



Appendix

Criminal Punishment Code Task Force Subcommittee Recommendations

Enhancements

Enhancements (EN)-1: Amend section 775.082(9)(a)3.a., Florida Statute to read: For a felony punishable by life, by a term of imprisonment for life, but where no firearm was discharged and no death or great bodily harm occurred, for a term of not less than 30 years and not more than a term of imprisonment for life.

The subcommittee considered if this recommendation should be prospective or retroactive. Ultimately, the subcommittee decided to leave it to the discretion of the Legislature to determine whether this amendment should expressly state that it applies retroactively.

EN-2: Amend the language in section 775.087(2)(d) to give judges discretion to make the firearms sentences consecutive or concurrent. Amend section 775.087(2)(d), Florida Statute to read: ... The court may impose any term of imprisonment provided for in this subsection concurrently or consecutively to any other term of imprisonment imposed for any other felony offense.

EN-3: Amend section 893.135(1)(a)1., Florida Statute to read: If the quantity of cannabis involved: 1. Is in excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than less than 2,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$25,000.

Amend section 893.135(1)(a)2., Florida Statute to read: If the quantity of cannabis involved: 2. Is 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than less than 10,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$50,000.

Proposed Discussion Item-1: The subcommittee recommends that the Legislature continue to consider conditional aging inmate release opportunities during the 2021 Legislative Session.

Scoresheets

Scoresheets (SS)-1: Resolved that an Enhancement in Part IX should not be used if the enhancement is identical to an element of the Primary Offense of conviction. Instead, the Offense Level for each offense that involves an element identical to any Enhancement should be increased to reflect the failure to apply the multiplier, so this change does not reduce the total number of points a defendant would receive.

SS-2: Resolved that additional points should not be added for a Legal Status Violation in Part V when all of the offense(s) of which the defendant is convicted involve an element that is identical to the basis for that Violation. Instead, the Offense Level for each offense that involves an element identical to a Legal Status Violation should be adjusted to reflect the failure to add these extra points, so this change does not reduce the total number of points a defendant would receive.

SS-3: Resolved that Victim Injury Point Adjustments in Part III should not be applied to any offense for which the basis for the adjustment is identical to an element. Instead, the Offense Level for each offense that involves an element identical to any Victim Injury Point Adjustment should be adjusted to reflect the failure to apply the adjustment, so this change does not reduce the total number of points a defendant would receive.

SS-4: Resolved that additional points should not be added for a Firearms Violation in Part VII when the defendant is convicted of an offense involving an identical element. Instead, the Offense Level for the underlying firearms offense should be adjusted to reflect the failure to apply this adjustment, so this change does not reduce the total number of points a defendant would receive.

SS-5: State Attorneys shall ensure that score sheets are completed accurately, with all legally required enhancements, multipliers, and other adjustments consistently applied. The Task Force recommends that the Florida Supreme Court require the use of an electronic, computer-based scoresheet program that has been developed by the Department of Corrections, or another materially identical or superior program, that automatically populates points and applies enhancements, multipliers, and other adjustments. The Attorney General should also compile a "best practices" guide to assist State Attorneys in implementing a uniform sentencing system."

SS-6: The subcommittee reviewed the following caselaw regarding downward departures. The subcommittee had an opportunity to suggest to the Legislature the codification of current caselaw or to take no action, leaving interpretation to the courts.

ISSUE #1

Should section 921.0026(2)(d), Florida Statutes, be amended to reflect the holding in *State v. Chubbuck*, 141 So.3d 1163 (Fla. 2014)?

or

Should section 921.0026(2)(d), Florida Statutes, be amended to add the requirement that defendant prove that he required specialized treatment he needs is unavailable in the Department of Corrections (DOC)?

The subcommittee considered the following caselaw and concluded to take no action.

ISSUE #5

Should section 921.0026(2) be clarified to address “sentence manipulation”? See *State v. Steadman*, 827 So.2d 1022 (Fla. 3d DCA 2002).

The subcommittee considered the following caselaw and concluded to take no action.

ISSUE #6

Should section 921.0026(2) be amended to add “diminished mental capacity” as a statutory reason for a downward departure? See *State v. Williams*, 870 So.2d 938 (Fla. 5th DCA 2004).

The subcommittee considered the following caselaw and concluded to take no action.

ISSUE #7

Should s. 921.0026 be amended to provide a non-exhaustive list of factors which should not be considered in determining whether a downward departure is appropriate?

The list would provide guidance to the trial judges on specific reasons determined to be invalid by caselaw such as:

- Defendant’s intoxication, substance abuse, or addiction at the time of the offense
- Defendant’s amenability to drug rehabilitation
- The codefendant received a downward departure
- Defendant’s lack of criminal activity since his arrest for the charged offense
- Age of Defendant’s prior convictions
- Family support concerns
- Defendant confessed after his arrest
- Defendant’s work status

- Length of Defendant's prior prison sentences
- The crime was not committed in a more heinous manner

***Federal system has list of prohibited departures. See USSG s. 5K2.0

The subcommittee considered the following caselaw and concluded to take no action.

ISSUE #8

Should a victim's consent or request for leniency be added to the list of valid or invalid reasons for departure? See *State v. Hawkins*, 225 So.3d 943 (Fla. 5th DCA 2017); *State v. Ussery* 543 So.2d 457 (Fla. 5th DCA 1989); *State v. White*, 532 So.2d 1083 (Fla. 5th DCA 1988); *State v. Eastridge*, 5 So.3d 707 (Fla. 2D DCA 2009); *State v. Bernard*, 744 So.2d 1134 (Fla. 2D Dca 1999); *State v. Powell*, 696 So.2d 789 (Fla. 2D DCA 1997).

The subcommittee considered the following caselaw and concluded to take no action.

ISSUE #9

Should the definitions for "primary offense," "additional offense" or "prior record" be amended to make clear that they shall not include any pending charges? See *Norvil v. State*, 191 So.3d 406 (Fla. 2016).

The subcommittee considered the following caselaw and concluded to take no action.

ISSUE #10

Should the definition of "conviction" in section 921.0021(2) be amended to include a "no contest plea" to make clear the holding in *Montgomery v. State*, 897 So.2d 1282 (Fla. 2005)?

The subcommittee voted to recommend the codification of issue #10.

****Issues 2-4 are still being discussed within the subcommittee, but are included for your reference:**

ISSUE #2

in light of the Florida Supreme Court's holding in *State v. Rife*, 789 So.2d 288 (Fla. 2001) should section 921.0026(2)(f) be amended to reflect the holding in *Rife*?

Amend section 921.0026(2)(f) to state the victim, including a minor, was the initiator, willing participant, aggressor, or provoker of the incident

or

should section 921.0026(2)(f) be amended to expressly prohibit the trial court from imposing a downward departure pursuant to section 921.0026(2)(f) if the victim is a minor?

ISSUE #3

Should section 921.0026(2)(e) be amended to require evidence of the following:

- the nature of the victim's loss, including the impact of the crime on the victim;
- the effectiveness of restitution, including the defendant's ability to pay restitution and the impact of the restitution plan on the victim; and
- the consequences of imprisonment?

ISSUE #4

Is it ever possible for DUI manslaughter to be committed in an unsophisticated manner when it is not a sophisticated crime? See *State v. Warner*, 721 So.2d 767 (Fla. 4th DCA 1998), *State v. VanBebber*, 805 So.2d 918 (Fla. 2d DCA 2001), and *State v. VanBebber*, 848 So.2d 1046 (Fla. 2003).

Non-Prison Sanctions

Non-Prison Sanctions-1: Allow law enforcement to issue notices to appear for Non-Violent, Non-Sexual Third-Degree Felonies.

The Subcommittee considered the following proposals, but tabled them for further discussion with the Task Force at-large:

1. Conditional Medical Release for Pre-Trial Detainees.
 - a. Create a statute giving county jails/jailers the discretion to release pretrial detainee inmates accused of eligible non-violent/non-sexual crimes on conditional medical release. The Florida Department of Corrections is permitted, pursuant to Florida Statute 947.149 (below), to establish a conditional medical release program and release pretrial detainee inmates who meet the criteria. Medical costs for county inmates continue to increase, putting a burden on taxpayers. Allowing jails/jailers to release inmates accused of eligible non-violent, non-sexual crimes on conditional medical release would alleviate some of the financial burden.
2. Mandate State Funding for Mental Health, Drug, and Veterans Courts.
 - a. Amend Florida Statutes regarding diversion to mandate funding for diversion courts: Florida Statute 397.334 (Drug Court), Florida Statute 394.47892 (Mental Health Court), Florida Statute 394.47891 (Veterans Court), and Florida Statute 948.16 (Misdemeanor mental health/drug/veterans court programs). Create an oversight office of all diversion programs in the state for consistency. Oversight office to consult with subject matter experts for best practices. Recommend Legislature allocate appropriate sufficient recurring funds for implementation and operation of all the statutory diversion programs.