

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 641 Criminal Justice
SPONSOR(S): Criminal Justice Subcommittee; Shaw and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	White	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Under current law, the total sentence points calculated by the Criminal Punishment Code scoresheet determine the lowest permissible sentence (LPS) for an offender. The LPS for an offender who receives less than or equal to 44 points on his or her worksheet is a nonstate prison sanction (NSPS). The LPS for an offender with 45 or more points is determined by the total number of sentence points minus 28 multiplied by .75. For example, the LPS is 12.75 months for 45 points and 24 months for 60 points.

In general, a sentencing judge, in his or her discretion, may sentence an offender to a term that is between the LPS and the statutory maximum for the offense, unless the judge's discretion is limited because a mandatory minimum sentence applies. A sentencing judge may depart below the LPS, unless a mandatory minimum sentence that exceeds the LPS applies, if the judge enters a written statement delineating the reasons for the departure.

In some cases, statute authorizes a NSPS, even though a defendant's scoresheet result would warrant a prison sentence. For example, under s.948.01, F.S., a defendant may be placed into a postadjudicatory treatment-based drug court program with a scoresheet result of 60 points or fewer if he or she is amenable to substance abuse treatment and meets other criteria.

The bill amends s. 775.082, F.S., to require the court to sentence a defendant to a NSPS if the defendant's primary offense is possession of a controlled substance and the total sentence points are 60 points or fewer. The only exception to this requirement is that the court may impose a prison sentence if the court makes written findings that a NSPS could present a danger to the public.

The bill defines "possession of a controlled substance" as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

The bill will reduce the need for prison beds and operating costs for the Department of Corrections. The bill does not appear to have a fiscal impact on local governments. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill takes effect on October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Criminal Punishment Code Sentencing

In 1997, the Legislature enacted the Criminal Punishment Code¹ (CPC) as Florida's "primary sentencing policy."² Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).³ Points are assigned on a CPC scoresheet and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁴ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury.

The total sentence points calculated by the CPC scoresheet determine the lowest permissible sentence (LPS) for an offender.⁵ The LPS for an offender who receives less than or equal to 44 points on his or her scoresheet is a nonstate prison sanction (NSPS).⁶ The LPS for an offender with 45 or more points is determined by the total number of sentence points minus 28 multiplied by .75.⁷ For example, the LPS is 12.75 months for 45 points and 24 months for 60 points.⁸

In general, a sentencing judge, in his or her discretion, may sentence an offender to a term that is between the LPS and the statutory maximum for the offense, unless the judge's discretion is limited because a mandatory minimum sentence applies.⁹ The statutory maximum for a: (a) felony of the first degree is 30 years; (b) felony of the second degree is 15 years; and (c) felony of the third degree is 5 years.¹⁰

A sentencing judge may depart below the LPS, unless a mandatory minimum sentence that exceeds the LPS applies, if the judge enters a written statement delineating the reasons for the departure.¹¹ A non-exclusive list of mitigating factors that may be considered by a sentencing judge in imposing a downward departure sentence is specified in s. 921.0026, F.S.

Exceptions to a CPC Sentence

Multiple exceptions to typical CPC sentencing exist. NSPSs are sometimes required or allowed in cases where a sentence of imprisonment would have otherwise been authorized or required under the CPC. For each of the following examples, the defendant must have committed his or her offense on or after July 1, 2009:

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on March 26, 2017).

³ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁵ s. 921.0024(1)-(3), F.S.

⁶ s. 921.0042(2), F.S.

⁷ Florida Department of Corrections and the Office of State Courts Administrator, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, July 1, 2015, at p. 26, available at http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

⁸ *Id.*

⁹ s. 921.0024(2), F.S.

¹⁰ s. 775.082(3)(b), (d), and (e), F.S.

¹¹ s. 921.00265, F.S.

- Under s. 775.082(10), F.S., a defendant who is sentenced for a third degree felony, but not a forcible felony,¹² and whose total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, *must be sentenced to a NSPS*. However, if the court makes written findings that a NSPS could present a danger to the public, the court may sentence the offender to state prison.
- Under s. 921.00241, F.S., a defendant who would otherwise receive a prison sentence *may be sentenced* to a NSPS if:
 - The offender’s primary offense is a third degree felony.
 - The offender’s total scoresheet points are not more than 48 points, or are 54 points and six of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.
 - The offender has not been convicted or previously convicted of a forcible felony.
 - The offender’s primary offense does not require a mandatory minimum sentence.
- Under s. 948.01, F.S., a defendant *may be placed* into a postadjudicatory treatment-based drug court program if:
 - His or her scoresheet result is 60 points or fewer;
 - He or she is amenable to substance abuse treatment; and
 - He or she otherwise qualifies under s. 397.334(3), F.S.¹³

Effect of Bill

The bill amends s. 775.082, F.S., to create a new subsection (11) that requires the court to sentence a defendant to a NSPS if:

- His or her primary offense is possession of a controlled substance;
- Such primary offense is committed on or after October 1, 2017; and
- The total sentence points are 60 points or fewer.

The only exception to the aforementioned required NSPS is that the court may impose a prison sentence if the court makes written findings that a NSPS could present a danger to the public.

The bill defines “possession of a controlled substance” as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

This diversion provision could apply to a defendant who has a prior record, which might include a prior violent offense. For example, a defendant with a current offense of possession of a controlled substance and a prior offense of aggravated assault would score fewer than 60 total points. However, under the bill, the court may choose to not divert such defendant from prison if the court finds that the NSPS could present a danger to the public.

The bill takes effect October 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 775.083, F.S., relating to penalties.

¹² Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

¹³ Section 948.01(7), F.S. Section 397.334(3)(a), F.S., provides that entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, F.S., s. 948.06, F.S., or s. 948.20, F.S., must be based upon the sentencing court’s assessment of the defendant’s criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant’s agreement to enter the program.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have a fiscal impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) met on March 2, 2017, and determined that bill could reduce the need for prison beds by 155 beds in Fiscal Year (FY) 2017-2018 and by a total of 1,001 beds for FYs 2017-2022. According to CJIC, the bill could result in a savings for FY 2017-2018 of \$1,575,808 for operating costs and \$35,718,480 for fixed capital outlay costs (total: \$37,294,288 for FY 2017-2018). For FYs 2017-2022, the CJIC indicated that the bill could result in a savings of \$64,848,390 for operating costs and \$65,858,966 for fixed capital outlay costs (total \$130,706,356).

According to the Department of Corrections, the bill's reduction in the prison population will be offset by an increase in supervision costs; however, the net effect of the bill will be a cost savings as shown below:

FY 2017-2018 to FY 2021-2022				
% of Inmates Affected	Affected Population	Inmate Costs	Supervision Costs	Total Cost to Implement
5%	264	(2,610,112)	536,729	(2,073,383)
10%	528	(5,220,223)	1,073,360	(4,146,863)
15%	792	(7,830,335)	1,610,088	(6,220,247)
20%	1,059	(10,469,510)	2,152,872	(8,316,638)
25%	1,321	(13,062,186)	2,685,569	(10,376,617)
50%	2,646	(26,159,244)	5,379,103	(20,780,141)
75%	3,966	(39,209,801)	8,062,551	(31,147,250)
100%	5,287	(52,271,986)	10,748,119	(41,523,867)

Data from the Florida Department of Corrections, February 10, 2017.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have a fiscal impact on local government revenues.
2. Expenditures: The bill does not appear to have a fiscal impact on local government revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

¹⁴ This data is on file with the House of Representatives Criminal Justice Subcommittee.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute (CS). The PCS removed the bill's amendments to s. 775.082(12), F.S., in Section 1. of the bill and removed Sections 2.-13. of the bill.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee