

## House Bill No. 695

An act relating to sentencing; amending s. 874.04, F.S.; providing for enhanced penalties for the commission of a felony or misdemeanor, or a delinquent act or violation of law that would be a felony or misdemeanor if committed by an adult, under specified circumstances when the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interest of a criminal street gang; amending s. 921.0024, F.S., relating to the Criminal Punishment Code worksheet computations and scoresheets; revising guidelines for applying a specified sentence multiplier for offenses committed for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 874.04, Florida Statutes, is amended to read:

874.04 Criminal street gang activity; enhanced penalties.—Upon a finding by the court at sentencing that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests ~~is a member of a criminal street gang~~, the penalty for any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, may be enhanced ~~if the offender was a member of a criminal street gang at the time of the commission of such offense~~. Each of the findings required as a basis for such sentence shall be found by a preponderance of the evidence. The enhancement will be as follows:

(1)(a) A misdemeanor of the second degree may be punished as if it were a misdemeanor of the first degree.

(b) A misdemeanor of the first degree may be punished as if it were a felony of the third degree. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such offense is ranked in level 1 of the offense severity ranking chart. The criminal street gang multiplier in s. 921.0024 does not apply to misdemeanors enhanced under this paragraph.

(2)(a) A felony of the third degree may be punished as if it were a felony of the second degree.

(b) A felony of the second degree may be punished as if it were a felony of the first degree.

(c) A felony of the first degree may be punished as if it were a life felony.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such felony offense is ranked as

provided in s. 921.0022 or s. 921.0023, and without regard to the penalty enhancement in this subsection. For purposes of this section, penalty enhancement affects the applicable statutory maximum penalty only.

Section 2. Subsection (1) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(1)(a) The Criminal Punishment Code worksheet is used to compute the subtotal and total sentence points as follows:

FLORIDA CRIMINAL PUNISHMENT CODE  
WORKSHEET

OFFENSE SCORE

Level	Primary Offense Sentence Points		Total
10	116	=	....
9	92	=	....
8	74	=	....
7	56	=	....
6	36	=	....
5	28	=	....
4	22	=	....
3	16	=	....
2	10	=	....
1	4	=	....
			<u>Total</u>

Level	Additional Offenses Sentence Points	Counts	Total
10	58	x .... =	....
9	46	x .... =	....
8	37	x .... =	....
7	28	x .... =	....
6	18	x .... =	....
5	5.4	x .... =	....
4	3.6	x .... =	....
3	2.4	x .... =	....
2	1.2	x .... =	....
1	0.7	x .... =	....
M	0.2	x .... =	....
			<u>Total</u>

Level	Victim Injury		Number	Total
	Sentence Points			
2nd degree murder-death	240	x	....	= ....
Death	120	x	....	= ....
Severe	40	x	....	= ....
Moderate	18	x	....	= ....
Slight	4	x	....	= ....
Sexual penetration	80	x	....	= ....
Sexual contact	40	x	....	= ....
				<u>Total</u>

Primary Offense + Additional Offenses + Victim Injury =  
**TOTAL OFFENSE SCORE**  
**PRIOR RECORD SCORE**

Level	Prior Record		Number	Total
	Sentence Points			
10	29	x	....	= ....
9	23	x	....	= ....
8	19	x	....	= ....
7	14	x	....	= ....
6	9	x	....	= ....
5	3.6	x	....	= ....
4	2.4	x	....	= ....
3	1.6	x	....	= ....
2	0.8	x	....	= ....
1	0.5	x	....	= ....
M	0.2	x	....	= ....
				<u>Total</u>

TOTAL OFFENSE SCORE . . . . .

TOTAL PRIOR RECORD SCORE . . . . .

LEGAL STATUS . . . . .

COMMUNITY SANCTION VIOLATION . . . . .

PRIOR SERIOUS FELONY . . . . .

PRIOR CAPITAL FELONY . . . . .

FIREARM OR SEMIAUTOMATIC WEAPON . . . . .

SUBTOTAL.....

- PRISON RELEASEE REOFFENDER (no)(yes) . . . . .
- VIOLENT CAREER CRIMINAL (no)(yes) . . . . .
- HABITUAL VIOLENT OFFENDER (no)(yes) . . . . .
- HABITUAL OFFENDER (no)(yes) . . . . .
- DRUG TRAFFICKER (no)(yes) (x multiplier) . . . . .
- LAW ENF. PROTECT. (no)(yes) (x multiplier) . . . . .
- MOTOR VEHICLE THEFT (no)(yes) (x multiplier) . . . . .
- CRIMINAL STREET GANG OFFENSE MEMBER (no)(yes) (x multiplier) . . . . .
- DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD (no)(yes) (x multiplier) . . . . .

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TOTAL SENTENCE POINTS.....

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender’s legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation, and each successive community sanction violation; however, if the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for such violation, and for each successive community sanction violation involving a new felony conviction. Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of 30 points shall be added. For purposes of this section, a prior serious felony is an offense in the offender’s prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender’s date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender’s criminal record, points shall be added to the subto-

tal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional 18 sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are assessed.

#### Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(9) or (10), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal street gang member: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang as prohibited under is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, the subtotal sentence points are multiplied by 1.5.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence,

as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family household member as defined in s. 741.28(2) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Section 3. This act shall take effect July 1, 2001.

Approved by the Governor May 31, 2001.

Filed in Office Secretary of State May 31, 2001.