

SB 866 – Sentencing

This bill amends s. 775.082, F.S., raising total sentence points from 22 points to 44 points for situations in which the court must sentence an offender who commits a 3rd degree felony (not forcible, excluding chapter 810) to a nonstate prison sanction. It also adds that an offender can be sentenced to prison if a jury makes findings, or the defendant waives the right to a jury trial and the court makes written findings that a nonstate prison sanction could present a danger to the public. Currently, the jury is not involved in this decision making.

Per DOC, in FY 16-17, 4.1% of those sentenced for offenses prior to the creation of s. 775.082(10), F.S. (July 1st, 2009) were sentenced to prison, and 1.5% of those sentenced for offenses committed after this law was created received a prison sentence. For those with sentencing points between 23 and 44 whose criteria matches s. 775.082(10), F.S., 10.7% received a prison sentence in FY 16-17 (3,163 adj.). Per DOC, in FY 16-17, 3.8% of cases were sentenced using a jury, while the rest were resolved under a plea deal.

It is not known how the inclusion of the jury will impact sentencing decisions for those with 44 points or less, nor is it known how judges will respond in the other 96.2% of cases, given that they tended to incarcerate at a higher rate than those under 22 points before the initial statute passed (10.7% compared to 4.1%). However, it is likely that judicial activity will change in some form with the implementation of this new scoring structure, and though the magnitude of the reduction cannot be quantified, even a small shift in judicial and jury activity in response to this change could produce a significant effect.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill also amends s. 921.0024, F.S., adding that offenses committed on or after October 1, 2018 would be subject to a new scoring point threshold for nonstate prison sanctions and a new sentence length scoring system for state prison sanctions. Currently, for offenses equal to or less than 44 points, the lowest permissible sentence is a nonstate prison sanction, “unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate,” with those above 44 points subject to a state prison sentence as the lowest permissible sentence. Sentence length is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25%. Under this bill, 52 points or less would be the new range where the lowest permissible sentence is a nonstate prison sanction, “unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate,” and prison sentence length above 52 points would be calculated by subtracting 36 points from the total sentence points and decreasing the remaining total by 25%. This would reduce future prison sentences by 6 months for point calculations.

Per DOC, in FY 16-17, about 14.2% of sentences up to 44 points were state prison sanctions, excluding those fitting the criteria in amended s. 775.082(10), F.S. Between 44 and 52 points, prison sentences jumped to 47.9% of all sentences, and above 52 points they reached 62.6%. This shows that judges already give nonstate prison sanctions to offenders between 44 and 52 points in over half of the sentences. Furthermore, such discretion also applies for prison sentence length. Currently, a person with 53 points should receive a prison sentence of 18.75 months, with the new bill dropping that to 12.75 months. However, a close examination of the 53 point category shows that 34% of offenders sentenced under this point total received a prison sentence that was 18 months or less.

It is not known how this section of the bill will impact current judicial discretion. However, it is likely that judicial activity will change in some form with the implementation of this new scoring structure, with a reduction in prison sentencing between 45 and 52 points. Although the magnitude of that reduction cannot be quantified, there are 4,419 (adj.) offenders who received prison sentences across these points, so even a small shift among judges toward nonstate sanctions could significantly impact prison sentences, as well as with the additional shift downwards in prison sentence length for those with 53 points or more.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

**CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL:
Negative Significant**

Requested by: Senate