

## SB 482 – Criminal Sentencing

This bill amends s. 775.082(10), F.S., increasing total sentence points for when the court must sentence the offender to a nonstate prison sanction from 22 points or fewer to 44 points or fewer. This applies to those who committed an offense “on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in s. 776.08, F.S. and excluding any third degree felony violation under chapter 810,” though if the offender is determined a danger to the public by the jury, a prison sentence can be imposed.

This bill also amends s. 921.002, F.S., adding that a “sentence imposed by the sentencing judge is guided by the computed recommended sentencing range under the code, which is from the lowest permissible sentence to the highest recommended prison sentence” and “departures above the highest recommended prison sentence established by the code must be explained by the trial court judge on the record at the time of the sentencing. The trial court judge’s explanation must specify his or her reasons for imposing the higher sentence.” Lastly, it removes the language stating that “a sentence may be appealed on the basis that it departs from the Criminal Punishment Code only if the sentence is below the lowest permissible sentence or as enumerated in s. 924.06(1), F.S.” However, it does not create an explicit right to appeal an upward departure.

Lastly, this bill amends s. 921.0024, F.S., increasing the total sentence points for the lowest permissible sentence that is any nonstate prison sanction from 44.1 points to 52 points, with a lowest permissible sentence in prison months beginning its calculations when it exceeds 52 points. For calculation, when it exceeds 52 points, 36 points are subtracted from the total sentence points with the remaining total decreased by 25 percent (previously subtracting 28 points when it exceeds 44 points, then decreasing by 25 percent). It also adds that “when the total sentence points exceed 52 points, the highest recommended prison sentence in prison months is calculated by subtracting 36 points from the total sentence points and increasing the remaining total by 25 percent.” Furthermore, it adds (in bold): “The total sentence points **are** calculated as a means of determining **the recommended sentencing range, which is from** the lowest permissible sentence **to the highest recommended prison sentence.**”

Currently, DOC scoresheet data is too incomplete to remove forcible felonies from incarceration rate calculations, and this also prevents the approximation of admissions. However, given that 3<sup>rd</sup> degree felonies take up a large percentage of new commitments (46.8% in CY 2019, 47.1% in CY 2020), significant numbers of offenders could be impacted by this change in language. Per DOC, the 22.1 to 44 points thresholds for third degree violations had incarceration rates of 9.2% in FY 18-19 and 7.8% in FY 19-20. It should be noted that while prison sentences dropped for those below 22 points following prior legislation requiring a nonstate prison sanction, from a high of 6.4% in FY 10-11 (offense prior to passage of 22-point diversion) to 1.7% in FY 19-20 (offense after passage of 22-point diversion), it does not mean that the same declines will occur for this new cohort. Additionally, those between the 44.1 and 52

points thresholds now fall into the range where a nonstate prison sanction is the lowest permissible sentence. Incarceration rates for the entirety of the 22.1 to 44 point group (currently nonstate prison sanction lowest permissible) and the 44.1 to 52 point group (currently state prison sanction lowest permissible) indicate a big difference in the cohorts, where prison sentences were imposed 10.0% of the time in FY 18-19 and 8.7% of the time in FY 19-20 (22.1 to 44 point range) compared to 38.0% of the time in FY 18-19 and 33.4% of the time in FY 19-20 (44.1 to 52 point range). This is another area where prison sentences might not reach the similar low incarceration levels under the amended statutory language, especially since judges are already imposing prison sentences a little over a third of the time in the 44.1 to 52 point range when state prison is supposed to be the lowest permissible sentence. Finally, the new calculated sentencing range could influence judges to sentence offenders to prison with lower lengths of stay once an offender scores above the 52 point threshold, though it is not known how much that might influence judges, given that it is a recommended range and the judge is only required to explain on record the reason for sentencing above the highest recommended sentence.

Due to judicial activity associated with the statutory language for the current sentencing structure, the prison bed impact cannot be quantified. However, given the large numbers of offenders admitted to prison that would be impacted by this bill, even a small decrease in prison sentences and prison sentence lengths would have a significant impact on admissions and the resulting prison population.

**CONFERENCE ADOPTED ESTIMATE: Negative Significant**

**Requested by: Senate**