



AGENDA

STATE OF FLORIDA CRIMINAL PUNISHMENT CODE TASK FORCE

March 27, 2020 at 11:00 AM

Conference Line: 888-585-9008

Conference Room Code: 757-756-300

“Reviewing, evaluating, and making recommendations regarding sentencing for and ranking of noncapital felony offenses under the Criminal Punishment Code.”
Chapter 2019-167, §152, Laws of Florida.

Welcome and Introductions

The Honorable Michelle Sisco,
Hillsborough County

Non-Prison Sanctions Subcommittee Recommendations

Sheriff Christopher Nocco, Pasco
County

Enhancements Subcommittee Recommendations

The Honorable Michelle Sisco,
Hillsborough County

Scoresheets Subcommittee Recommendations

The Honorable Donna McIntosh,
Seminole and Brevard County

Discussion

Task Force Members

Public Comment

Open to Public

Closing Remarks

The Honorable Michelle Sisco,
Hillsborough County



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.

Florida Criminal Punishment Code Task Force

Caselaw Considerations

January 17, 2020

PURPOSE OF THE TASK FORCE

- Review, evaluate, and make recommendations regarding sentencing for and ranking of noncapital felony offenses under the Criminal Punishment Code (Code)
- Include an analysis of best practices in its review
- Staff reviewed over 100 judicial decisions since 1998 interpreting the Code.
- A substantial volume of caselaw has developed over downward departures.

DOWNWARD DEPARTURES

- Section 921.0026(1), F.S.(2019) states:

- A downward departure from the permissible sentence, as calculated according to the total sentence points pursuant to section 921.0024, is prohibited *unless there are circumstances or factors that reasonably justify the downward departure.*

- A trial court may impose a downward departure below the lowest permissible sentence if it finds, **by a preponderance of the evidence**, mitigating circumstances or factors that reasonably justify the downward departure.

- Section 921.0026 includes a non-exhaustive list of statutory mitigating factors.

- “Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to...”

- A trial court may consider other non-statutory mitigating factors.

MITIGATING CIRCUMSTANCES INCLUDE, BUT ARE NOT LIMITED TO...

- The departure results from a legitimate, uncoerced plea bargain
- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct
- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment
- The need for payment of restitution to the victim outweighs the need for a prison sentence
- The victim was an initiator, willing participant, aggressor, or provoker of the incident

MITIGATING CIRCUMSTANCES INCLUDE, BUT ARE NOT LIMITED TO...

- The defendant acted under extreme duress or under the domination of another person
- Before the identity of the defendant was determined, the victim was substantially compensated
- The defendant cooperated with the state to resolve the current offense or any other offense
- The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse
- At the time of the offense the defendant was too young to appreciate the consequences of the offense
- The defendant is to be sentenced as youthful offender

Since October 1, 1998...

Most of the caselaw pertaining to the Code has addressed...

- Failure to give any reasons for downward departure
- Proper and improper interpretation and application of the statutory mitigating circumstances
- Valid and invalid non-statutory mitigating circumstances

Specialized Treatment – s. 921.0026(2)(d)

Statutory elements...

- The defendant has a mental disorder (unrelated to substance abuse or addiction) or a physical disability;
- Which requires specialized treatment; and
- The defendant is amenable to such treatment.

***State v. Chubbuck*, 141 So. 3d 1163 (Fla. 2014)**

•Evidence Presented at VOP Hearing:

- Defendant, a veteran, acknowledged he was undergoing treatment for PTSD at the VA hospital
- Defendant's fiancé testified that defendant was very ill and that she takes him to the VA hospital all the time

•Defense counsel argued

- Defendant was very ill and asked the trial court to sentence him to time served so he could get treatment for various ailments, including interferon treatment, at the VA hospital
- Relied on 921.0026(2)(d) for a downward departure based on his mental condition and physical disabilities

•State argued

- No evidence presented that the DOC would be ill-equipped to treat him

***State v. Chubbuck*, 141 So. 3d 1163 (Fla. 2014)**

The trial court revoked his probation as unsuccessful and sentenced him to 96 days' county jail with credit for 96 days' county jail.

Holding: Plain language of s. 921.0026 does not require defendant, in seeking a downward departure, to prove the DOC cannot provide the required specialized treatment.

Considerations

Should section 921.0026(2)(d), Florida Statutes, be amended to:

(a) reflect the holding in *Chubbuck*?

or

(b) add the requirement that defendant prove that the required specialized treatment he needs is unavailable in the DOC?

Victim Initiator/Aggressor/Willing Participant – s. 921.0026(2)(f)

Statutory elements...

- The victim was an initiator;
- The victim was a willing participant;
- The victim was an aggressor; or
- The victim was a provoker of the incident.

***State v. Rife*, 789 So. 2d 288 (Fla. 2001)**

Facts:

- Adult defendant admitted to having sex with a 17-year-old minor victim on numerous occasions but maintained, and the victim agreed, that the sexual activities were consensual
- The sexual activities with this minor, who moved in with the defendant because she had no other place to reside, began before the victim requested, and defendant agreed, that defendant become her guardian
- Both defendant and the victim testified that they had planned on marrying when the victim reached the legal age of 18
- The defendant was convicted of three counts of sexual battery in violation of section 794.011(8)(b) Florida Statutes

***State v. Rife*, 789 So. 2d 288 (Fla. 2001)**

The trial court recognized that a minor victim's consent could not be used by the defendant as a defense to sexual battery when the victim was in familial or custodial authority of the defendant (s. 794.011(8)(b), F.S.).

The defendant's sentencing scoresheet provided for a minimum of 297.4 months' prison to 495.7 months' prison (pre-Code).

The trial court found that the victim's consent could be considered in imposing a downward departure on defendant finding that the record supported the fact that the victim "willingly participated in this sexual endeavor".

***State v. Rife*, 789 So. 2d 288 (Fla. 2001)**

The trial court downwardly departed and sentenced defendant to three concurrent terms of 102 months followed by ten years' probation on each count and ordered that he receive sexual offender treatment as a condition of probation.

The state objected and requested that the defendant be sentenced within the guidelines.

***State v. Rife*, 789 So. 2d 288 (Fla. 2001)**

Court's Analysis: It is clear that the Legislature expressly precluded defendants from asserting the minor's consent as a defense to section 794.011(8)

The plain language of the downward departure statute at issue does not limit its applicability to crimes in which the victims are adults

If the Legislature had intended to prohibit downward departures even if the minor consented to the activity, it would have expressly provided for such a prohibition in either the laws governing sexual crimes involving minors or the sentencing guidelines

Holding: Trial judges are not prohibited as a matter of law from imposing a downward departure sentence based on a finding that the minor victim was an initiator, willing participant, aggressor, or provoker of the incident.

Considerations

In light of the Florida Supreme Court's holding in *Rife*, should section 921.0026(2)(f) be amended to:

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

921.0026(2)(e) - Need for Restitution to the Victim

Numerous downward departure sentences have been reversed because there was insufficient evidence to prove that need for payment of restitution to the victim outweighed the need for a prison sentence.

-Evidence which would support a departure based on the need for restitution versus the need for imprisonment includes the nature of the victim's loss, the effectiveness of restitution, and the consequences of imprisonment. *See Banks v. State*, 732 So.2d 1065, 1069 (Fla. 1999).

921.0026(2)(e) - Need for Restitution to the Victim

When the trial court considers the “efficacy of restitution,” as required by *Banks*, it must evaluate the power of the restitution plan to restore the victim to his or her previous state. This evaluation must include the defendant's ability to pay restitution, and the impact of the restitution plan on the victim. *Demoss v. State*, 843 So.2d 309, 312 (Fla. 1st DCA 2003).

When evaluating the nature of the victim's loss, the trial court must consider the impact of the crime on the victim. *Id.*

921.0026(2)(e) - Considerations

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?

921.0026(2)(j) - Unsophisticated Manner Departure

In 1998, the Fourth DCA in *State v. Warner*, 721 So.2d 767, 769 (Fla. 4th DCA 1998) held that this reason for departure was not available in DUI cases.

“Given the state’s strong public policy against DUI, we conclude that this reason for departure is not available in this case. If this DUI could be considered an isolated incident, then all first DUI’s by people having clean records could be considered such. Nor do we think that drunk driving can be ‘committed in an unsophisticated manner.’” *Id.*

921.0026(2)(j) - Unsophisticated Manner Departure

In 2001, the Second DCA in *State v. VanBebber*, 805 So.2d 918 (Fla. 2d DCA 2001) held that this reason for departure was available in DUI cases and certified conflict with the Fourth DCA's decision in *Warner*.

In 2003, the Florida Supreme Court held the unsophisticated manner mitigator in section 921.0026(2)(j) was available to support a downward departure from a sentence for a felony DUI conviction. *See VanBebber v. State*, 848 So. 2d 1046 (Fla. 2003).

921.0026(2)(j) - Unsophisticated Manner Departure

In *VanBebber*, the Florida Supreme Court based its decision on the following line of reasoning:

“Section 921.0026 plainly states, ‘This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.’ Because the mitigator in section 921.0026(2)(j) applies to any felony offense, except any capital felony committed on or after October 1, 1998, it is available to support a downward departure from a felony DUI conviction. The fact that the Legislature specifically exempted only capital felonies is further support for the conclusion that section 921.0026(2)(j) applies to felony DUI convictions.” *VanBebber*, 848 So.2d at 1049.

921.0026(2)(j) - Unsophisticated Manner Departure

“...if the Legislature intended to specifically exempt felony DUI offenses from this statutory scheme this Court must presume that it would have explicitly done so in the statute.” *Id.* at 1050.

The Florida Supreme Court based its decision on the clear and unambiguous language of section 921.0026 which provides that the mitigators found therein are applicable to all felonies, except capital felonies.

Did the Legislature intend for this mitigator to apply to DUIs?

Should the phrase “unsophisticated manner” be clarified or defined?

921.0026(2)(j) - Unsophisticated Manner Departure

The offense was committed in an unsophisticated manner...

What does that mean?

“[A] crime is committed in an unsophisticated manner when the acts constituting the crime are ‘artless, simple and not refined.’” *State v. Salgado*, 948 So.2d 12, 17 (Fla. 3d DCA 2006) (quoting *Staffney v. State*, 826 So.2d 509, 512-13 (Fla. 4th DCA 2002)).

“[C]ourts have considered evidence of ‘several distinctive and deliberate steps’ as an analytical factor to determine sophistication.” *State v. Fureman*, 161 So. 3d 403, 405 (Fla. 5th DCA 2014).

921.0026(2)(j) - Considerations

DUI manslaughter is not a specific intent crime, it is a general intent crime. *See Tollefson v. State*, 525 So.2d 957, 961 (Fla. 1st DCA 1988).

Is it ever possible for DUI manslaughter to be committed in an unsophisticated manner when it is not a sophisticated crime?

Sentence Manipulation by Police

Sentence manipulation by police is a valid non-statutory legal ground for a downward departure. *See State v. Steadman*, 827 So.2d 1022 (Fla. 3d DCA 2002). When considering sentence manipulation as a basis for downward departure, the trial court's inquiry should focus on law enforcement intent:

- was the sting operation continued only to enhance the defendant's sentence or did legitimate law enforcement reasons exist to support the police conduct, such as to determine the extent of the criminal enterprise, to establish the defendant's guilt beyond a reasonable doubt, or to uncover any co-conspirators?
- if legitimate law enforcement concerns exist, then a downward departure based on sentence manipulation is not warranted.

921.0026(2) - Considerations

Should section 921.0026(2) be clarified to address “sentence manipulation”?

Diminished Mental Capacity

Diminished mental capacity constitutes a valid non-statutory legal ground for a downward departure. *See State v. Williams*, 870 So.2d 938 (Fla. 5th DCA 2004).

In *Williams*, there was ample evidence that Defendant:

- suffers from diminished mental capacity as well as significant physical problems
- scored 68 and 70 on his IQ tests; was deemed minimally competent to stand trial
- has memory, concentration, and attention problems
- is morbidly obese with a pronounced difficulty in walking
- uses a cane and appears to have a long standing orthopedic malformation of his legs and/or feet; receives treatment and therapy on his legs, back, and spine
- lives with his mother and is very reliant on her to dress and prepare his meals
- has received Social Security Supplemental Income for many years

921.0026(2) - Considerations

Should section 921.0026(2) be amended to add “diminished mental capacity” as a statutory reason for a downward departure?

INVALID REASONS FOR DOWNWARD DEPARTURES

- Defendant's substance abuse or addiction at the time of the offense. *State v. Harvey*, 909 So. 2d 989 (Fla. 5th DCA 2005).
- Defendant seemed amenable to drug rehabilitation. *State v. Owens*, 848 So. 2d 1199 (Fla. 1st DCA 2003).
- No redeeming value in sending the defendant to prison. No injury or opportunity for the injury to the other person. *State v. Rogers*, 250 So. 3d 821 (Fla. 5th DCA 2018)
- Judge's opinion that lowest permissible sentence was "not appropriate in this particular situation". *State v. Subido*, 925 So. 2d 1052 (Fla. 5th DCA 2006).

INVALID REASONS FOR DOWNWARD DEPARTURES

- Defendant's intoxication at the time of the offense. *State v. Chapman*, 805 So. 2d 906 (Fla. 2d DCA 2001).
- Downward departure for co-defendant. *State v. Leverett*, 44 So. 3d 634 (Fla. 5th DCA 2010).
- Defendant's lack of criminal activity since his arrest for the charged offenses. Defendant's admission of guilt and entry of an open plea. Trial court's observations that the disposition of criminal cases is handled differently in one county than in other areas of the state. *State v. Robinson*, 149 So. 3d 1199 (Fla. 1st DCA 2017).

INVALID REASONS FOR DOWNWARD DEPARTURES

- Confession after arrest DOES NOT constitute “cooperation with the state to resolve the current offense” required to justify a downward departure. *State v. Garcia-Costa*, 86 So. 3d 562 (Fla. 2d DCA 2012).
- Lowest permissible sentence was “a bit harsh”. *State v. Bowman*, 123 So. 3d 107 (Fla. 1st DCA 2013).
- Age of defendant’s prior convictions because already taken into consideration by the Code. *State v. Isom*, 36 So. 3d 936 (Fla. 2d DCA 2010).
- Family support concerns. Crime was not committed in a more heinous manner. No redeeming value to sending defendant to prison. Defendant committed crime out of anger and stupidity. *State v. Thompkins*, 113 So. 3d 95

INVALID REASONS FOR DOWNWARD DEPARTURES

- Defendant had familial obligations and kept his “nose clean” since being released from prison in 2004 (short crime free period). *State v. Stephenson*, 973 So. 2d 1259 (Fla. 5th DCA 2008)
- Trial judge’s disagreement with the Code. *State v. Whiteside*, 56 So. 3d 799 (Fla. 2d DCA 2011).
- Work status or length of previous sentences. *State v. McKnight*, 35 So. 3d 995 (Fla. 5th DCA 2010).

INSUFFICIENT REASONS FOR DOWNWARD DEPARTURES

Prison overcrowding and strained DOC budget were insufficient reasons for downward departure when...

- No evidence was introduced regarding those factors and
- Trial judge did not take judicial notice of any type of report or other information to support the reason.

–*State v. Holsey*, 908 So. 2d 1159 (Fla. 1st DCA 2005)

Considerations

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

A victim's consent or request for leniency

May a victim's consent or request for leniency be a valid basis for a downward departure?

Fifth DCA – No

State v. Hawkins, 225 So.3d 943, 946 (Fla. 5th DCA 2017) (holding that the officer's recommendation for a non-incarcerative sentence does not constitute a valid reason for departure)

State v. Ussery, 543 So.2d 457, 457 (Fla. 5th DCA 1989) (holding that a victim's request for downward departure is invalid as a matter of law)

State v. White, 532 So.2d 1083, 1084 (Fla. 5th DCA 1988) (finding that forgiving attitude of victim's mother was not a valid reason for departure)

A victim's consent or request for leniency

May a victim's consent or request for leniency be a valid basis for a downward departure?

Second DCA – Yes

State v. Eastridge, 5 So.3d 707, 709 (Fla. 2d DCA 2009) (stating “[a] victim's consent or request for lenient sentencing, however, may be a valid basis for a downward departure”)

BUT...

The Second DCA in *Eastridge* cited *State v. Bernard*, 744 So.2d 1134, 1136 (Fla. 2d DCA 1999) and *State v. Powell*, 696 So.2d 789, 791 (Fla. 2d DCA 1997) to support that finding.

A victim's consent or request for leniency

In *Powell*, the Second DCA stated:

Whether a victim's request for leniency could ever be a proper reason for a downward departure sentence is a difficult issue. In the context of domestic violence, the victim may have many conflicting emotions. A defendant and other family members could easily pressure the victim to request leniency. We would not wish to encourage trial courts to rely upon this reason for a downward departure sentence in a case involving domestic violence. However, because the alternative ground for departure is valid, we do not need to resolve this issue. *Powell*, 696 So.2d at 791.

A victim's consent or request for leniency

In *Bernard*, the Second DCA stated:

The court in *Powell* expressed concern that domestic violence victims can be particularly vulnerable to family pressure to request leniency for the defendant. Although this case is slightly different factually, there is a family connection between the victim and the defendant. Of greater concern than the family tie, however, is that this victim was just a child, even at the time of sentencing. Because the policy behind the criminalizing of certain sexual offenses is to protect children of such age and to punish harshly the offenders, the trial judge at a minimum should be required to make record findings of credibility and lack of coercion. Without this evidence, the trial court abused its discretion in departing from the guidelines on this basis. *Bernard*, 744 So.2d at 1136.

Considerations

Should a victim's consent or request for leniency be added to the list of valid or invalid reasons for departure?

***Norvil v. State*, 191 So. 3d 406 (Fla. 2016)**

Do the terms “primary offense” and “prior record” include a *subsequent arrest* and its related charges?

- “Primary offense” means **the offense at conviction pending before the court for sentencing** for which the total sentence points recommend a sanction that is as severe as, or more severe than, the sanction recommended for any other offense committed by the offender and pending before the court at sentencing. § 921.0021(4), F.S. (2019)
- “Prior record” means a **conviction** for a crime committed by the offender, as an adult or a juvenile, **prior to the time of the primary offense**. § 921.0021(5), F.S. (2019).

***Norvil v. State*, 191 So. 3d 406 (Fla. 2016)**

•Prior to Sentencing:

- The state filed a sentencing memorandum recommending that the trial court consider a new charge pending against the defendant for burglary of a vehicle.
 - Defense counsel filed a sentencing memorandum objecting to the state's recommendation.
- Prior to pronouncing sentence, the trial court referred to the pending burglary charge, along with a trespass charge to which the defendant had already entered a plea, and noted that both arrests occurred while the defendant was out on bond awaiting trial in this case.

***Norvil v. State*, 191 So. 3d 406 (Fla. 2016)**

Holding: The terms “primary offense” and “prior record,” included in the Code’s sentencing principles, do not include a subsequent arrest and related charges where the charges are still pending without any conviction. A trial court violates a defendant’s due process rights when it considers a subsequent arrest without conviction during sentencing for the primary offense.

SEE ALSO

FOX V. STATE, 281 So. 3d 498, 501 (Fla. 4th DCA 2019)

“[F]or a collateral crime to be considered as ‘prior record’ during sentencing for the primary offense, two conditions must exist: (1) the defendant committed the collateral crime before committing the primary offense; and (2) the defendant has been convicted of the collateral crime before being sentenced for the primary offense. It is not necessary that the defendant be convicted of the collateral crime before the defendant has committed the primary offense”

Considerations

Should the definitions for “primary offense”, “additional offense” or “prior record” be amended to make clear that they shall not include any pending charges?

***Montgomery v. State*, 897 So. 2d 1282 (Fla. 2005)**

“Conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.

–§ 921.0021(2), Fla. Stat. (2019).

Defendant argued on appeal that his pleas of no contest followed by a withhold of adjudication should not be scored as prior convictions on the criminal punishment code scoresheet.

***Montgomery v. State*, 897 So. 2d 1282 (Fla. 2005)**

The Florida Supreme Court stated that a finding that a no contest plea is a prior conviction, regardless of adjudication being withheld, is consistent with section 921.0021(2).

The statute clearly indicates the Legislature wanted to include all determinations of guilt even where adjudication had been withheld.

Considerations

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*?

Thank you!

**FLORIDA SUPREME COURT CASES DEALING WITH PROVISIONS OF THE
CRIMINAL PUNISHMENT CODE (CPC)**

***Shine v. State*, 273 So. 3d 935 (Fla. 2019)**

Issue: whether a defendant is entitled to a de novo sentencing proceeding after an appellate court determines that the trial court's initial downward departure sentence was not supported legally sufficient findings

Facts: Shine pled guilty to four offense and was placed on probation

-subsequently, the court revoked his probation and imposed a downward departure sentence from what otherwise would have been the lowest permissible sentence under the Criminal Punishment Code ("CPC" or "Code")

-the state objected to the departure and appealed the sentence to the Third District Court of Appeal (3rd DCA)

-the 3rd DCA found the departure was invalid, and reversed and remanded for resentencing within the guidelines

-Shine sought review based on express and direct conflict with cases holding that a trial court may imposed a new downward departure on remand from the reversal of a downward departure

Analysis: nothing within the CPC precludes the imposition of a downward departure sentence on resentencing following remanded

-resentencing is a de novo proceeding where the defendant is entitled to the full array of due process rights and the parties may present new evidence

Holding: on remand for resentencing due to the substantive invalidity of a downward departure, the trial court is permitted to impose a downward departure as long as the departure "comports with the principles and criteria" of the CPC

***Brown v. State*, 260 So. 3D 147 (Fla. 2018)**

Issue: whether section 775.082(10) requiring the court, not the jury, to find the fact of dangerousness to the public that is necessary to increase the statutory maximum nonstate prison sanction violates the Sixth Amendment to the United States Constitution

Facts: -Brown's jury found her guilty of petit theft for stealing a DVD player from a store, a third degree felony based upon her prior convictions

-although her scoresheet totaled 16.4 points, the trial court found that imposing a nonstate prison sanction presented a danger to the public and imposed an upward departure sentence of three years' prison

Analysis: in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime *beyond the prescribed statutory maximum* must be submitted to a jury, and proved beyond a reasonable doubt"

-in *Blakely v. Washington*, 542 U.S. 296, 303, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), the Supreme Court defined the "statutory maximum" as the "maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant"

-subsection (10) unambiguously sets the statutory maximum penalty for *Apprendi* purposes as defined by *Blakely* as "a nonstate prison sanction"

-absent a factual finding of "dangerousness to the public," which was not reflected in the jury's verdict on the theft charge, the statute plainly states that "the court *must* sentence the offender to a nonstate prison sanction

Holding: 775.082(10), Florida Statutes violates the Sixth Amendment in light of *Apprendi* and *Blakely* based on its plain language requiring the court, not the jury, to find the fact of dangerousness to the public necessary to increase the statutory maximum nonstate prison sanction

-in order for a court to impose any sentence above a nonstate prison sanction when section 775.082 (10) applies, a jury must make the dangerousness finding

***Norvil v. State*, 191 So. 3d 406 (Fla. 2016)**

Issue: whether a trial court violated a defendant's due process rights at sentencing by considering a subsequent arrest without conviction during sentencing for the primary offense

Facts: before sentencing, the state filed a sentencing memorandum recommending that the court consider a new charge pending against the defendant for burglary of a vehicle

-defense counsel responded with a sentencing memorandum objecting to the state's recommendation

-before pronouncing sentence, the trial court referred to the pending burglary charge, along with a trespass charge to which the defendant had already entered a plea, and noted that both arrests occurred while the defendant was out on bond awaiting trial in this case

Analysis: the trial court emphasized and relied upon the subsequent arrest and its related charge of burglary of a vehicle in sentencing Norvil on the primary offense

-the terms "primary offense" and "prior record," which are included in the CPC's sentencing principles, do not include a subsequent arrest and its related charges

Holding: a trial court may not consider a subsequent arrest without conviction during sentencing for the primary offense

***State v. Chubbuck*, 141 So. 2D 1163 (Fla. 2014)**

Issue: whether section 921.0026(2)(d), Florida Statutes requires the defendant to prove that the required specialized treatment he needs is unavailable in the Department of Corrections (DOC)

Facts: Chubbuck entered into a plea agreement with the state to various drugs charges in exchange for five years' probation and no prison

-the trial court adjudicated him guilty and placed him on probation in accordance with the plea agreement

-the trial court also ordered that he abstain from the use of alcohol and illegal drugs and submit to random urinalysis testing during probation

-subsequently, an affidavit of violation of probation was filed alleging that he failed to live at liberty without violating the law by possessing cocaine as evidenced from his urine sample

-at the violating of probation hearing, the state advised the trial court that it could either reinstate his probation or sentence him in accordance with the sentencing guidelines where the bottom of the guidelines was 37.65 months' prison

-Chubbuck acknowledge his prior military service and that he was undergoing treatment for PTSD at the Veterans Affairs (VA) hospital

-Chubbuck's fiancée testified that he was very ill and she takes him to the VA hospital all the time

-his counsel argued that he was very ill and asked the trial court to sentence him to time served so he could get treatment for his various ailments, including interferon treatment, at the VA hospital and relied on section 921.0026(2)(d) to support a downward departure based on his mental condition and physical disabilities

-the state argued that there was no evidence presented that the Department of Corrections (DOC) would be ill-equipped to treat him

-the trial court revoked his probation as unsuccessful and sentenced him to 96 days' county jail with credit for 96 days' county jail

Analysis: a trial court may impose a downward departure below the lowest permissible sentence if it finds, by a preponderance of the evidence, circumstances or factors that reasonably justify the downward departure

-section 921.0026(2)(d) Florida Statutes allows the trial court to depart from the lowest permissible sentence if the defendant requires “specialized treatment” for a mental disorder (unrelated to substance abuse or addiction) or for a physical disability, and the defendant is amenable to treatment

-Chapter 921 does not define “specialized treatment”

-courts should not construe unambiguous statutes in a manner that would extend, modify, or limit their terms or the obvious implications as provided by the Legislature

-subsection 921.0026(2)(d) is clear and unambiguous and the plain an ordinary language must control

-the plain language of subsection 921.0026(2)(d) does not require the defendant to prove that the required specialized treatment is unavailable in the DOC

Holding: the defendant is not required to prove that the DOC cannot provide the required specialized treatment in seeking a downward departure sentence under section 921.0026(2)(d)

-a defendant who is requesting a downward departure pursuant to subsection 921.0026(2)(d) must prove the following three elements by a preponderance of the evidence: (1) the defendant has a mental disorder (unrelated to substance abuse or addiction) or a physical disability; (2) which requires specialized treatment; and (3) the defendant is amenable to such treatment

Jackson v. State, 64 So. 3d 90 (Fla. 2011)

Issue: whether an appellate court that reverses the imposition of a downward departure sentence must remand for resentencing within the CPC, or whether it may remand for resentencing outside of the CPC

Facts: Jackson pled guilty to two noncapital felonies in 2008

-the state requested an eight year prison sentence, but the trial court found that Jackson had requested assistance and was amenable to rehabilitation, and orally stated that it would impose a downward departure sentence on that basis

-the state objected to the court’s decision to impose a downward departure and to the reasons given for the departure

-the trial court sentenced Jackson to concurrent terms of nine months’ county jail with 72 days’ jail credit

-according to the CPC scoresheet, Jackson’s sentencing points totaled 46.6 and called for a sentencing range of 13.95 months to fifteen years’ prison

Analysis: the CPC is silent on how a trial court must resentence a defendant when the original departure sentence is reversed on appeal.

-however, the Legislature has expressed certain principles embodied by the CPC, including section 921.002(1)(f) which states “[d]epartures below the lowest permissible sentence established by the Code must be articulated in writing by the trial court judge and made only when circumstances or factors reasonably justify the mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the lowest permissible sentence is a preponderance of the evidence”

-based on the reading of the legislative scheme, nothing within the CPC precludes the imposition of a downward departure sentence on resentencing following remand

-an appellate court should not preclude a trial court from resentencing a defendant to a downward departure if such a departure is supported by valid ground

Holding: on remand for resentencing a trial court is permitted to impose a downward departure when the trial court finds a valid basis for departure as prescribed under the Code

Sanders v. State, 35 So. 3d 864 (Fla. 2010)

Issue: whether offenses over which trial court no longer had jurisdiction could be scored as additional offenses on the CPC scoresheet

Facts: defendant pled no contest to 5 offenses in three separate cases

-he was sentenced to concurrent three year prison terms on all of the offenses followed by concurrent terms of probation

-he received two year terms of probation for criminal mischief, attempted burglary, and aggravated assault, all third degree felonies
-he received three year terms of probation for the second degree felonies of robbery and aggravated battery
-after he completed the two year probationary terms, but before completing the three year probationary terms, the state alleged that he violated his probation by moving without the consent of his probation officer and failing to complete a residential drug treatment program
-he admitted to violating the conditions of his probation and was not charge with any new law offense
-the trial court revoked his probation on all five offenses and sentenced him to 108 months prison on all five offenses, which was a slight downward departure from the lowest permissible sentence of 111.6 months on the CPC scoresheet used by the trial court
-he appealed and argued that 1) the trial court erred in revoking his probation and sentencing him for the third degree felonies because he had completed his probation for those offenses and 2) because he could not be sentenced on the third degree felonies, those crimes should not have been scored as additional offenses on a recalculated scoresheet
Analysis: -the statute plainly provides that an offense qualifies as an “additional offense” for purposes of the scoresheet if it “is pending before the court for sentencing at the time” of the sentencing proceeding then being conducted
-in this case, the third degree felonies were not pending for sentencing during the resentencing proceeding and therefore, should not have been scored as additional offenses
Holding: offenses over which the trial court no longer has jurisdiction cannot be scored as additional offenses during a sentencing proceeding following a violation of probation because they do not fit the definition of “additional offense” set out in section 921.0021, Florida Statutes (1999)

Montgomery v. State, 897 So. 2d 1282 (Fla. 2005)

Issue: whether a plea of nolo contendere, where adjudication of guilt has been withheld, serves as a prior conviction for purposes of the sentencing guidelines

Facts: he was convicted of several offenses and sentenced to sixteen months’ prison

-the sentence was based on a scoresheet that scored his prior withheld adjudications as prior convictions

-previously, he had pled no contest to aggravated battery, carrying a concealed firearm, and two counts of possession of cocaine and adjudication was withheld on each charge

-he argued on appeal that his pleas of no contest with a withhold of adjudication should not be scored as prior convictions on the criminal punishment scoresheet

Analysis: chapter 921, Florida Statutes provides that prior convictions are scored on the sentencing guidelines worksheet in computing a defendant’s sentence

-section 921.0021 defines a conviction as “a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld”

-a finding that a no contest plea is a prior conviction, regardless of adjudication being withheld, is consistent with the legislative intent of section 921.0021(2)

-the statute clearly indicates the Legislature wanted to include all determinations of guilt even where adjudication had been withheld

Holding: a no contest plea followed by a withhold of adjudication is a conviction for purposes of sentencing under section 921.0014

***Butler v. State*, 838 So. 2d 554 (Fla. 2003)**

Issue: whether a trial court may sentence a defendant to a term in excess of the statutory maximum for an offense committed after October 1, 1998, where the lowest permissible sentence under the Code exceeds the statutory maximum

Facts: defendant pled guilty to several offenses, including possession of cocaine, a third degree felony, with a 5 year statutory maximum

-he was sentenced to 75.6 months' prison

-he filed a rule 3.850 motion alleging his sentence exceeded the 5 year statutory maximum

-the trial court denied his motion ruling that although the sentence imposed for possession of cocaine exceeded the statutory maximum, the sentence of 75.6 months' prison was the lowest permissible sentence under the guidelines and therefore was legal

Analysis: for those defendants who committed their crime after October 1, 1998, section 921.0024(2), Florida Statutes (1999) provided that if the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in section 775.082, the sentence required by the code must be imposed

-application of section 921.0024(2) is an exception to the general provision of section 921.002(1)(g) that sentences cannot exceed the statutory maximum

Holding: when section 921.0024(2) applies so that the statutory maximum sentence as provided in section 775.082, Florida Statutes (2002) is exceeded by the lowest permissible sentence under the code, the lowest permissible sentence under the Code becomes the maximum sentence which the trial judge can impose

-section 921.0024(2) is not vague

***VanBebber v. State*, 848 So. 2d 1046 (Fla. 2003)**

Issue: whether the mitigator in section 921.0026(2)(j), Florida Statutes (Supp. 1998) is available to support a downward departure from a sentence for a driving under the influence (DUI) conviction

Facts: VanBebber, while exhibiting extreme and sincere remorse and recognizing his fault, pled no contest to one count of DUI with property damage three counts of DUI with personal injury with one of them with serious bodily injury, and one count of DUI manslaughter

-at the sentencing hearing, members of the victim's family and VanBebber's family testified, both outlining the devastating effect the accident has had on the families

-defense counsel argued for a downward departure from the guidelines sentence of 175.9 months to 240 months based on the statutory mitigator that the "offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse" authorized by 921.0026(2)(j)

-the trial court imposed a downward departure of 200 months' prison, but suspended it upon completion of fifteen years' probation with special conditions.

-the state objected to the downward departure

Analysis: the Legislature did not exempt DUI crimes from application of section 921.0026(2)(j)

-because the mitigator in section 921.0026(2)(j) applies to any felony offense, except any capital felony, committed on or after October 1, 1998, it is available to support a downward departure from a felony DUI conviction

-section 921.0026 is clear and unambiguous and provides that the mitigators found therein are applicable to all felony offenses except capital felonies

Holding: the mitigator in section 921.0026(2)(j) is available to support a downward departure from a sentence for a felony DUI conviction

***Jones v. State*, 813 So. 2d 22 (Fla. 2002)**

Issue: whether section 948.01(13), Florida Statutes (Supp. 1998), which provides for the sanction of drug offender probation, is an alternative sentencing scheme independent of the sentencing guidelines

Facts: -after a psychiatrist testified at the sentencing hearing, the trial court found Jones to be a chronic substance abuser pursuant to section 948.01(13).

-although the sentencing guidelines mandated prison time, Jones argued that the trial court could place her on drug offender probation pursuant to section 948.01(13)

-the state argued that the sentencing guidelines applied to Jones' case and mandated that the trial court sentence Jones to prison.

-the trial court agreed with Jones and entered a written order finding that it had the discretion under section 948.01(13) to impose drug offender probation

-based on Jones' written plea of nolo contendere, the trial court adjudicated Jones guilty and placed her on two years' drug offender probation pursuant to section 948.01(13).

-the state appealed the imposition of probation

Analysis: although the enactment of section 921.0026(3) may indicate that the Legislature intended to limit the ability of trial courts to impose a downward departure from the sentencing guidelines solely on the basis of drug addiction, there is no question that section 948.01(13), as well as the other specific statutes dealing with treatment for substance abusers, indicate a strong policy in favor of treatment over incarceration for certain nonviolent drug-related crimes

Holding: section 948.01(13), Florida Statutes drug offender probation was an alternative to the sentencing guidelines and could be imposed completely outside of the guidelines

***Hall v. State*, 823 So. 2d 757 (Fla. 2002)**

Issue: whether the Code violates due process rights because it invites discriminatory sentencing by trial judges and promotes sentence disparity

Facts: Hall was found guilty by a jury of possession of cocaine and resisting arrest with violence, both third degree felonies with a 5 year statutory maximum

-under the CPC scoresheet, the total sentence points were 94.4 with 49.8 being the lowest permissible prison sentence in months

-the scoresheet indicated the maximum was up to the statutory maximum and that the sentences could be imposed either concurrently or consecutively

-the trial court sentenced him to five years' prison on each count to run consecutively

-he appealed arguing that the CPC is unconstitutional

Analysis: even though the primary goal of the CPC is punishment, it does not punish indiscriminately

-based upon objective criteria, including the severity and nature of the offense and the offender's criminal history, the Legislature has provided a reasonable basis for its criminal sentencing scheme which is neither discriminatory, arbitrary, nor oppressive

-statutorily mandated consecutive sentencing has been held to be constitutionally permissible-after

-minimum mandatory schemes do not constitute cruel and unusual punishment

-the Code does not implicate state and federal double jeopardy principles because it does not seek a second prosecution after conviction, does not seek a second prosecution after acquittal, and it does not seek multiple punishments for the same offense within the same prosecution

-the Code does not violated the principle of separation of powers because it is substantive in nature and is a product of legislative policy

-the Code does not violated due process as a defendant has constructive notice of the penalty for statutory crimes and comports with the due process requirement for fair warning

Holding: the CPC is constitutional

State v. Rife, 789 So. 2D 288 (Fla. 2001)

Issue: whether the trial court was precluded as a matter of law from imposing a prison sentence of eight and one-half years prison followed by ten years' probation, or whether the trial court was required as a matter of law to sentence Rife to a prison term of no less than twenty-four years, the minimum under the sentencing guidelines

Facts: Rife admitted to having sex with the 17 year old victim on numerous occasions but contends, and that victim agrees, that the sexual activities were consensual

-the sexual activities with this minor, who moved in with Rife because she had no other place to reside, began before the victim requested, and Rife agreed, that Rife become her guardian

-both Rife and the victim testified that they had planned on marrying when the victim reached the legal age of 18

-Rife was convicted of three counts of sexual battery in violation of section 794.011(8)(b), Florida Statutes

-although the trial court recognized that a minor victim's consent could not be utilized by Rife as a defense to the crime of sexual battery, the trial court found that the victim's consent could be considered in imposing a downward departure sentence on Rife finding the record supported the fact that the minor victim "willingly participated in this sexual endeavor"

-Rife's sentencing scoresheet provided for a range of 297.4 months' prison to 495.7 months' prison

-the trial court downwardly departed and sentenced Rife to three concurrent prison terms of 102 months followed by ten years' probation on each count and ordered that he receive sexual offender treatment as a condition of probation

-the state objected to the downward departure sentences and requested that Rife be sentenced within the statutory guidelines

Analysis: the plain language of the downward departure statute at issue, section 921.0016(4)(f), does not limit its applicability to crimes in which the victims are adults

-it is clear that the Legislature expressly precluded defendants from asserting the minor's consent as a defense to section 794.011(8)

-if the Legislature had intended to prohibit downward departures even if the minor consented to the activity, it could have expressly provided for such a prohibition in either the laws governing sexual crimes involving minors or the sentencing guidelines

Holding: the Legislature did not intend to preclude a trial court from utilizing section 921.0016(4)(f) as a basis for imposing a downward departure sentence

-by reading section 794.011(8)(b) in conjunction with section 921.0016(4)(f), trial judges are not prohibited as a matter of law from imposing a downward departure sentence based on a finding that the victim was an initiator, willing participant, aggressor, or provoker of the incident

**DISTRICT COURT OF APPEAL CASES DEALING WITH PROVISIONS OF THE
CRIMINAL PUNISHMENT CODE (CPC)**

Need for Restitution - reason for a downward departure – To support this finding, the evidence must establish the nature of the victim’s loss, the effectiveness of restitution, and the consequences of imprisonment. Need for payment of restitution to the victim outweighs the need for a prison sentence. The test for the victim’s need is not the victim’s preference or desire. The trial court must evaluate “the power of the restitution plan to restore the victim to his or her previous state,” including the defendant’s ability to pay and the impact of the restitution plan on the victim.

State v. Rogers, 250 So. 3d 821 (Fla. 5th DCA 2018) – Finding that the defendant failed to present any evidence regarding the loss sustained by the victim.

State v. Lackey, 248 So. 3d 1222 (Fla. 2d DCA 2018) – Finding that because there was no showing of a need for restitution by any victim, or that restitution would be effective, the DCA did not find competent substantial evidence in the record to justify a departure beneath the CPC’s minimum prison sentence under section 921.0026(2)(e).

Bailey v. State, 199 So. 3d 304 (Fla. 3d DCA 2016) – Finding that because there was no showing of a need for restitution where the victims were men of means.

State v. Wheeler, 180 So. 3d 1117 (Fla. 5th DCA 2015) – Finding there was no showing of a need for restitution where victim testified that it would be “nice” if she received restitution for the stolen items, but also acknowledged that the loss did not significantly impact her or her lifestyle and only evidence supporting defendant’s ability to pay was drug treatment coordinator’s testimony that “he would hope” that he could place defendant in employment that would allow him to pay restitution.

State v. Montgomery, 155 So. 3d 1182 (Fla. 2d DCA 2014) – Finding that trial court abused its discretion in departing from the recommended guidelines sentencing range where the victim never testified under oath about his need for restitution, the extent of his injuries, or his financial loss (no medical bills were introduced into evidence).

State v. Ford, 27 So. 3d 725 (Fla. 3d DCA 2010) – Finding that there was no evidence presented of the victim’s need or even the likely amount of restitution where the trial court’s sole finding was that defendant had a job, a fact having no bearing on the victim’s need, and restitution could be made a condition of any post-incarceration probation.

State v. Scott, 879 So. 2d 99 (Fla. 2d DCA 2004) – Finding no evidence was presented to support the downward departure where trial court merely stated on the record that the need for payment of restitution outweighed the need for a prison sentence, but no evidence was presented to support said finding.

Demoss v. State, 843 So. 2d 309 (Fla. 1st DCA 2003) – Finding evidence did not support downward departure where the victim was a corporation who averaged in excess of \$135,000 per month in gasoline sales, operated 18 similar stores in the Tallahassee region, had no pressing need for restitution, and had a spokesman who had expressed a preference for incarceration.

Cooperation by defendant - reason for a downward departure

State v. Johnson, 193 So. 3d 32 (Fla. 3d DCA 2016) – Finding that the defendant’s cooperation with police was an insufficient statutory ground to justify the downward departure sentence. Cooperation requires more than a confession to the authorities after arrest and guilty plea. Defendant’s cooperation did not resolve the current offenses or any other offense.

State v. Scott, 879 So. 2d 99 (Fla. 2d DCA 2004) – Finding no evidence was presented to support the downward departure where the trial court merely stated on the record that defendant cooperated with the State to resolve another offense, but no evidence was presented to support said finding.

Defendant was under the substantial domination of a another individual – reason for downward departure

State v. Sisco, 254 So. 3d 1139 (Fla. 3d DCA 2018) – Finding that the trial court did not err in relying on the statutory mitigating circumstance that the defendant was under the substantial domination of a co-defendant during the burglary of a dwelling.

Offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse - reason for a downward departure – All three elements must exist:

(a) the offense must have been “committed in an unsophisticated manner,” (b) the offense must have been “an isolated incident,” and (c) the defendant must have “shown remorse” for the offense.

State v. Rogers, 250 So. 3d 821 (Fla. 5th DCA 2018) – Finding that the trial court failed to articulate that the defendant committed his crimes in an unsophisticated manner.

Wallace v. State, 197 So. 3d 1204 (Fla. 1st DCA 2016) – Stating that neither the Legislature, nor the courts, offer a bright-line rule to determine whether an offense is an isolated incident. Trial judges, however, may consider the time between offenses, the types of offenses, and whether they suggest a pattern. A defendant’s extensive criminal history alone precludes the finding that an offense was an isolated incident under section 921.0026(2)(j). But judges are not precluded from giving a defendant a downward departure sentence just because the defendant has any prior criminal history.

State v. Lindsay, 163 So. 3d 721 (Fla. 5th DCA 2015) – Finding the evidence in the record insufficient to establish that the crime was done in an unsophisticated manner where defendant was a well-educated 45 year old man who had been a teacher and a youth counselor and waited until 14 years old male victim appeared to be sleeping and then placed his hands in the child’s pants and massaged his genitals. Finding the evidence in the record insufficient to establish that defendant has shown the requisite remorse where the defendant’s testimony made it clear that, in his mind, if he did anything, it was unintentional.

State v. Hudson, 153 So. 3d 375 (Fla. 2d DCA 2014) – Finding the trial court’s reason for downward departing legally insufficient when no evidence of remorsefulness was presented, five drug sales were made during the time period, and defendant operated under an alias, thereby suggesting a certain level of sophistication in the area of drug sales.

State v. Thompkins, 113 So. 3d 95 (Fla. 5th DCA 2013) – Finding that it was not an isolated incident based on defendant’s significant criminal history.

***State v. Weaver*, 23 So. 3d 829 (Fla. 5th DCA 2009)** – Finding that the evidence in the record did not support the existence of the elements where defendant had an extensive prior criminal record and the trial court used its experience and compassion to attempt to fashion a sentence it believed best served the interests of justice under the circumstances because the trial court did not think it was necessary to send defendant to prison.

***State v. Subido*, 925 So. 2d 1052 (Fla. 5th DCA 2006)** – Finding that the evidence in the record did not support the finding that the offense was committed in an unsophisticated manner where defendant claimed to have been asleep or too drunk to remember exactly what he did, but actually “waited for the victim to fall asleep, then, in a stealth-like manner, crept into the bed alongside her... and proceeded to commit sexual battery upon her.”

***State v. Ayers*, 901 So. 2d 942 (Fla. 2d DCA 2005)** – Finding that the evidence in the record did not support the existence of any of the elements where defendant showed no remorse, continued to deny his responsibility for the offense, had an extensive prior criminal record, and the trial court expressed its view that the sentence required by the CPC was not appropriate and the citizens of the State would not benefit by sending defendant to prison.

***State v. Thompson*, 844 So. 2d 814 (Fla. 5th DCA 2003)** – Finding that record did not contain evidence that the offenses were isolated or that defendant had shown remorse. Finding that defendant abuses alcohol causing him to act in an unsophisticated manner was not a valid basis for departure.

***State v. VanBebber*, 805 So. 2d 918 (Fla. 2d DCA 2001)** – Stating that the legislature did not preclude mitigation if the crime is DUI and was an isolated incident, committed in an unsophisticated manner, for which the defendant has shown remorse.

***State v. Randall*, 746 So. 2d 550 (Fla. 5th DCA 1999)** – Finding that the trial court’s finding that the sales constituted isolated incidents, close in time, to the same person, at a time when remorseful defendant was trying to provide a good Christmas for his family was a legally sufficient reason to support a downward departure sentence.

Defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability and the defendant is amenable to treatment – reason for a downward departure

***State v. Rogers*, 250 So. 3d 821 (Fla. 5th DCA 2018)** – Finding that defendant did not present evidence on any of the elements.

***State v. Owens*, 95 So. 3d 1018 (Fla. 5th DCA 2018)** – Holding the defendant was not required to establish that necessary treatment was unavailable in the Department of Corrections. Based on the reasoning that placing that burden on the defendant would place an additional burden not required by the Legislature. Stating that nothing in the legislative history even hints that in order to justify a downward departure on this ground, services must be unavailable in prison to treat the condition.

Sentence manipulation – reason for a downward departure – occurring when the government manipulates its conduct and/or investigation in order to increase a defendant’s potential sentence.

***State v. Washington*, --- So. 3d ---, 44 Fla. L. Weekly D2148 (Fla. 5th DCA Aug. 23, 2019)** – Finding no evidence that law enforcement intended to manipulated defendant’s potential sentence where trial court noted that it could not find law enforcement’s intent was to manipulate the potential

sentence and even noted there could be a legitimate explanation behind the multiple purchases. Stating that the mere presence of continued transactions cannot serve as competent, substantial evidence to support a finding of sentence manipulation. Stating that a defendant does not have a right to be arrested in order to be prevented from committing further crimes.

***State v. Steadman*, 827 So. 2d 1022 (Fla. 3d DCA 2002)** – Holding that although a defendant does not have a right to be arrested in order to be prevented from committing further crimes, a trial court has discretion to impose a downward departure sentence, when law enforcement allows a defendant to continue criminal activities for no reason other than to enhance his or her sentence.

Victim was an initiator, willing participant, aggressor, or provoker of the incident – reason for downward departure

***State v. Torres*, 60 So. 3d 560 (Fla. 2d DCA 2011)** – Stating that we are aware of no Florida cases addressing the application of “willing participation by the victim” in the context of a DUI manslaughter offense. Declining any invitation to extent comparative negligence principles to the statutory sentence mitigator of “willing participation by the victim” in a criminal DUI manslaughter case.

***Holland v State*, 953 So. 2d 19 (Fla. 2d DCA 2007)** – Finding that because the statute does not exempt cases in which the victim is a child, it applied in this case.

Defendant is too young to appreciate the consequences of his offenses - reason for a downward departure

***State v. Browne*, 187 So. 3d 377 (Fla. 5th DCA 2018)** – Finding there was no competent, substantial proof that defendant was too young to appreciate the consequences of his offenses where although defendant only completed the tenth grade, there was no evidence presented to establish that he “suffered from diminished mental capacity or other mental deficit which prevented him from maturing enough by age 23 to appreciate the consequences of his offenses. Stating that youthful age, alone, is insufficient proof of this mitigating factor.

The capacity of the defendant to appreciate the criminal nature of the conduct was substantially impaired - reason for a downward departure

***State v. Johnson*, 79 So. 3d 146 (Fla. 4th DCA 2012)** – Reversing the sentence and remanding for resentencing because defendant’s lack of knowledge of the change in the registration law did not support a basis for granting a downward departure. Stating that it is not enough that defendant simply not know that what he was doing was criminal or wrong; the defendant must have been unable to understand what he was doing was criminal or wrong. Defendant’s claim was that he did not know of the change in the sex offender registration law, not that he did not understand it. Justifying a downward departure in this case would run counter to the maxim that ignorance of the law is no excuse for criminal conduct.

The main codefendant received a downward departure - reason for a downward departure

***State v. Leverett*, 44 So. 3d 634 (Fla. 5th DCA 2010)** – Finding that the fact that defendant’s sentence was proportional to the sentence that the co-defendant received as a basis for a downward departure was inappropriate in this case because each defendant was convicted of committing different offenses, the jury convicted the defendant of committing his offenses with a firearm, and defendant had a prior criminal record, thereby making his lowest permissible sentence higher than the co-defendant.

***State v. Fernandez*, 927 So. 2d 939 (Fla. 3d DCA 2006)** – Finding that the fact that the main or “A” co-defendant had received a downward departure was a legally sufficient reason to support a decision to consider a downward departure sentence.

Invalid reasons for downward departure

***State v. Rogers*, 250 So. 3d 821 (Fla. 5th DCA 2018)** – Finding that the trial court erred in concluding that departure was warranted because there was no redeeming value in sending the defendant to prison. Finding that the trial court erred in concluding that departure was permissible because during the commission of defendant’s crimes, there was no injury or opportunity for the injury to other person.

***State v. Imber*, 223 So. 3d 1070 (Fla. 2d DCA 2017)** – Holding that the trial court erred by departing downward on the basis that the victim was a willing participant in defendant’s theft of his own money.

***State v. Robinson*, 149 So. 3d 1199 (Fla. 1st DCA 2017)** – Finding that the trial court’s observations that the disposition of criminal cases is handled differently in Hamilton County than in other areas of the state, like Dade County, is not a legally valid reason for a downward departure. Finding that defendant’s lack of criminal activity since his arrest for the charged offenses is not a legally valid reason for departure. Finding that defendant’s admission of guilt and entry of an open plea is not a legally valid reason for departure.

***State v. Hawkins*, 225 So. 3d 943 (Fla. 5th DCA 2017)** – Finding victim’s request for leniency, no injury to the two officers, and the fact that defendant did not actually leave the store with the pressure washer invalid reasons for a downward departure. Merely committing an offense “less heinously” than other defendants is not a legally valid ground to support a downward departure.

***State v. Sawyer*, 205 So. 3d 866 (Fla. 1st DCA 2016)** – Finding that defendant’s need for substance abuse treatment was not a permissible basis for departure because defendant’s CPC score rendered her ineligible for a reduction of sentence for drug treatment. Finding that defendant’s familial obligation was not a valid ground for downward departure sentence. Finding that the record did not establish by a preponderance of the evidence a diagnosis of the clinical condition of battery woman’s syndrome.

***Bailey v. State*, 199 So. 3d 304 (Fla. 3d DCA 2016)** – Finding that no breaks should be given to defendant simply because the crime he committed might generically be referred to as “white collar” – not a valid consideration under the CPC.

***State v. Sawyer*, 205 So. 3d 866 (Fla. 1st DCA 2016)** – Finding that the need for substance abuse treatment is not a permissible basis for departure in this case because defendant’s CPC score renders defendant ineligible for a reduction of sentence for drug treatment.

***State v. Kutz*, 157 So. 3d 380 (Fla. 2d DCA 2015)** – Stating that a possible gambling addiction does not provide competent, substantial evidence that defendant qualified for a drug program as required by the statute and cannot support the use of section 921.0026(2)(m) as a basis for a downward departure of defendant’s sentence.

***State v. Thompkins*, 113 So. 3d 95 (Fla. 5th DCA 2013)** – Finding that family support concerns, the fact that the crime was not committed in a more heinous manner, that there is no redeeming value to sending defendant to prison, and that defendant committed crime out of anger and stupidity are not valid reasons for departing.

***State v. Bowman*, 123 So. 3d 107 (Fla. 1st DCA 2013)** – Finding that trial court’s reasons for downward departing, including that the lowest permissible sentence was “a bit harsh” when defendant was only a few weeks late to register as a sex offender and no obvious intent to violate the registration requirements and reliance on the federal “Heartland” doctrine for sentencing in atypical federal cases, were not valid, legal grounds to depart downward.

***State v. Henderson*, 108 So. 3d 1137 (Fla. 5th DCA 2013)** – Finding that trial court’s finding that a downward departure sentence was needed in order for defendant to be rehabilitated from her addiction to alcohol is not a valid legal reason for a downward departure sentence.

***State v. Garcia-Costa*, 86 So. 3d 562 (Fla. 2d DCA 2012)** – Stating that confession after arrest does not constitute cooperating justifying a downward departure sentence.

***State v. Whiteside*, 56 So. 3d 799 (Fla. 2d DCA 2011)** – Finding that a trial judge’s disagreement with the CPC is not a sufficient reason for departure.

***State v. McKnight*, 35 So. 3d 995 (Fla. 5th DCA 2010)** – Finding that trial court’s reasons for downward departing, including that defendant followed the judge’s suggestion and obtained a valid license and defendant has previously received substantial prison time, neither of which is established by statute, were legally insufficient. An offender’s work status or length of previous sentences will not support a downward departure.

***State v. Isom*, 36 So. 3d 936 (Fla. 2d DCA 2010)** – Finding that the age of a defendant’s prior convictions is not an appropriate basis for a downward departure.

***State v. Hall*, 47 So. 3d 361 (Fla. 2d DCA 2010)** – Finding that trial court’s reason for downward departing, including that defendant’s lowest permissible sentence exceeded the statutory maximum sentence, conflicts with the CPC and is therefore, an invalid reason.

***State v. McKnight*, 35 So. 3d 995 (Fla. 5th DCA 2010)** – Stating “[b]ecause the first purpose of sentencing is to punish, a downward departure from the permissible sentence is discouraged and adequate justification is required. Second, the mitigating factors expressly authorized by the Legislature mainly focus on the offense itself: the nature of the crime, the defendant’s level of criminal involvement or participation, and the mental capacity or state of mind of the defendant.” Finding that the fact that the defendant followed the judge’s suggestion and obtained a valid license was not a valid reason for departure. Finding that the fact that defendant had previously received substantial prison time was not a valid reason for departure because it goes against legislative policy. Stating a defendant’s work status or length of previous sentences will not support a downward departure.

***State v. Voight*, 993 So. 2d 1174 (Fla. 5th DCA 2008)** – Finding that trial court’s reasons for downward departing, including that defendant cooperated with law enforcement, served 160 days in the county jail, no restitution was involved, and the offense was not a violent one, none of which were established by statute, were either legally insufficient or not supported by competent, substance evidence.

***State v. Stephenson*, 973 So. 2d 1259 (Fla. 5th DCA 2008)** – Finding the trial court’s findings that defendant had family obligations and had kept his nose clean since being released from prison in 2004 (short crime free period) were not legally valid reasons for departure.

***State v. Laroe*, 821 So. 2d 1199 (Fla. 5th DCA 2007)** – Finding that defendant was not entitled to receive a downward departure simply for turning himself in to authorities following his year of fugitive status.

***State v. Subido*, 925 So. 2d 1052 (Fla. 5th DCA 2006)** – Finding that trial court’s finding that others commit sexual battery against minors in more deceitful or persistent ways does not justify departure in this case. Finding that trial court’s opinion that the guidelines sentence was “not appropriate in this particular situation” was not a valid reason as the trial court may not downward depart merely because it disagrees with the legislative determination of sentencing policy or feels that the lowest permissible sentence is not commensurate with the crime.

***State v. Harvey*, 909 So. 2d 989 (Fla. 5th DCA 2005)** – Reversing the sentence and remanding for resentencing because a defendant’s substance abuse or addiction at the time of the offense does not constitute a valid mitigating sentencing factor and by suspending the incarcerative portion of the defendant’s sentence, the trial court imposed a downward departure sentence.

***State v. Hodges*, 151 So. 3d 531 (Fla. 3d DCA 2005)** – Stating that the remoteness of the prior conviction is not a valid basis for downward departure because the question of whether and the extent to which a trial court may consider “remote” prior convictions has already been addressed by the legislature in the CPC.

***State v. Holsey*, 908 So. 2d 1159 (Fla. 1st DCA 2005)** – Finding that prison overcrowding and strained Department of Corrections budget were insufficient reasons for downward departure when no evidence was introduced regarding those factors and the trial judge did not take judicial notice of any type of report or other information to support the reason.

***State v. Fulks*, 884 So. 2d 1083 (Fla. 2d DCA 2004)** – Mutual mistake of the law is not a valid basis for departure.

***State v. Owens*, 848 So. 2d 1199 (Fla. 1st DCA 2003)** – Finding that the fact that defendant seemed amenable to drug rehabilitation was not a valid legal ground upon which to issue a departure sentence. Drug rehabilitation is not a valid legal ground to issue a departure sentence.

***State v. Stanton*, 781 So. 2d 1129 (Fla. 3d DCA 2001)** – Finding the fact that defendant had spent fourteen months in prison on an unrelated case that was later reversed on appeal was not a valid reason for a downward departure. Stating there is no Florida statute or case law which permits a trial court to transfer credit for time previously served on an unrelated criminal case to the case for which the defendant is to be presently sentenced.

***State v. Chapman*, 805 So. 2d 906 (Fla. 2d DCA 2001)** – Finding that the trial court may not base a downward departure on the defendant’s intoxication at the time of the offense, the fact that the defendant has had no arrests since 1994, and that the DUI did not involve property damage.

Trial court failed to give any reasons for downward departure

***State v. Schultz*, 238 So. 3d 288 (Fla. 4th DCA 2018)** – Reversing the sentence and remanding for resentencing with in the CPC where the trial court did not state it was departing, did not orally articulate reasons for doing so, and failed to enter a written order memorializing the reasons for departure.

***State v. Murray*, 161 So. 3d 1287 (Fla. 4th DCA 2015)** – Reversing the sentence and remanding for resentencing with in the CPC where the trial court did not state it was departing, did not articulate or delineate any of the mitigating factors relevant to a downward departure, and did not enter a written order memorializing the reasons for departure.

***State v. Ahua*, 947 So. 2d 637 (Fla. 3d DCA 2007)** – Reversing the sentence and remanding for resentencing with in the CPC or to allow defendant to withdraw his plea where the trial court proffered no reason, valid or otherwise, for the downward departure.

***State v. Brownell*, 922 So. 2d 244 (Fla. 3d DCA 2006)** – Reversing the sentence and remanding for resentencing with in the CPC where the trial court failed to state any reason for the downward departure, either orally or in writing.

Doctors’ competency reports as sole evidence to support downward departure

***State v. Davis*, 133 So. 3d 1101 (Fla. 3d DCA 2014)** – Finding that the State’s prior stipulation use of doctors’ reports for competency purposes did not serve as a basis for the trial court, over the State’s objection, to admit or rely upon these reports as a basis for a downward departure sentence.

Other cases

***Fox v. State*, --- So. 3d ----, 2019 WL 4850133 (Fla. 4th DCA 2019)** – Stating that for a collateral crime to be considered as “prior record” during sentencing for the primary offense, two conditions must exist: (1) the defendant committed the collateral crime *before* committing the primary offense; and (2) the defendant has been convicted of the collateral crime *before* being sentenced for the primary offense. It is not necessary that the defendant be convicted of the collateral crime before the defendant has committed the primary offense.

***Champagne v. State*, 269 So. 3d 629 (Fla. 2d DCA 2019)** – Concluding that the lowest permissible sentence is an individual minimum sentence which applies to each felony at sentencing for which the LPS exceeds that felony’s statutory maximum sentence, regardless of whether the felony is the primary or an additional offense.

***Andrews v. State*, 207 So. 3d 889 (Fla. 4th DCA 2017)** – Finding that out-of-county residence is not a permissible sentencing factor. Finding that imposing a stiffer sentence merely because the defendant does not reside in St. Lucie County does not result in a sentence that is proportionate to the offense. The residence of the offender is not a valid basis for aggravating a sentence.

***State v. Robinson*, 138 So. 3d 1225 (Fla. 1st DCA 2014)** – Finding that suspended sentences are downward departure sentences and the reasons for which must be supported by competent, substantial evidence.

***Porter v. State*, 110 So. 3d 962 (Fla. 4th DCA 2013)** – Stating that “[i]n 2009, due to an ever-increasing prison population, the cost of prison building and operation, and the downturn in the economy, the Florida Legislature enacted section 775.082(10). This was an effort to stem the tide of prison commitments.” Stating that section 775.082(10) is a mitigation statute, not an enhancement statute. Stating that “[t]he enactment was a mandated mitigation of an otherwise available maximum penalty. The safety valve to this mandated mitigation was the discretion given to the trial court to adhere to the Criminal Punishment Code in lieu of the mandated mitigation of the defendant’s sentence when the trial court made a written finding that the defendant was a ‘danger to the community.’”

***Jones v. State*, 71 So. 3d 173 (Fla. 1st DCA 2011)** – Finding that the trial court was required to impose a nonstate prison sanction required by section 775.082(10). Section 775.082(10) states: “[i]f a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in s. 776.08, and excluding any third degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.”

***State v. Langdon*, 978 So. 2d 263 (Fla. 4th DCA 2008)** – Stating that section 948.034 covers terms and conditions of probation in a community residential drug punishment center for defendant committing the drug offenses enumerated in chapter 893, Florida Statutes. Section 948.034 is an alternative to the sentencing guidelines concerning certain chapter 893 drug-related offenses. Reading section 948.034 together with the relevant portions of section 921.187 and 893.13, both of which reference section 948.034, it follows that a defendant who has a felony conviction of a non-drug related offense is not eligible to receive an alternate sentence under section 948.034.

***Brown v. State*, 994 So. 2d 480 (Fla. 1st DCA 2008)** – Finding that imposing a stiffer sentence merely because the defendant does not reside in St. Lucie County does not result in a sentence that is proportionate to the offense. The residence of the offender is not a valid basis for aggravating a sentence.

***State v. Perez*, 979 So. 2d 986 (Fla. 3d DCA 2008)** – Finding the fact that the sentence was to be served in the county jail rather than in the state prison did not qualify as a sentence below the lowest permissible sentence under the guidelines and therefore, the State has no right to appeal.

***Parr v. State*, 247 So. 3d 550 (Fla. 4th DCA 2005)** – Stating that the “prior record” of a defendant, as defined in the CPC, excluded juvenile dispositions for offenses committed more than five years prior to the primary offense. However, the legislature placed no time limit on the information to be supplied to the court in a presentence investigation. Therefore, a defendant’s juvenile convictions could be considered in determining a proper sentence for the defendant even though they could not be scored.

***Lewis v. State*, 898 So. 2d 1081 (Fla. 4th DCA 2005)** – Suggesting that the Legislature may wish to readdress section 921.0021(7)(c), in so much as the law provides an exemption from victim injury points to a State detention worker who violates section 944.35(3)(b)2., but does not provide the same exemption to a county or municipal detention worker who violates section 951.221(1).

***Howard v. State*, 820 So. 2d 337 (Fla. 4th DCA 2002)** – Stating that the trial court’s consideration of the “trafficking” amount of cocaine possessed by appellant in sentencing him on the lesser charge of possession of cocaine did not violate due process principles, because the amount of contraband was a proper factor to consider in determining the extent of punishment to be imposed within the limits fixed by law.

***Fudge v. State*, 791 So. 2d 1186 (Fla. 5th DCA 2001)** – Concluding that the Legislature intended for misdemeanors to qualify as “additional offenses” as the CPC includes misdemeanors as additional offenses and provides that each misdemeanor scores 0.2 points. Therefore, victim injury points for the additional misdemeanor offense of reckless driving were properly scored.

MEMORANDUM

**TO: CRIMINAL PUNISHMENT CODE TASK FORCE
ENHANCEMENTS SUBCOMMITTEE**

FROM: THE HONORABLE MICHELE SISCO

DATE: FEBRUARY 18, 2020

RE: RETROACTIVITY OF PROPOSED RECOMMENDATION #1

**PROPOSED RECOMMENDATION #1 - GIVE JUDGES DISCRETION TO DEPART FROM MANDATORY
LIFE SENTENCES ON INDIVIDUALS FACING PRISON RELEASEE REOFFENDER (PRR) SANCTIONS
AND ALLOW FOR A MANDATORY MINIMUM TERM OF YEARS**

Under section 775.087, Florida Statutes (10-20-Life statute), the Court has discretion to sentence an individual who has committed a felony and during the commission of that felony discharged a firearm, destructive device, semiautomatic firearm and its high-capacity detachable magazine, or a machine gun to a mandatory minimum of 25 years' prison to life. *See* § 775.087(2)(a)3., Fla. Stat. (2019); § 775.087(3)(a)3., Fla. Stat. (2019). Currently, section 775.082(9)(a)3.a., Florida Statutes (2019) states:

3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

a. For a felony punishable by life, by a term of imprisonment for life...

§ 775.082(9)(a)3.a., Fla. Stat. (2019).

Similar to the discretion given judges in section 775.087, section 775.082(9)(a)3.a. could be amended to allow discretion to judges for individuals convicted of first degree felonies punishable by life where the state is seeking to have the court sentence the defendant as a prison releasee reoffender, but the judge believes that a life sentence would not be appropriate given the facts of the case (where no firearm was discharged and there was no death or great bodily harm) as well as other mitigating evidence presented at the sentencing hearing. *See Morris v. State*, --- So. 3d ----, 2020 WL 355903 (Fla. 4th DCA Jan. 22, 2020) (Judge Ciklin concurring opinion stating "... perhaps the Florida Legislature will in the future consider exclusion of sentences served for underage crimes from qualifying under recidivist statutes, or at least grant sentencing

judges the discretion to decline to apply such statutes where a predicate offense was committed by a juvenile”).

Recommendation: 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.**

**SHOULD THE TASK FORCE RECOMMEND TO THE LEGISLATURE THAT PROPOSED
RECOMMENDATION #1 BE RETROACTIVE?**

Prior to January 8, 2019, the Savings Clause stated, “[r]epeal of a criminal statute shall not affect prosecution for any crime previously committed.” Art. X, § 9, Fla. Const. The amended Savings Clause states, “[r]epeal of a criminal statute shall not affect prosecution for any crime committed before such repeal.” Art. X, § 9, Fla. Const. The newer provision became effective on January 8, 2019. *See Jimenez v. Jones*, 261 So. 3d 502, 504 (Fla. 2018). Therefore, “[p]rior to its recent amendment, the Savings Clause prohibited the Legislature not only from making the repeal of a statute retroactive, but also from making an amendment to a criminal statute applicable to pending prosecutions or sentences.” *Stapleton v. State*, --- So. 3d ----, 44 Fla. L. Weekly D2611 *2 (5th DCA Fla. Oct. 25, 2019); *see also Jimenez*, 261 So. 3d at 503-504. “The recent amendment removed that prohibition, meaning that there is no longer any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences.” *Stapleton*, *2. “However, nothing in the Florida Constitution *requires* the Legislature to do so, and the repeal of the prohibition does not require that it do so.” *Id.*

“Florida courts have consistently held that, based on article X, section 9, the criminal statute in effect *at the time of the crime* governs the sentence an offender receives for the commission of that crime.” *Id.*; *see also Horsley v. State*, 160 So. 3d 393, 406 (Fla. 2015); *State v. Reininger*, 254 So. 3d 996, 999 (Fla. 4th DCA 2018); *Scheaffers v. State*, 243 So. 3d 518, 519-20 (Fla. 1st DCA 2018). “The prohibition on retroactive application of statutes applies to statutes that effect *substantive* changes in the law rather than changes in the law that are merely procedural or remedial.” *Stapleton*, *2; *see also Grice v. State*, 967 So. 2d 957, 960 (Fla. 1st DCA 2007). “Changes to statutes affecting the sentencing for a criminal offense are substantive changes.” *Id.* “Therefore, it is well-settled that retroactive application of a sentence statute is unconstitutional.” *Stapleton*, *2; *see also Reininger*, 254 So. 3d at 999; *Anderson v. Anderson*, 468 So. 2d 528, 530 (Fla. 3d DCA 1985) (stating “[i]t is well settled that in the absence of an express legislative declaration that a statute have retroactive effect, the statute will be deemed to operate prospectively only, and that even a clear legislative expression of retroactivity will be ignored by the courts if the statute impairs vested rights, creates new obligations, or imposes new penalties”); *State v. Lavazzoli*, 434 So. 2d 321 (Fla. 1983).

When a statute has been amended, the court conducts a retroactivity analysis. “[T]he first step in a retroactivity analysis is to determine whether there is a clear expression of legislative intent regarding retroactivity. *See Landgraf v. USI Film Products*, 511 U.S. 244, 255-64, 114

S.Ct. 1483, 128 L.Ed.2d 229 (1994), and *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494 (Fla. 1999).

Next, the court must determine whether the amendment would be a procedural change in the law or a substantive change in the law. The recent Florida Supreme Court case *Love v. State*, --- So. 3d ----, 44 Fla. L. Weekly S293 (Fla. Dec. 19, 2019) sets out a detailed analysis of substantive versus procedural/remedial changes in the law. “As related to criminal law and procedure, substantive law is that which declares what acts are crimes and prescribes the punishment therefor, while procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished.” *Love*, 44 Fla. L. Weekly S293 *4; *see also State v. Garcia*, 229 So. 2d 236, 238 (Fla. 1969); *State v. Augustine*, 197 Kan. 207, 416 P.2d 281 (1966). Because the proposed amendment in proposed recommendation #1 deals with punishment, it is a substantive change in law. Because proposed recommendation #1 constitutes a substantive change in the law, i.e, punishment and penalties, the only way that the amendment would apply retroactively is if the Legislature expresses a clear intent regarding retroactivity. However, even if the Legislature declares a clear expression of retroactivity, may be ignored by the courts because it imposes a new penalty.

Recommendation: Leave it to the discretion of the legislature to determine whether this amendment should expressly state that it applies retroactively.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

Level	Florida Statute	Felony Degree	Description
1	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
1	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
1	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$1000 or more but less than \$20,000.
1	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
1	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
1	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
1	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
1	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
1	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
1	322.212(5)(a)	3rd	False application for driver license or identification card.
1	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
1	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
1	509.151(1)	3rd	Defraud an innkeeper, food or lodging value \$1000 or more.
1	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
1	713.69	3rd	Tenant removes property upon which lien has accrued, value \$1000 or more.
1	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
1	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
1	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
1	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
1	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
1	826.01	3rd	Bigamy.
1	828.122(3)	3rd	Fighting or baiting animals.
1	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

1	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
1	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
1	32.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
1	838.15(2)	3rd	Commercial bribe receiving.
1	838.16	3rd	Commercial bribery.
1	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of
1	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1	849.25(2)	3rd	Engaging in bookmaking.
1	860.08	3rd	Interfere with a railroad signal.
1	860.13(1)(a)	3rd	Operate aircraft while under the influence.
1	893.13(2)(a)2.	3rd	Purchase of cannabis.
1	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
1	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
2	379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
2	379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
2	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
2	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
2	590.28(1)	3rd	Intentional burning of lands.
2	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
2	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
2	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
2	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
2	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$750 or more but less than \$5,000.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

2	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$750, taken from unenclosed curtilage of dwelling.
2	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
2	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
2	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
2	817.52(3)	3rd	Failure to redeliver hired vehicle.
2	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
2	817.60(5)	3rd	Dealing in credit cards of another.
2	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
2	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
2	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2	831.01	3rd	Forgery.
2	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
2	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
2	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
2	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
2	843.08	3rd	False personation.
3	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
3	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
3	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
3	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
3	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
3	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

3	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
3	327.35(2)(b)	3rd	Felony BUI.
3	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
3	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
3	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
3	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine
3	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle
3	379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
3	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
3	400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
3	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
3	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
3	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
3	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
3	697.08	3rd	Equity skimming.
3	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
3	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
3	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
3	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
3	812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
3	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
3	817.233	3rd	Burning to defraud insurer.
3	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
3	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

3	817.236	3rd	Filing a false motor vehicle insurance application.
3	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
3	817.413(2)	3rd	Sale of used goods of \$1000 or more as new.
3	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
3	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
3	860.15(3)	3rd	Overcharging for repairs and parts.
3	870.01(2)	3rd	Riot; inciting or encouraging.
3	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
3	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
3	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
3	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
3	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
3	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
3	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or
3	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled
3	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
3	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a
3	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
3	944.47 (1)(a)1. & 2	3rd	Introduce contraband to correctional facility.
4	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
4	517.07(1)	3rd	Failure to register securities.
4	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
4	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
4	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

4	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
4	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
4	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
4	810.06	3rd	Burglary; possession of tools.
4	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
4	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
4	812.014(2)(c)4.-10	3rd	Grand theft, 3rd degree; specified items.
4	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
4	817.505(4)(a)	3rd	Patient brokering.
4	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
4	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
4	817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
4	817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
4	837.02(1)	3rd	Perjury in official proceedings.
4	837.021(1)	3rd	Make contradictory statements in official proceedings.
4	838.022	3rd	Official misconduct.
4	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
4	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
4	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
4	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
4	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
4	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
4	914.14(2)	3rd	Witnesses accepting bribes.
4	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

4	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
4	918.12	3rd	Tampering with jurors.
4	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
4	944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
4	51.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced
5	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
5	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
5	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
5	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in
5	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
5	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
5	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
5	440.381(2)	3rd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
5	790.01(2)	3rd	Carrying a concealed firearm.
5	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
5	812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
5	812.131(2)(b)	3rd	Robbery by sudden snatching.
5	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
5	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of
5	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
5	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
5	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
5	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
5	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

5	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
5	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
6	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
6	827.03(2)(c)	3rd	Abuse of a child.
6	827.03(2)(d)	3rd	Neglect of a child.
6	843.12	3rd	Aids or assists person to escape.
6	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
6	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
7	409.92 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
7	456.065(2)	3rd	Practicing a health care profession without a license.
7	458.327(1)	3rd	Practicing medicine without a license.
7	459.013(1)	3rd	Practicing osteopathic medicine without a license.
7	460.411(1)	3rd	Practicing chiropractic medicine without a license.
7	461.012(1)	3rd	Practicing podiatric medicine without a license.
7	462.17	3rd	Practicing naturopathy without a license.
7	463.015(1)	3rd	Practicing optometry without a license.
7	464.016(1)	3rd	Practicing nursing without a license.
7	465.015(2)	3rd	Practicing pharmacy without a license.
7	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
7	467.201	3rd	Practicing midwifery without a license.
7	468.366	3rd	Delivering respiratory care services without a license.
7	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
7	483.901(7)	3rd	Practicing medical physics without a license.
7	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

7	484.053	3rd	Dispensing hearing aids without a license.
7	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
7	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
7	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
7	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
7	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
7	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
7	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
7	843.0855(2)	3rd	Impersonation of a public officer or employee.
7	843.0855(3)	3rd	Unlawful simulation of legal process.
7	843.0855(4)	3rd	Intimidation of a public officer or employee.
7	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
7	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than
7	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
7	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
7	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
7	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
7	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
7	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
7	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
7	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
7	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
7	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
5	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

5	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public
7	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
7	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or
7	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were
7	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
7	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
7	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
7	784.081(1)	1st	Aggravated battery on specified official or employee.
7	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
7	784.083(1)	1st	Aggravated battery on code inspector.
7	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
7	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
7	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
7	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
7	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
7	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
7	800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for
7	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other
7	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
7	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
7	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
7	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
7	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
7	7.2341 (2)(b) & (3)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are

**Eligible Third Degree NTAs
Non-Prison Sanctions**

7	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
7	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.) within 1,000 feet of
7	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5., within 1,000 feet of
7	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
7	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
7	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
7	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
7	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
7	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 50 grams or more, less than 100 grams.
7	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
7	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
7	893.135 (1)(c)4.b.(f)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
7	893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
7	893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
7	893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
7	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
7	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
7	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
7	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
7	893.135 (1)(m)2.a	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
7	893.135 (1)(m)2.b	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
7	893.135 (1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
8	316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
8	499.0051(6)	1st	Knowing trafficking in contraband prescription drugs.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

8	499.0051(7)	1st	Knowing forgery of prescription labels or prescription drug labels.
8	777.03(2)(a)	1st	Accessory after the fact, capital felony.
8	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
8	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
8	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
8	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
8	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
8	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
8	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
8	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the
8	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
8	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force
8	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for
8	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
8	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
8	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
8	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
8	812.13(2)(b)	1st	Robbery with a weapon.
8	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
8	817.505(4)(c)	1st	Patient brokering; 20 or more patients.
8	817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
8	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
8	825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
8	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

8	860.16	1st	Aircraft piracy.
8	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
8	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
8	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
8	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
8	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
8	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
8	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 100 grams or more, less than 300 grams.
8	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
8	893.135 (1)(c)4.b.(i)	1st	Trafficking in fentanyl, 14 grams or more, less than 28 grams.
8	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, 200 grams or more, less than 400 grams.
8	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, 5 kilograms or more, less than 25 kilograms.
8	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, 28 grams or more, less than 200 grams.
8	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
8	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
8	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
8	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
8	893.135(1)(m)2.c.	1st	Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.
8	893.135(1)(n)2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.
8	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
8	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
8	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
8	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
9	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

9	327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
9	409.92 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
9	499.0051(8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
9	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
9	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
9	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
9	775.0844	1st	Aggravated white collar crime.
9	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
9	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
9	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
9	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
9	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
9	790.161	1st	Attempted capital destructive device offense.
9	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
9	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
9	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
9	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
9	812.135(2)(b)	1st	Home-invasion robbery with weapon.
9	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
9	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
9	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the
9	827.03(2)(a)	1st	Aggravated child abuse.
9	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
9	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

9	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent
9	893.135	1st	Attempted capital trafficking offense.
9	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
9	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
9	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
9	893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 300 grams or more, less than 30 kilograms.
9	893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
9	893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 28 grams or more.
9	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, 400 grams or more.
9	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, 25 kilograms or more.
9	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, 200 grams or more.
9	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
9	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
9	893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
9	893.135 (1)(m)2.d	1st	Trafficking in synthetic cannabinoids, 30 kilograms or more.
9	893.135(1)(n)2.c.	1st	Trafficking in n-benzyl phenethylamines, 200 grams or more.
9	896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
9	896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.
10	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in death.
10	782.07(3)	1st	Aggravated manslaughter of a child.
10	876.32	1st	Treason against the state.
10	782.04(2)	1st, PBL	Unlawful killing of human; act is homicide, unpremeditated.
10	787.01(1)(a)3.	1st, PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
10	812.135(2)(a)	1st, PBL	Home-invasion robbery with firearm or other deadly weapon.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

7	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
7	874.1	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
8	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
8	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
9	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily
9	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
9	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
9	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
9	787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery,
9	787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
9	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
9	794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
9	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
9	794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
9	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
9	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
3	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
3	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
3	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
3	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000
3	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000
3	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
4	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol
4	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

4	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
4	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
5	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
5	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
5	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
5	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
5	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
5	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
5	790.162	2nd	Threat to throw or discharge destructive device.
5	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
5	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
5	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
5	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
5	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
5	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
5	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
5	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
5	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
5	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud,
5	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
5	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
5	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
5	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
5	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

5	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
5	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
5	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
5	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4)
5	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9.,
5	893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
6	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
6	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
6	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
6	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
6	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
6	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
6	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
6	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
6	784.081(2)	2nd	Aggravated assault on specified official or employee.
6	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
6	784.083(2)	2nd	Aggravated assault on code inspector.
6	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
6	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
6	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent
6	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
6	794.05(1)	2nd	Unlawful sexual activity with specified minor.
6	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
6	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

6	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
6	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
6	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
6	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
6	812.015(9)(a)	2nd	Retail theft; property stolen \$750 or more; second or subsequent conviction.
6	812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is \$3,000 or more; coordination of others.
6	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
6	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
6	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
6	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
6	836.05	2nd	Threats; extortion.
6	836.1	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
6	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
6	944.4	2nd	Escapes.
6	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
7	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.
7	409.92 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
7	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
7	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
7	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
7	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
7	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
7	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
7	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

7	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
7	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
7	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
7	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
7	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
7	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
7	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
7	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
7	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
7	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
7	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
7	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
7	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
7	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
7	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
7	812.131(2)(a)	2nd	Robbery by sudden snatching.
7	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
7	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
7	817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
7	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
7	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
7	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
7	838.015	2nd	Bribery.
7	838.016	2nd	Unlawful compensation or reward for official behavior.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

7	838.021(3)(a)	2nd	Unlawful harm to a public servant.
7	838.22	2nd	Bid tampering.
7	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
7	872.06	2nd	Abuse of a dead human body.
7	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
7	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
7	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
8	316.193 (3)(c)3.a.	2nd	DUI manslaughter.
8	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
8	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
8	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than
8	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
8	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping,
8	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
8	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
8	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
8	800.04(4)(b)	2nd	Lewd or lascivious battery.
8	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
8	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
8	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
8	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
8	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
8	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
8	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

8	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
8	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
8	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but
3	843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
9	817.568(7)	2nd,PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person
1	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
1	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
1	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$1000 or more but less than \$20,000.
1	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
1	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
1	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
1	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
1	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
1	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
1	322.212(5)(a)	3rd	False application for driver license or identification card.
1	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
1	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
1	509.151(1)	3rd	Defraud an innkeeper, food or lodging value \$1000 or more.
1	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
1	713.69	3rd	Tenant removes property upon which lien has accrued, value \$1000 or more.
1	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
1	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
1	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
1	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

1	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
1	826.01	3rd	Bigamy.
1	828.122(3)	3rd	Fighting or baiting animals.
1	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
1	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
1	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
1	32.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
1	838.15(2)	3rd	Commercial bribe receiving.
1	838.16	3rd	Commercial bribery.
1	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
1	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of
1	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1	849.25(2)	3rd	Engaging in bookmaking.
1	860.08	3rd	Interfere with a railroad signal.
1	860.13(1)(a)	3rd	Operate aircraft while under the influence.
1	893.13(2)(a)2.	3rd	Purchase of cannabis.
1	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
1	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
2	379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
2	379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
2	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
2	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
2	590.28(1)	3rd	Intentional burning of lands.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

2	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
2	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
2	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
2	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
2	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$750 or more but less than \$5,000.
2	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$750, taken from unenclosed curtilage of dwelling.
2	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
2	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
2	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
2	817.52(3)	3rd	Failure to redeliver hired vehicle.
2	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
2	817.60(5)	3rd	Dealing in credit cards of another.
2	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
2	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
2	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2	831.01	3rd	Forgery.
2	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
2	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
2	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
2	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
2	843.08	3rd	False personation.
2	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs other than cannabis.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

2	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
3	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
3	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
3	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
3	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
3	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
3	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
3	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
3	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
3	327.35(2)(b)	3rd	Felony BUI.
3	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
3	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
3	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
3	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine
3	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle
3	379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
3	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
3	400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
3	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
3	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
3	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
3	626.902(1)(a) &(b)	3rd	Representing an unauthorized insurer.
3	697.08	3rd	Equity skimming.
3	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

3	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
3	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
3	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
3	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
3	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
3	812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
3	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
3	817.233	3rd	Burning to defraud insurer.
3	817.234 (8)(b) & c	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
3	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
3	817.236	3rd	Filing a false motor vehicle insurance application.
3	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
3	817.413(2)	3rd	Sale of used goods of \$1000 or more as new.
3	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
3	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
3	860.15(3)	3rd	Overcharging for repairs and parts.
3	870.01(2)	3rd	Riot; inciting or encouraging.
3	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4)
3	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
3	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
3	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
3	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
3	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
3	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

3	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or
3	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled
3	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
3	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a
3	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
3	944.47 (1)(a)1. & 2	3rd	Introduce contraband to correctional facility.
3	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
4	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
4	517.07(1)	3rd	Failure to register securities.
4	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
4	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
4	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
4	784.075	3rd	Battery on detention or commitment facility staff.
4	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
4	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
4	784.081(3)	3rd	Battery on specified official or employee.
4	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
4	784.083(3)	3rd	Battery on code inspector.
4	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
4	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
4	787.07	3rd	Human smuggling.
4	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
4	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
4	790.115(2)(c)	3rd	Possessing firearm on school property.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

4	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
4	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
4	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
4	810.06	3rd	Burglary; possession of tools.
4	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
4	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
4	812.014(2)(c)4.-10	3rd	Grand theft, 3rd degree; specified items.
4	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
4	817.505(4)(a)	3rd	Patient brokering.
4	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
4	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
4	817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
4	817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
4	837.02(1)	3rd	Perjury in official proceedings.
4	837.021(1)	3rd	Make contradictory statements in official proceedings.
4	838.022	3rd	Official misconduct.
4	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
4	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
4	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
4	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
4	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreatment or bond jumping).
4	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
4	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
4	914.14(2)	3rd	Witnesses accepting bribes.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

4	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
4	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
4	918.12	3rd	Tampering with jurors.
4	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
4	944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
4	51.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced
5	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
5	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
5	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
5	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in
5	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
5	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
5	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
5	440.381(2)	3rd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
5	790.01(2)	3rd	Carrying a concealed firearm.
5	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
5	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
5	812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
5	812.131(2)(b)	3rd	Robbery by sudden snatching.
5	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
5	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of
5	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
5	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
5	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

5	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
5	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
5	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
5	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
6	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
6	775.0875(1)	3rd	Taking firearm from law enforcement officer.
6	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
6	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
6	784.041	3rd	Felony battery; domestic battery by strangulation.
6	784.048(3)	3rd	Aggravated stalking; credible threat.
6	784.048(5)	3rd	Aggravated stalking of person under 16.
6	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
6	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
6	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
6	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
6	827.03(2)(c)	3rd	Abuse of a child.
6	827.03(2)(d)	3rd	Neglect of a child.
6	843.12	3rd	Aids or assists person to escape.
6	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
6	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
6	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
6	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision,
6	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
6	951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

7	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
7	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
7	409.92 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
7	456.065(2)	3rd	Practicing a health care profession without a license.
7	458.327(1)	3rd	Practicing medicine without a license.
7	459.013(1)	3rd	Practicing osteopathic medicine without a license.
7	460.411(1)	3rd	Practicing chiropractic medicine without a license.
7	461.012(1)	3rd	Practicing podiatric medicine without a license.
7	462.17	3rd	Practicing naturopathy without a license.
7	463.015(1)	3rd	Practicing optometry without a license.
7	464.016(1)	3rd	Practicing nursing without a license.
7	465.015(2)	3rd	Practicing pharmacy without a license.
7	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
7	467.201	3rd	Practicing midwifery without a license.
7	468.366	3rd	Delivering respiratory care services without a license.
7	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
7	483.901(7)	3rd	Practicing medical physics without a license.
7	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
7	484.053	3rd	Dispensing hearing aids without a license.
7	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
7	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
7	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
7	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
7	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

7	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
7	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
7	784.048(7)	3rd	Aggravated stalking; violation of court order.
7	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
7	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
7	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
7	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
7	843.0855(2)	3rd	Impersonation of a public officer or employee.
7	843.0855(3)	3rd	Unlawful simulation of legal process.
7	843.0855(4)	3rd	Intimidation of a public officer or employee.
7	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
7	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
7	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than
7	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
7	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
7	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
7	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
7	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
7	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
7	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
7	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
7	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
7	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
9	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.

**Eligible Third Degree NTAs
Non-Prison Sanctions**

9	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
10	787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation,
10	787.06(3)(g)	Life	Human trafficking for commercial sexual activity of a child under the age of 18 or mentally defective or incapacitated person.
10	787.06(4)(a)	Life	Selling or buying of minors into human trafficking.
10	794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.