



## CRIMINAL PUNISHMENT CODE TASK FORCE Scoresheets Subcommittee Minutes

**February 21, 2020 at 3PM**

Conference Call

### **I. Members Present:**

The Honorable Donna McIntosh (Chair)

The Honorable Larry Eger

Mr. Kenneth Steely

Professor Michael Morley

*Absent:*

Senator Jason Pizzo

### **II. Scoresheets Subcommittee**

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 he 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).

### **III. Subcommittee Working Objectives**

The subcommittee's working objectives are as follows:

1. Review and make recommendations regarding offense severity rankings
  - a. Including uncharted
2. Review and make recommendations for sentencing points under the CPC.
  - a. What is the number of points necessary to trigger state sanctions?
  - b. Legal status
  - c. Review sentencing range- lowest and highest permissible.
  - d. Review points for primary, additional, and prior offenses
3. Mitigating Factors
4. Downward Departures

### **IV. Adjourn**

5:11 PM