

SB 1194 – Sentencing

This bill amends various provisions of the chapters 921 and 924, F.S., to revise sentencing under the Criminal Punishment Code for noncapital felony offenses committed on or after October 1, 2017. Under the bill, the defendant's total sentence points and lowest permissible sentence are calculated the same as provided in current law. If, as calculated from the scoresheet, the defendant's total sentence points are less than or equal to 44 points, the lowest permissible sentence is any nonstate prison sanction. However, it is now amended that a court would only be able to increase these total sentence points by up to, and including, 25 percent. If this increase results in total sentence points exceeding 44 points, the court calculates the state prison sentence in months. This is the prison sentence the court may impose.

If, as calculated from the scoresheet, the defendant's total sentence points exceed 44 points, a lowest permissible sentence in prison months is calculated. Generally, the scored lowest permissible sentence does not exceed the statutory maximum sentence under s. 775.082, F.S. According to the bill, a court may, without providing written reasons, impose a prison sentence that does not vary upward by more than 25 percent from the scored lowest permissible sentence in prison months. The court may also sentence the defendant to what is called an "upward departure sentence," which is a prison sentence that varies upward by more than 25 percent from the scored lowest permissible sentence. However, an upward departure sentence requires at least one written "aggravating circumstance" that reasonably justifies the departure. The bill includes a list of aggravating circumstances that mirror aggravating circumstances under the pre-Code sentencing guidelines. An upward departure sentence may not exceed the statutory maximum sentence in s. 775.082, F.S. Finally, an upward departure sentence is appealable by the defendant and the state.

It is not known how current court discretion will be impacted by these changes to sentencing under the Code, especially the creation of upward departure sentencing. Furthermore, since upward departure sentencing does not currently exist under the Code (generally, the sentencing range is the lowest permissible sentence up to the statutory maximum), the prison bed impact of sentencing as proposed in the bill cannot be ascertained from DOC data on sentencing.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

Requested by: Senate