

CS/SB 554 – Sentencing

This bill amends s. 921.0026(2)(d), F.S., adding the following to the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified: “For defendants sentenced on or after October 1, 2020, the defendant requires specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability, and the defendant is amenable to treatment.” Under current law, a mental disorder should be unrelated to substance abuse or addiction and “the defendant’s substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor.” This language would no longer apply for offenses committed on or after October 1, 2020.

This bill also amends s. 921.0026(2)(m), F.S., deleting the requirement that a court should determine that a “defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence” as part of the mitigating circumstance for those with an offense that is a nonviolent felony with total sentence points that are 60 points or fewer. This is also structured so that such sentences begin on or after October 1, 2020.

With these two changes to the statute, specialized treatment for substance abuse and addiction as a mitigating factor can apply to an expanded pool of offenders, in addition to having committed a nonviolent felony with total sentence points that are 60 or fewer still available as a mitigating circumstance. These changes would permit a larger number of downward departures for inmates eligible under these criteria.

Per DOC, on June 30, 2019, roughly 60% of the inmate population had a substance abuse problem. It is not known how many of these people fit the criteria for mitigating circumstances. With FY 18-19 data unavailable, FY 17-18 data show that there were 92,033 (adj.) offenders sentenced for nonviolent offenses with 60 or fewer sentence points, and 12,163 (adj.) were sentenced to prison (mean sentence length=25.1 m, incarceration rate: 13.2% adj.-13.2% unadj.). While it is not known how many of these also had drug abuse problems, the inclusion of drug offenses in the nonviolent category likely creates significant overlap, and perhaps a higher percentage of those with substance abuse problems than in the general prison population. Furthermore, although it is not known how often judges will use these new opportunities for mitigating circumstances, nor is it known who is eligible within the existing population that would qualify, this pool is very large. Therefore, this bill would be expected to have a significant impact on prison sentences and the potential length of prison sentences.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

Requested by: Senate