

1 A bill to be entitled
2 An act relating to criminal sentencing; amending s.
3 921.002, F.S.; providing that the sentencing
4 guidelines of the Criminal Punishment Code are
5 recommendations for sentencing and are not mandatory;
6 revising provisions concerning departures from
7 recommended sentences; amending ss. 921.0024,
8 921.0026, and 921.00265, F.S.; conforming provisions;
9 providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 921.002, Florida Statutes, is amended
14 to read:

15 921.002 The Criminal Punishment Code.—The Criminal
16 Punishment Code shall apply to all felony offenses, except
17 capital felonies, committed on or after October 1, 1998.

18 (1) The provision of criminal penalties and of limitations
19 upon the application of such penalties is a matter of
20 predominantly substantive law and, as such, is a matter properly
21 addressed by the Legislature. The Legislature, in the exercise
22 of its authority and responsibility to establish sentencing
23 criteria, to provide for the imposition of criminal penalties,
24 and to make the best use of state prisons so that violent
25 criminal offenders are appropriately incarcerated, has

26 | determined that it is in the best interest of the state to
27 | develop, implement, and revise a ~~sentencing~~ policy of
28 | recommended sentences. The Criminal Punishment Code embodies the
29 | principles that:

30 | (a) Sentencing is neutral with respect to race, gender,
31 | and social and economic status.

32 | (b) The primary purpose of sentencing is to punish the
33 | offender. Rehabilitation is a desired goal of the criminal
34 | justice system but is subordinate to the goal of punishment.

35 | (c) The penalty imposed is commensurate with the severity
36 | of the primary offense and the circumstances surrounding the
37 | primary offense.

38 | (d) The severity of the sentence increases with the length
39 | and nature of the offender's prior record.

40 | (e) The sentence imposed by the sentencing judge reflects
41 | the length of actual time to be served, shortened only by the
42 | application of incentive and meritorious gain-time as provided
43 | by law, and may not be shortened if the defendant would
44 | consequently serve less than 85 percent of his or her term of
45 | imprisonment as provided in s. 944.275(4)(b)3. The provisions of
46 | chapter 947, relating to parole, shall not apply to persons
47 | sentenced under the Criminal Punishment Code.

48 | (f) Departures below the lowest ~~permissible~~ sentence
49 | recommended ~~established~~ by the code must be articulated in
50 | writing by the trial court judge and made only when

51 | circumstances or factors reasonably justify the mitigation of
52 | the sentence due to a mitigating circumstance of a kind, or to a
53 | degree, not adequately taken into consideration in the
54 | formulation of the code. The level of proof necessary to
55 | establish facts that support a departure from the lowest
56 | recommended ~~permissible~~ sentence is a preponderance of the
57 | evidence.

58 | (g) The trial court judge may impose a sentence above the
59 | highest sentence recommended by the code when circumstances or
60 | factors reasonably justify the aggravation of the sentence due
61 | to an aggravating circumstance of a kind, or to a degree, not
62 | adequately taken into consideration in the formulation of the
63 | code ~~impose a sentence up to and including the statutory maximum~~
64 | for any offense, including an offense that is before the court
65 | due to a violation of probation or community control.

66 | (h) A sentence may be appealed on the basis that it
67 | departs from the Criminal Punishment Code only if the sentence
68 | is below the lowest recommended ~~permissible~~ sentence or as
69 | enumerated in s. 924.06(1).

70 | (i) Use of incarcerative sanctions is prioritized toward
71 | offenders convicted of serious offenses and certain offenders
72 | who have long prior records, in order to maximize the finite
73 | capacities of state and local correctional facilities.

74 | (2) When a defendant is before the court for sentencing
75 | for more than one felony and the felonies were committed under

76 | more than one version or revision of the former sentencing
77 | guidelines or the code, each felony shall be sentenced under the
78 | guidelines or the code in effect at the time the particular
79 | felony was committed. This subsection does not apply to
80 | sentencing for any capital felony.

81 | (3) A court may impose a departure below the lowest
82 | recommended ~~permissible~~ sentence based upon circumstances or
83 | factors that reasonably justify the mitigation of the sentence
84 | in accordance with s. 921.0026. The level of proof necessary to
85 | establish facts supporting the mitigation of a sentence is a
86 | preponderance of the evidence. When multiple reasons exist to
87 | support the mitigation, the mitigation shall be upheld when at
88 | least one circumstance or factor justifies the mitigation
89 | regardless of the presence of other circumstances or factors
90 | found not to justify mitigation. Any sentence imposed below the
91 | lowest recommended ~~permissible~~ sentence must be explained in
92 | writing by the trial court judge.

93 | (4) (a) The Department of Corrections shall report on
94 | trends in sentencing practices and sentencing score thresholds
95 | and provide an analysis on the sentencing factors considered by
96 | the courts and shall submit this information to the Legislature
97 | by October 1 of each year.

98 | (b) The Criminal Justice Estimating Conference, with the
99 | assistance of the Department of Corrections, shall estimate the
100 | impact of any proposed change to the Criminal Punishment Code on

101 future rates of incarceration and on the prison population. The
102 Criminal Justice Estimating Conference shall base its
103 projections on historical data concerning sentencing practices
104 which have been accumulated by the Department of Corrections and
105 other relevant data from other state agencies and records of the
106 Department of Corrections which disclose the average time served
107 for offenses covered by any proposed changes to the Criminal
108 Punishment Code.

109 (c) In order to produce projects that are either required
110 by law or requested by the Legislature to assist the Legislature
111 in making modifications to the Criminal Punishment Code, the
112 Department of Corrections is authorized to collect and evaluate
113 Criminal Punishment Code scoresheets from each of the judicial
114 circuits after sentencing. ~~Beginning in 1999,~~ By October 1 of
115 each year, the Department of Corrections shall provide an annual
116 report to the Legislature that shows the rate of compliance of
117 each judicial circuit in providing scoresheets to the
118 department.

119 Section 2. Paragraph (b) of subsection (1) and subsections
120 (2), (3), and (4) of section 921.0024, Florida Statutes, are
121 amended to read:

122 921.0024 Criminal Punishment Code; worksheet computations;
123 scoresheets.—

124 (1)

125 (b) WORKSHEET KEY:

126 Legal status points are assessed when any form of legal status
127 existed at the time the offender committed an offense before the
128 court for sentencing. Four (4) sentence points are assessed for
129 an offender's legal status.

130 Community sanction violation points are assessed when a
131 community sanction violation is before the court for sentencing.
132 Six (6) sentence points are assessed for each community sanction
133 violation and each successive community sanction violation,
134 unless any of the following apply:

135 1. If the community sanction violation includes a new
136 felony conviction before the sentencing court, twelve (12)
137 community sanction violation points are assessed for the
138 violation, and for each successive community sanction violation
139 involving a new felony conviction.

140 2. If the community sanction violation is committed by a
141 violent felony offender of special concern as defined in s.
142 948.06:

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

146 I. The violation does not include a new felony conviction;
147 and

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

151 b. Twenty-four (24) community sanction violation points
152 are assessed for the violation and for each successive violation
153 of felony probation or community control where the violation
154 includes a new felony conviction.
155 Multiple counts of community sanction violations before the
156 sentencing court shall not be a basis for multiplying the
157 assessment of community sanction violation points.
158 Prior serious felony points: If the offender has a primary
159 offense or any additional offense ranked in level 8, level 9, or
160 level 10, and one or more prior serious felonies, a single
161 assessment of thirty (30) points shall be added. For purposes of
162 this section, a prior serious felony is an offense in the
163 offender's prior record that is ranked in level 8, level 9, or
164 level 10 under s. 921.0022 or s. 921.0023 and for which the
165 offender is serving a sentence of confinement, supervision, or
166 other sanction or for which the offender's date of release from
167 confinement, supervision, or other sanction, whichever is later,
168 is within 3 years before the date the primary offense or any
169 additional offense was committed.
170 Prior capital felony points: If the offender has one or more
171 prior capital felonies in the offender's criminal record, points
172 shall be added to the subtotal sentence points of the offender
173 equal to twice the number of points the offender receives for
174 the primary offense and any additional offense. A prior capital
175 felony in the offender's criminal record is a previous capital

176 felony offense for which the offender has entered a plea of nolo
177 contendere or guilty or has been found guilty; or a felony in
178 another jurisdiction which is a capital felony in that
179 jurisdiction, or would be a capital felony if the offense were
180 committed in this state.

181 Possession of a firearm, semiautomatic firearm, or machine gun:
182 If the offender is convicted of committing or attempting to
183 commit any felony other than those enumerated in s. 775.087(2)
184 while having in his or her possession: a firearm as defined in
185 s. 790.001(6), an additional eighteen (18) sentence points are
186 assessed; or if the offender is convicted of committing or
187 attempting to commit any felony other than those enumerated in
188 s. 775.087(3) while having in his or her possession a
189 semiautomatic firearm as defined in s. 775.087(3) or a machine
190 gun as defined in s. 790.001(9), an additional twenty-five (25)
191 sentence points are assessed.

192 Sentencing multipliers:

193 Drug trafficking: If the primary offense is drug trafficking
194 under s. 893.135, the subtotal sentence points are multiplied,
195 at the discretion of the court, for a level 7 or level 8
196 offense, by 1.5. The state attorney may move the sentencing
197 court to reduce or suspend the sentence of a person convicted of
198 a level 7 or level 8 offense, if the offender provides
199 substantial assistance as described in s. 893.135(4).

200 Law enforcement protection: If the primary offense is a

201 violation of the Law Enforcement Protection Act under s.
202 775.0823(2), (3), or (4), the subtotal sentence points are
203 multiplied by 2.5. If the primary offense is a violation of s.
204 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
205 are multiplied by 2.0. If the primary offense is a violation of
206 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
207 Protection Act under s. 775.0823(10) or (11), the subtotal
208 sentence points are multiplied by 1.5.

209 Grand theft of a motor vehicle: If the primary offense is grand
210 theft of the third degree involving a motor vehicle and in the
211 offender's prior record, there are three or more grand thefts of
212 the third degree involving a motor vehicle, the subtotal
213 sentence points are multiplied by 1.5.

214 Offense related to a criminal gang: If the offender is convicted
215 of the primary offense and committed that offense for the
216 purpose of benefiting, promoting, or furthering the interests of
217 a criminal gang as defined in s. 874.03, the subtotal sentence
218 points are multiplied by 1.5. If applying the multiplier results
219 in the lowest recommended ~~permissible~~ sentence exceeding the
220 statutory maximum sentence for the primary offense under chapter
221 775, the court may not apply the multiplier and must sentence
222 the defendant to the statutory maximum sentence.

223 Domestic violence in the presence of a child: If the offender is
224 convicted of the primary offense and the primary offense is a
225 crime of domestic violence, as defined in s. 741.28, which was

226 committed in the presence of a child under 16 years of age who
227 is a family or household member as defined in s. 741.28(3) with
228 the victim or perpetrator, the subtotal sentence points are
229 multiplied by 1.5.

230 Adult-on-minor sex offense: If the offender was 18 years of age
231 or older and the victim was younger than 18 years of age at the
232 time the offender committed the primary offense, and if the
233 primary offense was an offense committed on or after October 1,
234 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
235 violation involved a victim who was a minor and, in the course
236 of committing that violation, the defendant committed a sexual
237 battery under chapter 794 or a lewd act under s. 800.04 or s.
238 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
239 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
240 800.04; or s. 847.0135(5), the subtotal sentence points are
241 multiplied by 2.0. If applying the multiplier results in the
242 lowest recommended ~~permissible~~ sentence exceeding the statutory
243 maximum sentence for the primary offense under chapter 775, the
244 court may not apply the multiplier and must sentence the
245 defendant to the statutory maximum sentence.

246 (2) The lowest recommended ~~permissible~~ sentence is the
247 recommended minimum sentence that should ~~may~~ be imposed by the
248 trial court, absent a valid reason for departure. The lowest
249 recommended ~~permissible~~ sentence is any nonstate prison sanction
250 in which the total sentence points equals or is less than 44

251 points, unless the court determines within its discretion that a
252 prison sentence, which may be up to the statutory maximums for
253 the offenses committed, is appropriate. When the total sentence
254 points exceeds 44 points, the lowest recommended ~~permissible~~
255 sentence in prison months shall be calculated by subtracting 28
256 points from the total sentence points and decreasing the
257 remaining total by 25 percent. The total sentence points shall
258 be calculated only as a means of determining the lowest
259 recommended ~~permissible~~ sentence. The recommended ~~permissible~~
260 range for sentencing shall be the lowest recommended ~~permissible~~
261 sentence up to and including the statutory maximum, as defined
262 in s. 775.082, for the primary offense and any additional
263 offenses before the court for sentencing. The sentencing court
264 may impose such sentences concurrently or consecutively.
265 However, any sentence to state prison must exceed 1 year. If the
266 lowest recommended ~~permissible~~ sentence under the code exceeds
267 the statutory maximum sentence as provided in s. 775.082, no
268 more than the statutory maximum sentence may ~~required by the~~
269 ~~code must~~ be imposed. If the total sentence points are greater
270 than or equal to 363, the court may sentence the offender to
271 life imprisonment. An offender sentenced to life imprisonment
272 under this section is not eligible for any form of discretionary
273 early release, except executive clemency or conditional medical
274 release under s. 947.149.

275 (3) A single scoresheet shall be prepared for each

276 defendant to determine the recommended ~~permissible~~ range for the
277 sentence that the court may impose, except that if the defendant
278 is before the court for sentencing for more than one felony and
279 the felonies were committed under more than one version or
280 revision of the guidelines or the code, separate scoresheets
281 must be prepared. The scoresheet or scoresheets must cover all
282 the defendant's offenses pending before the court for
283 sentencing. The state attorney shall prepare the scoresheet or
284 scoresheets, which must be presented to the defense counsel for
285 review for accuracy in all cases unless the judge directs
286 otherwise. The defendant's scoresheet or scoresheets must be
287 approved and signed by the sentencing judge.

288 (4) The Department of Corrections, in consultation with
289 the Office of the State Courts Administrator, state attorneys,
290 and public defenders, must develop and submit the revised
291 Criminal Punishment Code scoresheet to the Supreme Court for
292 approval by June 15 of each year, as necessary. Upon the Supreme
293 Court's approval of the revised scoresheet, the Department of
294 Corrections shall produce and provide sufficient copies of the
295 revised scoresheets by September 30 of each year, as necessary.
296 Scoresheets must include item entries for the scoresheet
297 preparer's use in indicating whether any prison sentence imposed
298 includes a mandatory minimum sentence or the sentence imposed
299 was a downward departure from the lowest recommended ~~permissible~~
300 sentence under the Criminal Punishment Code.

301 Section 3. Section 921.0026, Florida Statutes, is amended
302 to read:

303 921.0026 Mitigating circumstances.—This section applies to
304 any felony offense, except any capital felony, committed on or
305 after October 1, 1998.

306 (1) A downward departure from the lowest recommended
307 ~~permissible~~ sentence, as calculated according to the total
308 sentence points pursuant to s. 921.0024, is prohibited unless
309 there are circumstances or factors that reasonably justify the
310 downward departure. Mitigating factors to be considered include,
311 but are not limited to, those listed in subsection (2). The
312 imposition of a sentence below the lowest recommended
313 ~~permissible~~ sentence is subject to appellate review under
314 chapter 924, but the extent of downward departure is not subject
315 to appellate review.

316 (2) Mitigating circumstances under which a departure from
317 the lowest recommended ~~permissible~~ sentence is reasonably
318 justified include, but are not limited to:

319 (a) The departure results from a legitimate, uncoerced
320 plea bargain.

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

323 (c) The capacity of the defendant to appreciate the
324 criminal nature of the conduct or to conform that conduct to the
325 requirements of law was substantially impaired.

326 (d) The defendant requires specialized treatment for a
327 mental disorder that is unrelated to substance abuse or
328 addiction or for a physical disability, and the defendant is
329 amenable to treatment.

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

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

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

336 (h) Before the identity of the defendant was determined,
337 the victim was substantially compensated.

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

340 (j) The offense was committed in an unsophisticated manner
341 and was an isolated incident for which the defendant has shown
342 remorse.

343 (k) At the time of the offense the defendant was too young
344 to appreciate the consequences of the offense.

345 (l) The defendant is to be sentenced as a youthful
346 offender.

347 (m) The defendant's offense is a nonviolent felony, the
348 defendant's Criminal Punishment Code scoresheet total sentence
349 points under s. 921.0024 are 60 points or fewer, and the court
350 determines that the defendant is amenable to the services of a

351 postadjudicatory treatment-based drug court program and is
352 otherwise qualified to participate in the program as part of the
353 sentence. For purposes of this paragraph, the term "nonviolent
354 felony" has the same meaning as provided in s. 948.08(6).

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

358 (3) Except as provided in paragraph (2)(m), the
359 defendant's substance abuse or addiction, including intoxication
360 at the time of the offense, is not a mitigating factor under
361 subsection (2) and does not, under any circumstances, justify a
362 downward departure from the recommended ~~permissible~~ sentencing
363 range.

364 Section 4. Section 921.00265, Florida Statutes, is amended
365 to read:

366 921.00265 Recommended sentences; departure sentences;
367 mandatory minimum sentences.—This section applies to any felony
368 offense, except any capital felony, committed on or after
369 October 1, 1998.

370 (1) The lowest recommended ~~permissible~~ sentence provided
371 by calculations from the total sentence points pursuant to s.
372 921.0024(2) is assumed to be the lowest appropriate sentence for
373 the offender being sentenced. A departure sentence is
374 discouraged ~~prohibited~~ unless there are mitigating circumstances
375 or factors present as provided in s. 921.0026 which reasonably

376 | justify a departure.

377 | (2) A sentence that decreases an offender's sentence below
378 | the lowest recommended ~~permissible~~ sentence is a departure
379 | sentence and must be accompanied by a written statement by the
380 | sentencing court delineating the reasons for the departure,
381 | filed within 7 days after the date of sentencing. A written
382 | transcription of reasons stated orally at sentencing for
383 | departure from the lowest recommended ~~permissible~~ sentence is
384 | permissible if it is filed by the court within 7 days after the
385 | date of sentencing.

386 | (3) Any offender who is sentenced to a departure sentence
387 | or any offender who is subject to a minimum mandatory sentence
388 | must have the departure sentence and any minimum mandatory
389 | sentence so noted on the sentencing scoresheet.

390 | Section 5. This act shall take effect July 1, 2017.