

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 482

INTRODUCER: Senator Bracy and others

SUBJECT: Criminal Sentencing

DATE: March 9, 2021

REVISED: 3/10/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u> </u>	<u> </u>	<u>CJ</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 482 is designed to result in shorter prison sentences for offenses and allows for more offenders to be sentenced to a nonstate prison sanction in lieu of prison.

The bill works by increasing the sentence point thresholds of the Criminal Punishment Code which define whether a court may or must sentence an offender to a nonstate prison sanction. A sentence must also be based on a sentencing range as calculated by the formulas in the bill and not based on the statutory maximum for any offense. However, the bill allows a court to sentence an offender for a term that exceeds the maximum term under the calculated sentencing range if the trial judge provides justification for the longer sentence. Finally, the bill repeals a provision that would allow the state to appeal a sentence that falls below the lowest permissible sentence for the offense.

The bill takes effect July 1, 2021.

II. Present Situation:

The Criminal Punishment Code (Code) applies to convictions for felony offense committed on or after October 1, 1998. Absent a downward departure, the Code instructs a judge to sentence an offender based on a calculation that determines the lowest and highest permissible sentence up to the statutory maximum sentence.¹ The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.² Any sentence imposed reflects the length of actual time to be serviced, and may only be lessened by earned gain-time.³

¹ Section 921.002(f) and (g), F.S.

² Section 775.082(3)(b), (d), and (e), F.S.

³ Section 921.002(1)(e), F.S. See s. 944.275, F.S., for information on the various types of incentive and meritorious gain-time.

The Code assigns points based on the severity of the offenses as well as certain aggravating factors.⁴ The Code calls for a nonstate prison sanction if the offender scores below 45 points, unless the sentencing judge finds that a term of imprisonment is otherwise appropriate.⁵ If the 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. If an inmate were to score 50 points, for example, the inmate would score for a minimum of 16.5 months in prison. If an offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.⁶

Gain-time

Gain-time is used to encourage inmate rehabilitation and behavior by awarding deductions to a court-ordered sentence based on participation in certain activities while incarcerated.⁷ Certain felonies, including sexual battery, murder, and false imprisonment, are ineligible for gain-time if the inmate was convicted on or after October 1, 2014.⁸ Likewise, those sentenced to life imprisonment are ineligible for gain-time.⁹ Even with gain-time, however, an inmate must still serve at least 85 percent of his or her term of imprisonment.¹⁰ Thus, sentences imposed under the Code may be decreased by gain-time earned by an offender while imprisoned.

Example

A primary offense of aggravated battery,¹¹ a second degree felony, automatically scores 22 points under the Code.¹² Additional points may be added depending on the victim's injury. A "slight" injury would add an additional 4 points, a "moderate" injury would add an additional 18 points, while a "severe" injury would add an additional 40 points. If the offender committed the offense with a firearm, an additional 18 points are automatically added as an enhancement. Assuming no additional points are added based on the offenders history or other aggravating factors, the minimum score for an offender convicted of aggravated battery would be 26 points if the victim's injuries were "slight," 40 points if the victim's injuries were "moderate," or 62 points if the injuries were "severe." If the offender used a firearm during the commission of the offense, an additional 18 points would be added, increasing this range to 44, 58, and 80 respectively. Thus, a "moderate" or "severe" injury based on an aggravated battery where the offender used a firearm during the commission of the crime, would score more than 44 sentence points, making the offender eligible for a term of imprisonment under the Code.

⁴ Section 921.0024, F.S.

⁵ Section 921.0024(2), F.S.

⁶ Fla. R. Crim. P. 3.704(d)(27).

⁷ Section 944.275(1), F.S.

⁸ Section 944.275(4)(e), F.S., refers to certain offenses that are ineligible for gain-time, including murder, false imprisonment, kidnapping, sexual battery, computer pornography, traveling to meet a minor for the purpose of unlawful sexual conduct, and lewd and lascivious offenses committed upon or in the presence of a minor, elderly, or disabled person.

⁹ Section 775.082(4)(f), F.S.

¹⁰ Section 944.275(4)(f), F.S.

¹¹ Aggravated battery is a battery where the offender "intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement" or commits a battery on a pregnant person, or while using a deadly weapon. Section 784.045, F.S.

¹² Section 921.0023(2) F.S. and s. 921.0024, F.S.

Certain offenses where the “victim injury” results in death, automatically qualify for a term of imprisonment.¹³ Likewise, offenses involving sexual contact or penetration automatically add 40 or 80 points respectively,¹⁴ both of which would meet the minimum 45 points necessary for a recommended term of imprisonment when combined with the primary offense score.

III. Effect of Proposed Changes:

The bill will increase the offense score that is generally necessary to sentence an offender to prison based on the sentencing worksheet used under the Criminal Punishment Code. Specifically, the required score that would make an offender eligible for a term of imprisonment is increased from 45 points to 53 points. Additionally, the bill bases the maximum term of imprisonment on a calculation using the points scored as opposed to the statutory maximum for the offense.

Moreover, the bill provides formulas for calculating the sentencing range for an offense. An offender who scores 56 points, for example, would have a recommended term of imprisonment between 15 and 25 months. Currently, the maximum is based on the statutory maximum for the offense committed, and the lowest permissible sentence for an offense resulting in 56 sentence points is 21 months in prison.

The bill requires the sentencing judge to explain any departure above the recommended sentence scored under the Code. Additionally, the bill declares that sentencing is guided by the “recommended sentencing range under the code, which is from the lowest permissible sentence to the highest recommended prison sentence.”

Under the penalty structure in existing s. 775.082(10), F.S., a court generally may not sentence an offender convicted of a third-degree felony to prison if the total sentence points are 22 or fewer. The bill increases this threshold to 44 sentence points. Accordingly, unless a court makes written findings that a nonstate prison sanction would present a danger to the public, the offender scoring 44 or fewer sentence points must be sentenced to a nonstate prison sanction.

The bill repeals language that specifies that a sentence may only be appealed if the sentence is either *below* the lowest permissible sentence under the Code or *over* any statutory maximum. By repealing the provision, the bill may allow appeals by an offender on the basis that a sentence imposed is longer than that specified by the sentencing range for an offense without sufficient justification by the trial court judge.¹⁵ The bill does not affect the ability or right of an offender to appeal a sentence based on other statutory or constitutional grounds.

¹³ A “victim injury” of death automatically scores 120 points, increasing to 240 points if the death is based on a 2nd degree murder conviction. Section 921.0024(1)(a), F.S.

¹⁴ *Id.*

¹⁵ Specifically, courts have concluded Section 921.002(1)(h), F.S., “does not prohibit all appeals by a defendant, but rather grants the state the right to appeal a *departure* sentence, defining a departure sentence as one that is less than the calculated lowest permissible sentence.” *Peterson v. State*, 775 So. 2d 376, 379 (Fla. 4th DCA 2000). Additionally “in order to challenge a sentence which is within the statutory maximum, it is now necessary for a defendant to argue vindictiveness.” *Willingham v. State*, 781 So. 2d 512, 514 (Fla. 5th DCA 2001).

The bill has an effective date of July 1, 2021.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 482 may impact private entities that are contracted with the Department of Corrections to provide services to those serving a term of imprisonment. Any reduction in prison capacities due to the reduction in eligible prison sanctions may affect the amount of services needed from these providers. Conversely, any contracted providers who provide services, such as substance abuse treatment, to offenders serving a nonprison sanction may see additional demands for services due to an increase in offenders serving nonstate prison sanctions.

C. Government Sector Impact:

The bill will likely decrease prison funding needs due to a reduction in prison populations. More offenders will likely be diverted to nonprison sanctions such as probation and substance abuse treatment, which will increase the workload for these programs.

The Department of Corrections believes the bill will result in less serious offenders being diverted from prison to probation or jail.¹⁶ Due to the likely increase in offenders who will receive probation in lieu of a prison sanction, the Department estimates a need for an additional 288 correctional probation officers over the course of the next 5 years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.082, 921.002, and 921.0024.

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.

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

¹⁶ Department of Corrections, *2021 Agency Legislative Bill Analysis: SB 482*, 3-4 (on file with the Senate Committee on Judiciary)