

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 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; correcting provisions concerning
 11 limiting prison sentences for first time revocations
 12 for technical violations; providing for structured
 13 sentences when technical violations result in prison
 14 terms in certain circumstances; providing time periods
 15 for hearing and release of a probationer or offender
 16 concerning alleged violations that are criminal
 17 traffic offenses or technical violations; providing
 18 that an alternative sanctioning program is the default
 19 method for the resolution of certain low-risk
 20 violations; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Paragraph (b) of subsection (1) of section
 25 921.0024, Florida Statutes, is amended to read:

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26 921.0024 Criminal Punishment Code; worksheet computations;
 27 scoresheets.—

28 (1)

29 (b) WORKSHEET KEY:

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

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

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

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

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

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50 I. The violation does not include a new felony conviction;
51 and

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

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

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

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

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

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

96 Sentencing multipliers:

97 Drug trafficking: If the primary offense is drug trafficking

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

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

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

118 | Offense related to a criminal gang: If the offender is convicted
 119 | of the primary offense and committed that offense for the
 120 | purpose of benefiting, promoting, or furthering the interests of
 121 | a criminal gang as defined in s. 874.03, the subtotal sentence

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122 points are multiplied by 1.5. If applying the multiplier results
123 in the lowest permissible sentence exceeding the statutory
124 maximum sentence for the primary offense under chapter 775, the
125 court may not apply the multiplier and must sentence the
126 defendant to the statutory maximum sentence.

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

134 Adult-on-minor sex offense: If the offender was 18 years of age
135 or older and the victim was younger than 18 years of age at the
136 time the offender committed the primary offense, and if the
137 primary offense was an offense committed on or after October 1,
138 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
139 violation involved a victim who was a minor and, in the course
140 of committing that violation, the defendant committed a sexual
141 battery under chapter 794 or a lewd act under s. 800.04 or s.
142 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
143 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
144 800.04; or s. 847.0135(5), the subtotal sentence points are
145 multiplied by 2.0. If applying the multiplier results in the

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146 lowest permissible sentence exceeding the statutory maximum
147 sentence for the primary offense under chapter 775, the court
148 may not apply the multiplier and must sentence the defendant to
149 the statutory maximum sentence.

150 3. If the community sanction violation is resolved through
151 the alternative sanctioning program under s. 948.06(9), no
152 points are assessed. If a community sanction violation not
153 resolved through the alternative sanctioning program is before
154 the court, no points are assessed for prior violations that were
155 resolved through the alternative sanctioning program.

156 Section 2. Paragraph (c) of subsection (1), paragraph (f)
157 of subsection (2), subsection (4), and paragraphs (c), (d), (e),
158 and (i) of subsection (9) of section 948.06, Florida Statutes,
159 are amended to read:

160 948.06 Violation of probation or community control;
161 revocation; modification; continuance; failure to pay
162 restitution or cost of supervision.—

163 (1)

164 (c) If a probationer or offender on community control
165 commits a technical violation, the probation officer shall
166 determine whether the probationer or offender on community
167 control is eligible for the alternative sanctioning program
168 under subsection (9). If the probation officer determines that
169 the probationer or offender on community control is eligible,
170 the probation officer may proceed with the alternative

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171 sanctioning program in lieu of filing an affidavit of violation
172 with the court. If the probationer or offender on community
173 control is eligible for the alternative sanctioning program and
174 the violation is a low-risk violation, as defined in paragraph
175 (9) (b), the probation officer shall proceed with the alternative
176 sanctioning program in lieu of filing an affidavit of violation
177 with the court unless directed by the court to submit or file an
178 affidavit of violation pursuant to paragraph (9) (i). For
179 purposes of this section, the term "technical violation" means
180 an alleged violation of supervision that is not a new felony
181 offense, a misdemeanor violation of chapter 784, a misdemeanor
182 crime of domestic violence, as defined in s. 741.28, or a
183 misdemeanor under s. 316.193, s. 741.29, s. 741.31, s. 784.046,
184 s. 784.047, s. 784.048, s. 784.0487, s. 784.049, or s. 787.025
185 ~~misdemeanor offense~~, or criminal traffic offense other than a
186 misdemeanor violation of s. 322.34.

187 (2)

188 (f)1. Except as provided in subparagraph 4. 3- or upon
189 waiver by the probationer, the court shall modify or continue a
190 probationary term upon finding a probationer in violation when
191 all of the following apply:

- 192 a. The term of supervision is probation.
193 b. The probationer does not qualify as a violent felony
194 offender of special concern, as defined in paragraph (8) (b).
195 c. The violation is a low-risk technical violation, as

196 defined in paragraph (9) (b) .

197 d. The court has not, on two or more separate occasions,
 198 previously found the probationer in violation of his or her
 199 probation pursuant to a filed violation of probation affidavit
 200 during the current term of supervision. A probationer who has
 201 successfully completed sanctions through the alternative
 202 sanctioning program is eligible for mandatory modification or
 203 continuation of his or her probation.

204 2. Upon modifying probation under subparagraph 1., the
 205 court may include in the sentence a maximum of 90 days in county
 206 jail as a special condition of probation. If the court has
 207 previously found the probationer in violation of his or her
 208 probation and modified probation with up to 90 days in county
 209 jail as a special condition of probation it may, upon
 210 modification of probation under subparagraph 1., include in the
 211 sentence a maximum of 120 days in county jail as a special
 212 condition of probation.

213 ~~3.2.~~ Upon modifying probation under subparagraph 1., the
 214 court may include in the sentence a maximum of 90 days in county
 215 jail as a special condition of probation.

216 ~~4.3.~~ Notwithstanding s. 921.0024, if a probationer meets
 217 the criteria for mandatory modification in subparagraph 1. but
 218 has less time on supervision remaining than the number of days
 219 in jail authorized in subparagraph 2. ~~than 90 days of~~
 220 ~~supervision remaining on his or her term of probation and meets~~

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221 ~~the criteria for mandatory modification or continuation in~~
222 ~~subparagraph 1.~~, the court may revoke probation and sentence the
223 probationer to a maximum of 90 or 120 days in county jail as
224 provided in subparagraph 2.

225 ~~5.4.~~ For purposes of imposing a jail sentence under this
226 paragraph only, the court may grant credit only for time served
227 in the county jail since the probationer's most recent arrest
228 for the violation. However, the court may not order the
229 probationer to a total term of incarceration greater than the
230 maximum provided by s. 775.082.

231 (4) Notwithstanding any other provision of this section, a
232 felony probationer or an offender in community control who is
233 arrested for violating his or her probation or community control
234 in a material respect may be taken before the court in the
235 county or circuit in which the probationer or offender was
236 arrested. That court shall advise him or her of the charge of a
237 violation and, if such charge is admitted, shall cause him or
238 her to be brought before the court that granted the probation or
239 community control. If the violation is not admitted by the
240 probationer or offender, the court may commit him or her or
241 release him or her with or without bail to await further
242 hearing. However, if the probationer or offender is under
243 supervision for any criminal offense proscribed in chapter 794,
244 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a
245 registered sexual predator or a registered sexual offender, or

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246 is under supervision for a criminal offense for which he or she
247 would meet the registration criteria in s. 775.21, s. 943.0435,
248 or s. 944.607 but for the effective date of those sections, the
249 court must make a finding that the probationer or offender is
250 not a danger to the public prior to release with or without
251 bail. In determining the danger posed by the offender's or
252 probationer's release, the court may consider the nature and
253 circumstances of the violation and any new offenses charged; the
254 offender's or probationer's past and present conduct, including
255 convictions of crimes; any record of arrests without conviction
256 for crimes involving violence or sexual crimes; any other
257 evidence of allegations of unlawful sexual conduct or the use of
258 violence by the offender or probationer; the offender's or
259 probationer's family ties, length of residence in the community,
260 employment history, and mental condition; his or her history and
261 conduct during the probation or community control supervision
262 from which the violation arises and any other previous
263 supervisions, including disciplinary records of previous
264 incarcerations; the likelihood that the offender or probationer
265 will engage again in a criminal course of conduct; the weight of
266 the evidence against the offender or probationer; and any other
267 facts the court considers relevant. The court, as soon as is
268 practicable, shall give the probationer or offender an
269 opportunity to be fully heard on his or her behalf in person or
270 by counsel. If the alleged violation is a criminal traffic

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271 offense or a low-risk violation, as defined in paragraph (9) (b),
272 the court shall, within 20 days after arrest, give the
273 probationer or offender an opportunity to be fully heard on his
274 or her behalf in person or by counsel. If no hearing is held
275 within 20 days after arrest, the court shall release the
276 probationer or offender without bail. The court may impose
277 nonmonetary conditions of release. After the hearing, the court
278 shall make findings of fact and forward the findings to the
279 court that granted the probation or community control and to the
280 probationer or offender or his or her attorney. The findings of
281 fact by the hearing court are binding on the court that granted
282 the probation or community control. Upon the probationer or
283 offender being brought before it, the court that granted the
284 probation or community control may revoke, modify, or continue
285 the probation or community control or may place the probationer
286 into community control as provided in this section. However, the
287 probationer or offender shall not be released and shall not be
288 admitted to bail, but shall be brought before the court that
289 granted the probation or community control if any violation of
290 felony probation or community control other than a failure to
291 pay costs or fines or make restitution payments is alleged to
292 have been committed by:

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

295 (b) A person who is on felony probation or community

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296 control for any offense committed on or after the effective date
 297 of this act and who is arrested for a qualifying offense as
 298 defined in this section; or

299 (c) A person who is on felony probation or community
 300 control and has previously been found by a court to be a
 301 habitual violent felony offender as defined in s. 775.084(1)(b),
 302 a three-time violent felony offender as defined in s.
 303 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 304 arrested for committing a qualifying offense as defined in this
 305 section on or after the effective date of this act.

306 (9)

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

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

311 2. Failure to remain at an approved residence by an
 312 offender on community control.

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

315 4. A new misdemeanor offense that is not a misdemeanor
 316 violation of chapter 784, a misdemeanor crime of domestic
 317 violence, as defined in s. 741.28, or a misdemeanor under s.
 318 316.193, s. 741.29, s. 741.31, s. 784.046, s. 784.047, s.
 319 784.048, s. 784.0487, s. 784.049, or s. 787.025.

320 ~~5.4.~~ Any other violation as determined by administrative

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321 order of the chief judge of the circuit.

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

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

326 2. The violation is a felony, a misdemeanor violation of
327 chapter 784, a misdemeanor crime of domestic violence, as
328 defined in s. 741.28, or a misdemeanor under s. 316.193, s.
329 741.29, s. 741.31, s. 784.046, s. 784.047, s. 784.048, s.
330 784.0487, s. 784.049, or s. 787.025 ~~misdemeanor~~, or criminal
331 traffic offense other than a misdemeanor violation of s. 322.34;

332 3. The violation is absconding;

333 4. The violation is of a stay-away order or no-contact
334 order;

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

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

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

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

343 9. The terms of the sentence prohibit alternative
344 sanctioning.

345 (e) For a first or second low-risk violation, as defined

346 | in paragraph (b), within the current term of supervision, a
 347 | probation officer shall ~~may~~ offer an eligible probationer one or
 348 | more of the following as an alternative sanction:

- 349 | 1. Up to 5 days in the county jail.
- 350 | 2. Up to 50 additional community service hours.
- 351 | 3. Counseling or treatment.
- 352 | 4. Support group attendance.
- 353 | 5. Drug testing.
- 354 | 6. Loss of travel or other privileges.
- 355 | 7. Curfew for up to 30 days.
- 356 | 8. House arrest for up to 30 days.
- 357 | 9.a. Any other sanction as determined by administrative
 358 | order of the chief judge of the circuit.

359 | b. However, in no circumstance shall participation in an
 360 | alternative sanctioning program convert a withheld adjudication
 361 | to an adjudication of guilt.

362 | (i) If the violation is a low-risk violation under
 363 | paragraph (b), the court shall impose the recommended sanction
 364 | unless it records a finding of specific, identified risk to
 365 | public safety, in which case it may direct the department to
 366 | submit a violation report, affidavit, and warrant to the court.
 367 | In all other cases, the court may impose the recommended
 368 | sanction or direct the department to submit a violation report,
 369 | affidavit, and warrant to the court.

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