

1 A bill to be entitled
2 An act relating to criminal sentencing; amending s.
3 921.0024, F.S.; prohibiting points from being assessed
4 for violations of community sanctions that are
5 resolved under an alternative sanction program for
6 purposes of calculations under the criminal punishment
7 code; revising provisions concerning the lowest
8 permissible sentence when the court imposes a split
9 sentence; amending s. 948.06, F.S.; providing for the
10 resolution of low-risk violations of probation through
11 an alternative sanction program in certain
12 circumstances; correcting provisions concerning
13 limiting prison sentences for first time revocations
14 for technical violations; providing for structured
15 sentences when technical violations result in prison
16 terms in certain circumstances; providing time periods
17 for hearing and release of a probationer or offender
18 concerning alleged violations that are criminal
19 traffic offenses or technical violations; providing
20 that the default method for the resolution of certain
21 low-risk violations is the alternative sanctions
22 program; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 Section 1. Paragraph (b) of subsection (1) and subsection
27 (2) of section 921.0024, Florida Statutes, are amended to read:
28 921.0024 Criminal Punishment Code; worksheet computations;
29 scoresheets.—

30 (1)

31 (b) WORKSHEET KEY:

32 Legal status points are assessed when any form of legal status
33 existed at the time the offender committed an offense before the
34 court for sentencing. Four (4) sentence points are assessed for
35 an offender's legal status.

36 Community sanction violation points are assessed when a
37 community sanction violation is before the court for sentencing.
38 Six (6) sentence points are assessed for each community sanction
39 violation and each successive community sanction violation,
40 unless any of the following apply:

41 1. If the community sanction violation includes a new
42 felony conviction before the sentencing court, twelve (12)
43 community sanction violation points are assessed for the
44 violation, and for each successive community sanction violation
45 involving a new felony conviction.

46 2. If the community sanction violation is committed by a
47 violent felony offender of special concern as defined in s.
48 948.06:

49 a. Twelve (12) community sanction violation points are
50 assessed for the violation and for each successive violation of

51 felony probation or community control where:

52 I. The violation does not include a new felony conviction;
53 and

54 II. The community sanction violation is not based solely
55 on the probationer or offender's failure to pay costs or fines
56 or make restitution payments.

57 b. Twenty-four (24) community sanction violation points
58 are assessed for the violation and for each successive violation
59 of felony probation or community control where the violation
60 includes a new felony conviction.

61 Multiple counts of community sanction violations before the
62 sentencing court shall not be a basis for multiplying the
63 assessment of community sanction violation points.

64 Prior serious felony points: If the offender has a primary
65 offense or any additional offense ranked in level 8, level 9, or
66 level 10, and one or more prior serious felonies, a single
67 assessment of thirty (30) points shall be added. For purposes of
68 this section, a prior serious felony is an offense in the
69 offender's prior record that is ranked in level 8, level 9, or
70 level 10 under s. 921.0022 or s. 921.0023 and for which the
71 offender is serving a sentence of confinement, supervision, or
72 other sanction or for which the offender's date of release from
73 confinement, supervision, or other sanction, whichever is later,
74 is within 3 years before the date the primary offense or any
75 additional offense was committed.

76 Prior capital felony points: If the offender has one or more
77 prior capital felonies in the offender's criminal record, points
78 shall be added to the subtotal sentence points of the offender
79 equal to twice the number of points the offender receives for
80 the primary offense and any additional offense. A prior capital
81 felony in the offender's criminal record is a previous capital
82 felony offense for which the offender has entered a plea of nolo
83 contendere or guilty or has been found guilty; or a felony in
84 another jurisdiction which is a capital felony in that
85 jurisdiction, or would be a capital felony if the offense were
86 committed in this state.

87 Possession of a firearm, semiautomatic firearm, or machine gun:
88 If the offender is convicted of committing or attempting to
89 commit any felony other than those enumerated in s. 775.087(2)
90 while having in his or her possession: a firearm as defined in
91 s. 790.001(6), an additional eighteen (18) sentence points are
92 assessed; or if the offender is convicted of committing or
93 attempting to commit any felony other than those enumerated in
94 s. 775.087(3) while having in his or her possession a
95 semiautomatic firearm as defined in s. 775.087(3) or a machine
96 gun as defined in s. 790.001(9), an additional twenty-five (25)
97 sentence points are assessed.

98 Sentencing multipliers:

99 Drug trafficking: If the primary offense is drug trafficking
100 under s. 893.135, the subtotal sentence points are multiplied,

101 at the discretion of the court, for a level 7 or level 8
102 offense, by 1.5. The state attorney may move the sentencing
103 court to reduce or suspend the sentence of a person convicted of
104 a level 7 or level 8 offense, if the offender provides
105 substantial assistance as described in s. 893.135(4).

106 Law enforcement protection: If the primary offense is a
107 violation of the Law Enforcement Protection Act under s.
108 775.0823(2), (3), or (4), the subtotal sentence points are
109 multiplied by 2.5. If the primary offense is a violation of s.
110 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
111 are multiplied by 2.0. If the primary offense is a violation of
112 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
113 Protection Act under s. 775.0823(10) or (11), the subtotal
114 sentence points are multiplied by 1.5.

115 Grand theft of a motor vehicle: If the primary offense is grand
116 theft of the third degree involving a motor vehicle and in the
117 offender's prior record, there are three or more grand thefts of
118 the third degree involving a motor vehicle, the subtotal
119 sentence points are multiplied by 1.5.

120 Offense related to a criminal gang: If the offender is convicted
121 of the primary offense and committed that offense for the
122 purpose of benefiting, promoting, or furthering the interests of
123 a criminal gang as defined in s. 874.03, the subtotal sentence
124 points are multiplied by 1.5. If applying the multiplier results
125 in the lowest permissible sentence exceeding the statutory

126 maximum sentence for the primary offense under chapter 775, the
127 court may not apply the multiplier and must sentence the
128 defendant to the statutory maximum sentence.

129 Domestic violence in the presence of a child: If the offender is
130 convicted of the primary offense and the primary offense is a
131 crime of domestic violence, as defined in s. 741.28, which was
132 committed in the presence of a child under 16 years of age who
133 is a family or household member as defined in s. 741.28(3) with
134 the victim or perpetrator, the subtotal sentence points are
135 multiplied by 1.5.

136 Adult-on-minor sex offense: If the offender was 18 years of age
137 or older and the victim was younger than 18 years of age at the
138 time the offender committed the primary offense, and if the
139 primary offense was an offense committed on or after October 1,
140 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
141 violation involved a victim who was a minor and, in the course
142 of committing that violation, the defendant committed a sexual
143 battery under chapter 794 or a lewd act under s. 800.04 or s.
144 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
145 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
146 800.04; or s. 847.0135(5), the subtotal sentence points are
147 multiplied by 2.0. If applying the multiplier results in the
148 lowest permissible sentence exceeding the statutory maximum
149 sentence for the primary offense under chapter 775, the court
150 may not apply the multiplier and must sentence the defendant to

151 the statutory maximum sentence.

152 3. If the community sanction violation is resolved through
153 the alternative sanction program under s. 948.03, no points are
154 assessed. If a community sanction violation not resolved through
155 the alternative sanction program is before the court, no points
156 are assessed for prior violations that were resolved through the
157 alternative sanction program.

158 (2) The lowest permissible sentence is the minimum
159 sentence that may be imposed by the trial court, absent a valid
160 reason for departure. The lowest permissible sentence is any
161 nonstate prison sanction in which the total sentence points
162 equals or is less than 44 points, unless the court determines
163 within its discretion that a prison sentence, which may be up to
164 the statutory maximums for the offenses committed, is
165 appropriate. When the total sentence points exceeds 44 points,
166 the lowest permissible sentence in prison months shall be
167 calculated by subtracting 28 points from the total sentence
168 points and decreasing the remaining total by 25 percent. The
169 total sentence points shall be calculated only as a means of
170 determining the lowest permissible sentence. The permissible
171 range for sentencing shall be the lowest permissible sentence up
172 to and including the statutory maximum, as defined in s.
173 775.082, for the primary offense and any additional offenses
174 before the court for sentencing. The sentencing court may impose
175 such sentences concurrently or consecutively. However, any

176 sentence to state prison must exceed 1 year. If the lowest
177 permissible sentence under the code exceeds the statutory
178 maximum sentence as provided in s. 775.082, the sentence
179 required by the code must be imposed. If the total sentence
180 points are greater than or equal to 363, the court may sentence
181 the offender to life imprisonment. An offender sentenced to life
182 imprisonment under this section is not eligible for any form of
183 discretionary early release, except executive clemency or
184 conditional medical release under s. 947.149. When the total
185 sentence points exceeds 44 points but is less than 108 points
186 and the court imposes a split sentence pursuant to s. 948.012,
187 probation months imposed as part of the split sentence count
188 toward the lowest permissible sentence up to the lesser of 24
189 months or one half of the lowest permissible sentence.

190 Section 2. Paragraph (c) of subsection (1), paragraph (f)
191 of subsection (2), subsection (4), and paragraphs (c), (d), (e),
192 and (i) of subsection (9) of section 948.06, Florida Statutes,
193 are amended to read:

194 948.06 Violation of probation or community control;
195 revocation; modification; continuance; failure to pay
196 restitution or cost of supervision.—

197 (1)

198 (c) If a probationer or offender on community control
199 commits a technical violation, the probation officer shall
200 determine whether the probationer or offender on community

201 control is eligible for the alternative sanctioning program
202 under subsection (9). If the probation officer determines that
203 the probationer or offender on community control is eligible,
204 the probation officer may proceed with the alternative
205 sanctioning program in lieu of filing an affidavit of violation
206 with the court. If the probationer or offender on community
207 control is eligible for the alternative sanctioning program and
208 the violation is a low-risk violation, as defined in paragraph
209 (9) (b), the probation officer shall proceed with the alternative
210 sanctioning program in lieu of filing an affidavit of violation
211 with the court unless directed by the court to submit or file an
212 affidavit of violation pursuant to paragraph (9) (h). For
213 purposes of this section, the term "technical violation" means
214 an alleged violation of supervision that is not a new felony
215 offense, a violent misdemeanor, a misdemeanor crime of domestic
216 violence, as defined in s. 741.28, or a misdemeanor under s.
217 316.193, s. 327.35, s. 741.29, s. 741.31, s. 784.046, s.
218 784.047, s. 784.048, s. 784.0487, s. 784.049, or s. 787.025
219 ~~misdemeanor offense~~, or criminal traffic offense other than a
220 misdemeanor violation of s. 322.34.

221 (2)

222 (f)1. Except as provided in subparagraph 3. or upon waiver
223 by the probationer, the court shall modify or continue a
224 probationary term upon finding a probationer in violation when
225 all any of the following apply ~~applies~~:

- 226 a. The term of supervision is probation.
- 227 b. The probationer does not qualify as a violent felony
228 offender of special concern, as defined in paragraph (8)(b).
- 229 c. The violation is a low-risk technical violation, as
230 defined in paragraph (9)(b).
- 231 d. The court has not, on two or more separate occasions,
232 previously found the probationer in violation of his or her
233 probation pursuant to a filed violation of probation affidavit
234 during the current term of supervision. A probationer who has
235 successfully completed sanctions through the alternative
236 sanctioning program is eligible for mandatory modification or
237 continuation of his or her probation. If the court has
238 previously found the probationer in violation of his or her
239 probation and modified probation with up to 90 days in county
240 jail as a special condition of probation it may, upon
241 modification of probation under subparagraph 1., include in the
242 sentence a maximum of 120 days in county jail as a special
243 condition of probation.
- 244 2. Upon modifying probation under subparagraph 1., the
245 court may include in the sentence a maximum of 90 days in county
246 jail as a special condition of probation.
- 247 3. Notwithstanding s. 921.0024, if a probationer meets the
248 criteria for mandatory modification in subparagraph 1. but has
249 less time on supervision remaining than the number of days in
250 jail authorized in subparagraph 2. ~~than 90 days of supervision~~

251 ~~remaining on his or her term of probation and meets the criteria~~
252 ~~for mandatory modification or continuation in subparagraph 1.,~~
253 the court may revoke probation and sentence the probationer to a
254 maximum of 90 or 120 days in county jail as a special condition
255 of probation as provided in subparagraph 2.

256 4. For purposes of imposing a jail sentence under this
257 paragraph only, the court may grant credit only for time served
258 in the county jail since the probationer's most recent arrest
259 for the violation. However, the court may not order the
260 probationer to a total term of incarceration greater than the
261 maximum provided by s. 775.082.

262 (4) Notwithstanding any other provision of this section, a
263 felony probationer or an offender in community control who is
264 arrested for violating his or her probation or community control
265 in a material respect may be taken before the court in the
266 county or circuit in which the probationer or offender was
267 arrested. That court shall advise him or her of the charge of a
268 violation and, if such charge is admitted, shall cause him or
269 her to be brought before the court that granted the probation or
270 community control. If the violation is not admitted by the
271 probationer or offender, the court may commit him or her or
272 release him or her with or without bail to await further
273 hearing. However, if the probationer or offender is under
274 supervision for any criminal offense proscribed in chapter 794,
275 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a

276 registered sexual predator or a registered sexual offender, or
277 is under supervision for a criminal offense for which he or she
278 would meet the registration criteria in s. 775.21, s. 943.0435,
279 or s. 944.607 but for the effective date of those sections, the
280 court must make a finding that the probationer or offender is
281 not a danger to the public prior to release with or without
282 bail. In determining the danger posed by the offender's or
283 probationer's release, the court may consider the nature and
284 circumstances of the violation and any new offenses charged; the
285 offender's or probationer's past and present conduct, including
286 convictions of crimes; any record of arrests without conviction
287 for crimes involving violence or sexual crimes; any other
288 evidence of allegations of unlawful sexual conduct or the use of
289 violence by the offender or probationer; the offender's or
290 probationer's family ties, length of residence in the community,
291 employment history, and mental condition; his or her history and
292 conduct during the probation or community control supervision
293 from which the violation arises and any other previous
294 supervisions, including disciplinary records of previous
295 incarcerations; the likelihood that the offender or probationer
296 will engage again in a criminal course of conduct; the weight of
297 the evidence against the offender or probationer; and any other
298 facts the court considers relevant. The court, as soon as is
299 practicable, shall give the probationer or offender an
300 opportunity to be fully heard on his or her behalf in person or

301 by counsel. If the alleged violation is a criminal traffic
302 offense or technical violation, the court shall, within 20 days,
303 give the probationer or offender an opportunity to be fully
304 heard on his or her behalf in person or by counsel. If no
305 hearing is held within 20 days the court shall release the
306 probationer or offender without bail. After the hearing, the
307 court shall make findings of fact and forward the findings to
308 the court that granted the probation or community control and to
309 the probationer or offender or his or her attorney. The findings
310 of fact by the hearing court are binding on the court that
311 granted the probation or community control. Upon the probationer
312 or offender being brought before it, the court that granted the
313 probation or community control may revoke, modify, or continue
314 the probation or community control or may place the probationer
315 into community control as provided in this section. However, the
316 probationer or offender shall not be released and shall not be
317 admitted to bail, but shall be brought before the court that
318 granted the probation or community control if any violation of
319 felony probation or community control other than a failure to
320 pay costs or fines or make restitution payments is alleged to
321 have been committed by:

322 (a) A violent felony offender of special concern, as
323 defined in this section;

324 (b) A person who is on felony probation or community
325 control for any offense committed on or after the effective date

326 of this act and who is arrested for a qualifying offense as
 327 defined in this section; or

328 (c) A person who is on felony probation or community
 329 control and has previously been found by a court to be a
 330 habitual violent felony offender as defined in s. 775.084(1)(b),
 331 a three-time violent felony offender as defined in s.
 332 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 333 arrested for committing a qualifying offense as defined in this
 334 section on or after the effective date of this act.

335 (9)

336 (c) As used in this subsection, the term "moderate-risk
 337 violation" means any of the following:

338 1. A violation identified in paragraph (b), when committed
 339 by an offender on community control.

340 2. Failure to remain at an approved residence by an
 341 offender on community control.

342 3. A third violation identified in paragraph (b) by a
 343 probationer within the current term of supervision.

344 4. A new misdemeanor offense that is not a violent
 345 misdemeanor, a misdemeanor crime of domestic violence, as
 346 defined in s. 741.28, or a misdemeanor under s. 316.193, s.
 347 327.35, s. 741.29, s. 741.31, s. 784.046, s. 784.047, s.
 348 784.048, s. 784.0487, s. 784.049, or s. 787.025.

349 ~~5.4.~~ Any other violation as determined by administrative
 350 order of the chief judge of the circuit.

351 (d) A probationer or offender on community control is not
 352 eligible for an alternative sanction if:

353 1. He or she is a violent felony offender of special
 354 concern as defined in paragraph (8) (b);

355 2. The violation is a felony, a violent misdemeanor, a
 356 misdemeanor crime of domestic violence, as defined in s. 741.28,
 357 or a misdemeanor under s. 316.193, s. 327.35, s. 741.29, s.
 358 741.31, s. 784.046, s. 784.047, s. 784.048, s. 784.0487, s.
 359 784.049, or s. 787.025 ~~misdemeanor~~, or criminal traffic offense
 360 other than a misdemeanor violation of s. 322.34;

361 3. The violation is absconding;

362 4. The violation is of a stay-away order or no-contact
 363 order;

364 5. The violation is not identified as low-risk or
 365 moderate-risk under this subsection or by administrative order;

366 6. He or she has a prior moderate-risk level violation
 367 during the current term of supervision;

368 7. He or she has three prior low-risk level violations
 369 during the same term of supervision;

370 8. The term of supervision is scheduled to terminate in
 371 less than 90 days; or

372 9. The terms of the sentence prohibit alternative
 373 sanctioning.

374 (e) For a first or second low-risk violation, as defined
 375 in paragraph (b), within the current term of supervision, a

376 | probation officer shall ~~may~~ offer an eligible probationer one or
377 | more of the following as an alternative sanction:

- 378 | 1. Up to 5 days in the county jail.
379 | 2. Up to 50 additional community service hours.
380 | 3. Counseling or treatment.
381 | 4. Support group attendance.
382 | 5. Drug testing.
383 | 6. Loss of travel or other privileges.
384 | 7. Curfew for up to 30 days.
385 | 8. House arrest for up to 30 days.
386 | 9.a. Any other sanction as determined by administrative
387 | order of the chief judge of the circuit.
388 | b. However, in no circumstance shall participation in an
389 | alternative sanctioning program convert a withheld adjudication
390 | to an adjudication of guilt.
391 | (i) If the violation is a low-risk violation under
392 | paragraph (b), the court shall impose the recommended sanction
393 | unless it records a finding of specific, identified risk to
394 | public safety, in which case it may direct the department to
395 | submit a violation report, affidavit, and warrant to the court.
396 | In all other cases, the court may impose the recommended
397 | sanction or direct the department to submit a violation report,
398 | affidavit, and warrant to the court.

399 | Section 3. This act shall take effect July 1, 2021.