

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 550

INTRODUCER: Senators Brandes and Perry

SUBJECT: Sentencing

DATE: December 9, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 550 amends s. 921.00241, F.S., which authorizes a court to sentence certain felony offenders to a nonstate prison sanction with mandatory participation in a prison diversion program (if there is a funded, existing program). The bill amends some of the criteria for prison diversion eligibility, which will be applicable to offenders sentenced on or after October 1, 2020, to:

- Include offenders whose primary offense is a second degree felony. Currently, eligibility is limited to offenders whose primary offense is a third degree felony.
- Provide that an offender’s total sentence points must be 60 points or fewer, which is an increase in total sentence points specified in current law.

Additional eligibility criteria, which are not amended by the bill, include that the offender has not been convicted or previously convicted of a forcible felony, excluding ch. 810, F.S. (burglary and trespass), and the offender’s primary offense does not require a minimum mandatory sentence.

The described changes expand the pool of offenders who may be diverted from prison under s. 921.00241, F.S.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “negative significant” prison bed impact (a decrease of more than 25 prison beds).

The effective date of the bill is October 1, 2020.

## II. Present Situation:

### Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (Code) as “Florida’s primary sentencing policy.”<sup>2</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>3</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>4</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation,<sup>5</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>6</sup>

### Prison Diversion for Certain Nonviolent Third Degree Felony Offenders

Notwithstanding the Code, s. 921.00241, F.S., authorizes a court to sentence an offender to a nonstate prison sanction if the offender committed his or her offense on or after July 1, 2009, and meets all of the following criteria:

- The offender’s primary offense is a third degree felony.
- The offender’s total sentence points score, as provided in s. 921.0024, F.S. (Code scoresheet), is not more than 48 points, or the offender’s total sentence points score is 54 points and 6 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,<sup>7</sup> excluding any third degree felony violation under ch. 810, F.S. (burglary and trespass).
- The offender’s primary offense does not require a mandatory minimum sentence.<sup>8</sup>

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<sup>1</sup> 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.

<sup>2</sup> *Florida’s Criminal Punishment Code: A Comparative Assessment* (September 2018), Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf) (last visited on Nov. 6, 2019).

<sup>3</sup> 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.

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

<sup>5</sup> The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>6</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

<sup>7</sup> 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.

<sup>8</sup> Section 921.00241(1), F.S.

If the court elects to impose a sentence as provided in this section, then the court must sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a Department of Corrections prison diversion program if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program must be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit.<sup>9</sup>

The program may require:

- Residential, nonresidential, or day-reporting requirements;
- Substance abuse treatment;
- Employment;
- Restitution;
- Academic or vocational opportunities; or
- Community service work.<sup>10</sup>

A court sentencing an offender pursuant to this section must make written findings that the offender meets the previously-described criteria. The sentencing order must indicate that the offender was sentenced to the prison diversion program. The court may order the offender to pay all or a portion of the costs related to the program if the court determines that the offender has the ability to pay.<sup>11</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 921.00241, F.S., which authorizes a court to sentence certain felony offenders to a nonstate prison sanction with mandatory participation in a prison diversion program (if there is a funded, existing program). The bill amends some of the criteria for prison diversion eligibility, which will be applicable to offenders sentenced on or after October 1, 2020, to:

- Include offenders whose primary offense is a second degree felony. Currently, eligibility is limited to offenders whose primary offense is a third degree felony.
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The described changes expand the pool of offenders who may be diverted from prison under s. 921.00241, F.S.<sup>12</sup>

The effective date of the bill is October 1, 2020.

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<sup>9</sup> Section 921.00241(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 921.00241(3), F.S.

<sup>12</sup> In addition to offenders whose offense was committed on or after October 1, 2020, and who are sentenced after that date, the bill should apply to offenders whose offense was committed before October 1, 2020, provided the sentence is imposed on or after October 1, 2020.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). The EDR provided the following information relevant to its estimate:

Per DOC, there were 10,311 admitted to prison in FY 17-18 who fit the criteria outlined in the amended statute. It should be noted that a certain proportion of this number received prison sentences while eligible under the current statute, so while this bill would likely decrease prison sentences for offenders with 2nd degree felonies/higher sentence points, it should also do the same for offenders currently eligible who received prison sentences. Additionally, those offenders who would remain ineligible for prison diversion with sentencing points greater than 60 could see a decrease in prison admissions for similar reasons. Historical data from DOC has shown that following the initial creation of the prison

diversion program, those who were between 54 and 60 sentence points, yet fitting all other eligibility requirements, also saw a decrease in prison sentences. Due to this apparent balancing of overall sentencing practices to adjust to [a] new statute for a cohort of similar offenders, the prison bed impact cannot be quantified. However, given the large number of eligible offenders sentenced to prison and the adjustments to sentencing for both eligible and ineligible offenders, the impact is expected to be significant.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 921.00241 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>13</sup> The preliminary EDR estimate is on file with the Senate Committee on Criminal Justice.