

By Senator Simon

3-01130-23

20231478__

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; requiring a court to impose the
23 recommended sanction for certain low-risk violations;
24 providing an exception; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Paragraph (b) of subsection (1) of section
29 921.0024, Florida Statutes, is amended to read:

3-01130-23

20231478__

30 921.0024 Criminal Punishment Code; worksheet computations;
31 scoresheets.-

32 (1)

33 (b) WORKSHEET KEY:

34

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

39

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

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

50 2. If the community sanction violation is committed by a
51 violent felony offender of special concern as defined in s.
52 948.06:

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

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

58 II. The community sanction violation is not based solely on

3-01130-23

20231478__

59 the probationer or offender's failure to pay costs or fines or
60 make restitution payments.

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

65

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

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

81

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

3-01130-23

20231478__

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

93

94 Possession of a firearm, semiautomatic firearm, or machine gun:

95 If the offender is convicted of committing or attempting to

96 commit any felony other than those enumerated in s. 775.087(2)

97 while having in his or her possession: a firearm as defined in

98 s. 790.001(6), an additional eighteen (18) sentence points are

99 assessed; or if the offender is convicted of committing or

100 attempting to commit any felony other than those enumerated in

101 s. 775.087(3) while having in his or her possession a

102 semiautomatic firearm as defined in s. 775.087(3) or a machine

103 gun as defined in s. 790.001(9), an additional twenty-five (25)

104 sentence points are assessed.

105

106 Sentencing multipliers:

107

108 Drug trafficking: If the primary offense is drug trafficking

109 under s. 893.135, the subtotal sentence points are multiplied,

110 at the discretion of the court, for a level 7 or level 8

111 offense, by 1.5. The state attorney may move the sentencing

112 court to reduce or suspend the sentence of a person convicted of

113 a level 7 or level 8 offense, if the offender provides

114 substantial assistance as described in s. 893.135(4).

115

116 Law enforcement protection: If the primary offense is a

3-01130-23

20231478__

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

125

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

131

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

141

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

3-01130-23

20231478__

146 is a family or household member as defined in s. 741.28(3) with
147 the victim or perpetrator, the subtotal sentence points are
148 multiplied by 1.5.

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

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

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

3-01130-23

20231478__

175 are amended to read:

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

179 (1)

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

203 (2)

3-01130-23

20231478__

204 (f)1. Except as provided in subparagraph 4. ~~3.~~ or upon
205 waiver by the probationer, the court shall modify or continue a
206 probationary term upon finding a probationer in violation when
207 all of the following apply:

208 a. The term of supervision is probation.

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

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

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

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

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

232 ~~4.3.~~ Notwithstanding s. 921.0024, if a probationer meets

3-01130-23

20231478__

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

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

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

3-01130-23

20231478__

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

3-01130-23

20231478__

291 within 20 days after arrest, the court must release the
292 probationer or offender without bail. The court may impose
293 nonmonetary conditions of release. After the hearing, the court
294 shall make findings of fact and forward the findings to the
295 court that granted the probation or community control and to the
296 probationer or offender or his or her attorney. The findings of
297 fact by the hearing court are binding on the court that granted
298 the probation or community control. Upon the probationer or
299 offender being brought before it, the court that granted the
300 probation or community control may revoke, modify, or continue
301 the probation or community control or may place the probationer
302 into community control as provided in this section. However, the
303 probationer or offender shall not be released and shall not be
304 admitted to bail, but shall be brought before the court that
305 granted the probation or community control if any violation of
306 felony probation or community control other than a failure to
307 pay costs or fines or make restitution payments is alleged to
308 have been committed by:

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

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

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

3-01130-23

20231478__

320 arrested for committing a qualifying offense as defined in this
321 section on or after the effective date of this act.

322 (9)

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

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

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

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

331 4. A new misdemeanor offense that is not a misdemeanor
332 violation of chapter 784, a misdemeanor crime of domestic
333 violence as defined in s. 741.28, or a misdemeanor under s.
334 316.193, s. 741.29, s. 741.31, s. 784.046, s. 784.047, s.
335 784.048, s. 784.0487, s. 784.049, or s. 787.025.

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

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

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

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

348 3. The violation is absconding;

3-01130-23

20231478__

- 349 4. The violation is of a stay-away order or no-contact
350 order;
- 351 5. The violation is not identified as low-risk or moderate-
352 risk under this subsection or by administrative order;
- 353 6. He or she has a prior moderate-risk level violation
354 during the current term of supervision;
- 355 7. He or she has three prior low-risk level violations
356 during the same term of supervision;
- 357 8. The term of supervision is scheduled to terminate in
358 less than 90 days; or
- 359 9. The terms of the sentence prohibit alternative
360 sanctioning.
- 361 (e) For a first or second low-risk violation, as defined in
362 paragraph (b), within the current term of supervision, a
363 probation officer shall ~~may~~ offer an eligible probationer one or
364 more of the following as an alternative sanction:
- 365 1. Up to 5 days in the county jail.
- 366 2. Up to 50 additional community service hours.
- 367 3. Counseling or treatment.
- 368 4. Support group attendance.
- 369 5. Drug testing.
- 370 6. Loss of travel or other privileges.
- 371 7. Curfew for up to 30 days.
- 372 8. House arrest for up to 30 days.
- 373 9.a. Any other sanction as determined by administrative
374 order of the chief judge of the circuit.
- 375 b. However, in no circumstance shall participation in an
376 alternative sanctioning program convert a withheld adjudication
377 to an adjudication of guilt.

3-01130-23

20231478__

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

386 Section 3. This act shall take effect October 1, 2023.