

By Senator Powell

30-01129-22

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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 which are  
5       resolved under an alternative sanctioning program for  
6       purposes of calculations under the Criminal Punishment  
7       Code; amending s. 948.06, F.S.; providing for the  
8       resolution of low-risk violations of probation through  
9       an alternative sanctioning program in certain  
10      circumstances; revising the definition of the term  
11      "technical violation"; correcting provisions  
12      concerning limiting prison sentences for first-time  
13      revocations for technical violations; providing for  
14      structured sentences when technical violations result  
15      in prison terms in certain circumstances; providing  
16      time periods for hearing and release of a probationer  
17      or offender concerning alleged violations that are  
18      criminal traffic offenses or low-risk violations;  
19      revising the definition of the term "moderate-risk  
20      violation"; providing that an alternative sanction is  
21      the required method for resolving certain low-risk  
22      violations; providing an exception; providing an  
23      effective date.

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

26  
27       Section 1. Paragraph (b) of subsection (1) of section  
28       921.0024, Florida Statutes, is amended to read:

29       921.0024 Criminal Punishment Code; worksheet computations;

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30 scoresheets.-

31 (1)

32 (b) WORKSHEET KEY:

33

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

38

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

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

49 2. If the community sanction violation is committed by a  
50 violent felony offender of special concern as defined in s.  
51 948.06:

52 a. Twelve (12) community sanction violation points are  
53 assessed for the violation and for each successive violation of  
54 felony probation or community control where:

55 I. The violation does not include a new felony conviction;  
56 and

57 II. The community sanction violation is not based solely on  
58 the probationer or offender's failure to pay costs or fines or

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59 make restitution payments.

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

64  
65 Multiple counts of community sanction violations before the  
66 sentencing court shall not be a basis for multiplying the  
67 assessment of community sanction violation points.

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

80  
81 Prior capital felony points: If the offender has one or more  
82 prior capital felonies in the offender's criminal record, points  
83 shall be added to the subtotal sentence points of the offender  
84 equal to twice the number of points the offender receives for  
85 the primary offense and any additional offense. A prior capital  
86 felony in the offender's criminal record is a previous capital  
87 felony offense for which the offender has entered a plea of nolo

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88 contendere or guilty or has been found guilty; or a felony in  
89 another jurisdiction which is a capital felony in that  
90 jurisdiction, or would be a capital felony if the offense were  
91 committed in this state.

92

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

104

105 Sentencing multipliers:

106

107 Drug trafficking: If the primary offense is drug trafficking  
108 under s. 893.135, the subtotal sentence points are multiplied,  
109 at the discretion of the court, for a level 7 or level 8  
110 offense, by 1.5. The state attorney may move the sentencing  
111 court to reduce or suspend the sentence of a person convicted of  
112 a level 7 or level 8 offense, if the offender provides  
113 substantial assistance as described in s. 893.135(4).

114

115 Law enforcement protection: If the primary offense is a  
116 violation of the Law Enforcement Protection Act under s.

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117 775.0823(2), (3), or (4), the subtotal sentence points are  
118 multiplied by 2.5. If the primary offense is a violation of s.  
119 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points  
120 are multiplied by 2.0. If the primary offense is a violation of  
121 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
122 Protection Act under s. 775.0823(10) or (11), the subtotal  
123 sentence points are multiplied by 1.5.

124

125 Grand theft of a motor vehicle: If the primary offense is grand  
126 theft of the third degree involving a motor vehicle and in the  
127 offender's prior record, there are three or more grand thefts of  
128 the third degree involving a motor vehicle, the subtotal  
129 sentence points are multiplied by 1.5.

130

131 Offense related to a criminal gang: If the offender is convicted  
132 of the primary offense and committed that offense for the  
133 purpose of benefiting, promoting, or furthering the interests of  
134 a criminal gang as defined in s. 874.03, the subtotal sentence  
135 points are multiplied by 1.5. If applying the multiplier results  
136 in the lowest permissible sentence exceeding the statutory  
137 maximum sentence for the primary offense under chapter 775, the  
138 court may not apply the multiplier and must sentence the  
139 defendant to the statutory maximum sentence.

140

141 Domestic violence in the presence of a child: If the offender is  
142 convicted of the primary offense and the primary offense is a  
143 crime of domestic violence, as defined in s. 741.28, which was  
144 committed in the presence of a child under 16 years of age who  
145 is a family or household member as defined in s. 741.28(3) with

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146 the victim or perpetrator, the subtotal sentence points are  
147 multiplied by 1.5.

148

149 Adult-on-minor sex offense: If the offender was 18 years of age  
150 or older and the victim was younger than 18 years of age at the  
151 time the offender committed the primary offense, and if the  
152 primary offense was an offense committed on or after October 1,  
153 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the  
154 violation involved a victim who was a minor and, in the course  
155 of committing that violation, the defendant committed a sexual  
156 battery under chapter 794 or a lewd act under s. 800.04 or s.  
157 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.  
158 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.  
159 800.04; or s. 847.0135(5), the subtotal sentence points are  
160 multiplied by 2.0. If applying the multiplier results in the  
161 lowest permissible sentence exceeding the statutory maximum  
162 sentence for the primary offense under chapter 775, the court  
163 may not apply the multiplier and must sentence the defendant to  
164 the statutory maximum sentence.

165 3. If the community sanction violation is resolved through  
166 the alternative sanctioning program under s. 948.06(9), no  
167 points are assessed. If a community sanction violation not  
168 resolved through the alternative sanctioning program is before  
169 the court, no points are assessed for prior violations that were  
170 resolved through the alternative sanctioning program.

171 Section 2. Paragraph (c) of subsection (1), paragraph (f)  
172 of subsection (2), subsection (4), and paragraphs (c), (d), (e),  
173 and (i) of subsection (9) of section 948.06, Florida Statutes,  
174 are amended to read:

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175 948.06 Violation of probation or community control;  
176 revocation; modification; continuance; failure to pay  
177 restitution or cost of supervision.—

178 (1)

179 (c) If a probationer or offender on community control  
180 commits a technical violation, the probation officer shall  
181 determine whether the probationer or offender on community  
182 control is eligible for the alternative sanctioning program  
183 under subsection (9). If the probation officer determines that  
184 the probationer or offender on community control is eligible,  
185 the probation officer may proceed with the alternative  
186 sanctioning program in lieu of filing an affidavit of violation  
187 with the court. If the probationer or offender on community  
188 control is eligible for the alternative sanctioning program and  
189 the violation is a low-risk violation, as defined in paragraph  
190 (9) (b), the probation officer shall proceed with the alternative  
191 sanctioning program in lieu of filing an affidavit of violation  
192 with the court unless directed by the court to submit or file an  
193 affidavit of violation pursuant to paragraph (9) (i). For  
194 purposes of this section, the term "technical violation" means  
195 an alleged violation of supervision that is not a new felony  
196 offense, a misdemeanor violation of chapter 784, a misdemeanor  
197 crime of domestic violence, as defined in s. 741.28, or a  
198 misdemeanor under s. 316.193, s. 741.29, s. 741.31, s. 784.046,  
199 s. 784.047, s. 784.048, s. 784.0487, s. 784.049, or s. 787.025  
200 ~~misdemeanor offense~~, or criminal traffic offense other than a  
201 misdemeanor violation of s. 322.34.

202 (2)

203 (f)1. Except as provided in subparagraph 4. 3. or upon

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204 waiver by the probationer, the court shall modify or continue a  
205 probationary term upon finding a probationer in violation when  
206 all of the following apply:

207 a. The term of supervision is probation.

208 b. The probationer does not qualify as a violent felony  
209 offender of special concern, as defined in paragraph (8)(b).

210 c. The violation is a low-risk technical violation, as  
211 defined in paragraph (9)(b).

212 d. The court has not, on two or more separate occasions,  
213 previously found the probationer in violation of his or her  
214 probation pursuant to a filed violation of probation affidavit  
215 during the current term of supervision. A probationer who has  
216 successfully completed sanctions through the alternative  
217 sanctioning program is eligible for mandatory modification or  
218 continuation of his or her probation.

219 2. Upon modifying probation under subparagraph 1., the  
220 court may include in the sentence a maximum of 90 days in county  
221 jail as a special condition of probation. If the court has  
222 previously found the probationer in violation of his or her  
223 probation and modified probation with up to 90 days in county  
224 jail as a special condition of probation, it may, upon  
225 modification of probation under subparagraph 1., include in the  
226 sentence a maximum of 120 days in county jail as a special  
227 condition of probation.

228 ~~3.2.~~ Upon modifying probation under subparagraph 1., the  
229 court may include in the sentence a maximum of 90 days in county  
230 jail as a special condition of probation.

231 ~~4.3.~~ Notwithstanding s. 921.0024, if a probationer meets  
232 the criteria for mandatory modification in subparagraph 1. but



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233 has less time on supervision remaining than the number of days  
234 in jail authorized in subparagraph 2. ~~than 90 days of~~  
235 ~~supervision remaining on his or her term of probation and meets~~  
236 ~~the criteria for mandatory modification or continuation in~~  
237 ~~subparagraph 1.~~, the court may revoke probation and sentence the  
238 probationer to a maximum of 90 or 120 days in county jail as  
239 provided in subparagraph 2.

240 ~~5.4.~~ For purposes of imposing a jail sentence under this  
241 paragraph only, the court may grant credit only for time served  
242 in the county jail since the probationer's most recent arrest  
243 for the violation. However, the court may not order the  
244 probationer to a total term of incarceration greater than the  
245 maximum provided by s. 775.082.

246 (4) Notwithstanding any other provision of this section, a  
247 felony probationer or an offender in community control who is  
248 arrested for violating his or her probation or community control  
249 in a material respect may be taken before the court in the  
250 county or circuit in which the probationer or offender was  
251 arrested. That court shall advise him or her of the charge of a  
252 violation and, if such charge is admitted, shall cause him or  
253 her to be brought before the court that granted the probation or  
254 community control. If the violation is not admitted by the  
255 probationer or offender, the court may commit him or her or  
256 release him or her with or without bail to await further  
257 hearing. However, if the probationer or offender is under  
258 supervision for any criminal offense proscribed in chapter 794,  
259 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a  
260 registered sexual predator or a registered sexual offender, or  
261 is under supervision for a criminal offense for which he or she

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262 would meet the registration criteria in s. 775.21, s. 943.0435,  
263 or s. 944.607 but for the effective date of those sections, the  
264 court must make a finding that the probationer or offender is  
265 not a danger to the public prior to release with or without  
266 bail. In determining the danger posed by the offender's or  
267 probationer's release, the court may consider the nature and  
268 circumstances of the violation and any new offenses charged; the  
269 offender's or probationer's past and present conduct, including  
270 convictions of crimes; any record of arrests without conviction  
271 for crimes involving violence or sexual crimes; any other  
272 evidence of allegations of unlawful sexual conduct or the use of  
273 violence by the offender or probationer; the offender's or  
274 probationer's family ties, length of residence in the community,  
275 employment history, and mental condition; his or her history and  
276 conduct during the probation or community control supervision  
277 from which the violation arises and any other previous  
278 supervisions, including disciplinary records of previous  
279 incarcerations; the likelihood that the offender or probationer  
280 will engage again in a criminal course of conduct; the weight of  
281 the evidence against the offender or probationer; and any other  
282 facts the court considers relevant. The court, as soon as is  
283 practicable, shall give the probationer or offender an  
284 opportunity to be fully heard on his or her behalf in person or  
285 by counsel. If the alleged violation is a criminal traffic  
286 offense or a low-risk violation, as defined in paragraph (9) (b),  
287 the court shall, within 20 days after arrest, give the  
288 probationer or offender an opportunity to be fully heard on his  
289 or her behalf in person or by counsel. If no hearing is held  
290 within 20 days after arrest, the court shall release the

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291 probationer or offender without bail. The court may impose  
292 nonmonetary conditions of release. After the hearing, the court  
293 shall make findings of fact and forward the findings to the  
294 court that granted the probation or community control and to the  
295 probationer or offender or his or her attorney. The findings of  
296 fact by the hearing court are binding on the court that granted  
297 the probation or community control. Upon the probationer or  
298 offender being brought before it, the court that granted the  
299 probation or community control may revoke, modify, or continue  
300 the probation or community control or may place the probationer  
301 into community control as provided in this section. However, the  
302 probationer or offender shall not be released and shall not be  
303 admitted to bail, but shall be brought before the court that  
304 granted the probation or community control if any violation of  
305 felony probation or community control other than a failure to  
306 pay costs or fines or make restitution payments is alleged to  
307 have been committed by:

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

310 (b) A person who is on felony probation or community  
311 control for any offense committed on or after the effective date  
312 of this act and who is arrested for a qualifying offense as  
313 defined in this section; or

314 (c) A person who is on felony probation or community  
315 control and has previously been found by a court to be a  
316 habitual violent felony offender as defined in s. 775.084(1)(b),  
317 a three-time violent felony offender as defined in s.  
318 775.084(1)(c), or a sexual predator under s. 775.21, and who is  
319 arrested for committing a qualifying offense as defined in this

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320 section on or after the effective date of this act.

321 (9)

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

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

326 2. Failure to remain at an approved residence by an  
327 offender on community control.

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

330 4. A new misdemeanor offense that is not a misdemeanor  
331 violation of chapter 784, a misdemeanor crime of domestic  
332 violence, as defined in s. 741.28, or a misdemeanor under s.  
333 316.193, s. 741.29, s. 741.31, s. 784.046, s. 784.047, s.  
334 784.048, s. 784.0487, s. 784.049, or s. 787.025.

335 ~~5.4.~~ Any other violation as determined by administrative  
336 order of the chief judge of the circuit.

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

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

341 2. The violation is a felony, a misdemeanor violation of  
342 chapter 784, a misdemeanor crime of domestic violence, as  
343 defined in s. 741.28, or a misdemeanor under s. 316.193, s.  
344 741.29, s. 741.31, s. 784.046, s. 784.047, s. 784.048, s.  
345 784.0487, s. 784.049, or s. 787.025 ~~misdemeanor~~, or criminal  
346 traffic offense other than a misdemeanor violation of s. 322.34;

347 3. The violation is absconding;

348 4. The violation is of a stay-away order or no-contact

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349 order;

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

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

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

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

358 9. The terms of the sentence prohibit alternative  
359 sanctioning.

360 (e) For a first or second low-risk violation, as defined in  
361 paragraph (b), within the current term of supervision, a  
362 probation officer shall ~~may~~ offer an eligible probationer one or  
363 more of the following as an alternative sanction:

364 1. Up to 5 days in the county jail.

365 2. Up to 50 additional community service hours.

366 3. Counseling or treatment.

367 4. Support group attendance.

368 5. Drug testing.

369 6. Loss of travel or other privileges.

370 7. Curfew for up to 30 days.

371 8. House arrest for up to 30 days.

372 9.a. Any other sanction as determined by administrative  
373 order of the chief judge of the circuit.

374 b. However, in no circumstance shall participation in an  
375 alternative sanctioning program convert a withheld adjudication  
376 to an adjudication of guilt.

377 (i) If the violation is a low-risk violation under

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378 paragraph (b), the court shall impose the recommended sanction  
379 unless it records a finding of specific, identified risk to  
380 public safety, in which case it may direct the department to  
381 submit a violation report, affidavit, and warrant to the court.  
382 In all other cases, the court may impose the recommended  
383 sanction or direct the department to submit a violation report,  
384 affidavit, and warrant to the court.

385 Section 3. This act shall take effect October 1, 2022.