



CRIMINAL PUNISHMENT CODE TASK FORCE Minutes

May 21, 2020 at 1:00 P.M.

Conference Call

I. Members Present:

The Honorable Michelle Sisco
Professor John Stinneford
The Honorable Michael Andrews
Senator Jason Pizzo
The Honorable Donna McIntosh
Kathryn Horst
Professor Michael Morley
The Honorable Bernie McCabe
Secretary Simone Marsteller
The Honorable Charles E. Williams
Sheriff William Snyder
The Honorable Melissa Nelson
Chief Melanie Bevan
Sheriff Christopher Nocco

Absent:

The Honorable Larry Eger

The Honorable Michelle Sisco, Chair Designee, welcomed the Task Force.

Judge Sisco motioned to approve minutes. The motion passed unanimously.

I. Scoresheets Subcommittee

a. SS-1

At the request of Judge Sisco, Staff Attorney Jennifer Mooney created example scoresheet calculations. The calculations were drafted using the new offense point levels provided by the subcommittee's proposed 5(a) recommendation. The intent was to edify the Task Force of differing lowest permissible sentences and statutory maximums when using the new charts. Ms. Mooney presented three scoring calculation examples: 1). based on the current offense severity ranking chart that contains 3 felony degree levels and 10 offense severity levels; 2. Using the subcommittee's proposed chart with three

felony degree levels and 16 offense severity levels; and 3. Using the subcommittee's second proposed chart with 5 felony degree level and 16 offense severity levels.

Senator Pizzo refuted the conclusion that under the proposed offense severity levels the minimum sentence would always be lower, noting that intent charges would balance an individual's score.

Secretary Marsteller inquired if the recommendations set forth by the scoresheet subcommittee severable or contingent upon one another. It was clarified that the recommendations could be adopted individually.

The Task Force discussed SS-1, subsection 5(a), which seeks to remove the Drug Trafficking, Motor Vehicle Theft, Domestic Violence in the Presence of Related Child, and Adult-On-Minor Sex Offenses enhancements from the scoresheet.

Judge Sisco made a motion, which was seconded, to remove the 1.5 Drug Trafficking Multiplier from the scoresheet. The motion passed unanimously.

A motion was made to remove the 1.5 Domestic Violence in Presence of Related Child multiplier from the scoresheet. Judge Sisco opined that it would be difficult to account for every criminal offense where this multiplier could be imposed. Professor Morley clarified that the subcommittee could adjust all offense severity ranking and points levels in the charts to present to the Legislature. Members expressed a desire to see these offenses adjusted on the offense severity ranking sheet prior to voting. This motion has been tabled for further discussion at the next Task Force Meeting.

Professor Morley presented removing the 2.0 Adult-on-Minor multiplier, noting that based on the manual, every offense that could trigger this multiplier could be identified and accounted for by adjusting points. Judge Sisco expressed concern over accounting for sexual penetration and sexual contact points. A motion was made by Professor Morley and seconded to remove Adult-on (Detained)-Minor Sex Offense 2.0 Multiplier from the scoresheet. This motion did not pass, 6-7, with Judge Sisco, Sheriff Snyder, Secretary Marsteller, Judge Andrews, Sheriff Nocco, Chief Bevan and Kathryn Horst voting no.

A motion was made by Senator Pizzo and seconded to remove the 1.5 Motor Vehicle Theft multiplier from the scoresheet with the clarification that it would be codified. This motion passed unanimously.

The Task Force discussed SS-1 subsection 5(b), which seeks to retain the Law Enforcement Officer Protection Act and Criminal Gang Offense enhancements, applying them when they are not included as an element of the offense of conviction.

A motion was made to remove the Law Enforcement Officer Protection Act multiplier from the scoresheet. A motion was made by Judge Sisco. This Recommendation did not pass 3-11, with Judge Sisco, Chief Bevan, State Attorney McCabe, Sheriff Nocco, Sheriff Snyder, Judge Williams, Professor Morley, Judge Andrews, Secretary Marsteller, State Attorney Nelson, Senator Pizzo and Professor Morley voting no.

A motion was made to remove the 1.5 Criminal Gang Offense Multiplier from the scoresheet and adjust the offense level for offenses with a known gang element. Judge Sisco expressed concern over how this recommendation would impact the minimum sentence, noting that lowering the minimum and increasing the maximum sentences creates more disparity in sentencing. After further discussion the Task Force agreed to leave this multiplier on the scoresheet. However, since this multiplier is at the court's discretion, The Task Force recommends that space should be carved out on the scoresheet, using check boxes to indicate whether or not the 1.5 multiplier is applied in each gang case. Judge Sisco

moved and it was seconded to add language to the multiplier where the court can check that it is exercising its discretion and finds the 1.5 criminal gang offense multiplier applicable. This motion passed, 7-6 with Judge Sisco, Chief Bevan, Sheriff Nocco, Judge Andrews, Secretary Marstiller and Sheriff Snyder voting no.

b. SS-2

The Task Force discussed SS-2, which addresses Legal Status Violations on the Scoresheet.

A motion was made by Judge McIntosh and seconded to remove Failure to Appear and Escape enhancements from the scoresheet. These offenses require the prosecution to prove the multiplier as an element of the criminal offense. Enhancing the severity point level of these crimes and removing them from the multiplier section could be done effectively without significantly changing the offender's scoresheet points. This motion passed unanimously.

c. SS-3

The Task Force discussed SS-3, which addresses Victim Injury Point Adjustments in Part III of the Scoresheet. A motion was made to adopt recommendation 1(a), which removes the Second-Degree Murder, Death, Severe Injury, Sexual Penetration, and Sexual Contact enhancements in Part III from the scoresheet and 1(b) which retains the Moderate Injury (18 points) and Slight Injury (4 points) Enhancements, since they do not constitute elements of any offenses.

Judge Sisco expressed concern that victim injury was so case specific, consistency would be lost if the court were denied the ability to deeply look into the facts of the case. Senator Pizzo noted that the subcommittee was concerned that these decisions were being made in cases that were not going to trial. Judge Sisco asked if this would require a rewriting of the statute; Senator Pizzo noted it could be addressed with a new subsection.

A motion was made by Senator Pizzo and seconded to adopt SS-3, subsections 1(a) and 1(b). This motion passed 7-6, with Judge Sisco, Chief Bevan, Sheriff Nocco, Sheriff Snyder, Judge Andrews and Secretary Marstiller voting no.

d. SS-5

The Task Force was presented with 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."

A motion was made by Judge McIntosh and seconded. This motion passed unanimously.

e. SS-6

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. *Issues 1, 5-10 were voted on at the previous task force meeting.

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

Despite the subcommittee's recommendation of no action, Professor Morley invited the Task Force to reconsider issue #2. Judge Sisco suggested that the Task Force take the opportunity to codify the issue through statute, noting that based on the capacity of a minor this is an invalid reason to downward depart. Professor Stinneford countered by suggesting that were an offender just over 18 and in conjunction with a slight age gap between the victim, would that change allow for reconsideration? This issue was tabled for further discussion at the next Task Force Meeting.

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?

The subcommittee considered the caselaw and concluded to take no action given that restitution could exacerbate inequality.

A motion was made by Judge Sisco to adopt the subcommittee's recommendation regarding section 921.0026(2)(e). This motion passed unanimously.

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).

The subcommittee considered the caselaw and concluded to take no action. No motion was made, given the subcommittee's recommendation.

SS-8: This recommendation was tabled by the subcommittee.

At the request of Senator Pizzo and Judge McIntosh, Judge Sisco solicited the Task Force for reservations around the concept of SS-7a, which increases offense severity levels. No objections were made, and the scoresheets subcommittee will go forward with adjusting their work.

Judge Sisco asked that the recommendations approved in today's meeting be translated onto updated offense severity ranking sheets.

II. Public Comment

None

III. Adjournment

The meeting was adjourned at approximately 4:12 PM

An audio recording of the Task Force's January meeting can be accessed at myfloridalegal.com