



CRIMINAL PUNISHMENT CODE TASK FORCE Minutes

January 17, 2020 at 1:00 P.M.

Tampa, Florida

I. Members Present:

The Honorable Michelle Sisco

Professor John Stinneford

The Honorable Michael Andrews

Senator Jason Pizzo

The Honorable Donna McIntosh

Sheriff Christopher Nocco

Mr. Kenneth Steely

Professor Michael Morley

Present via conference line:

The Honorable Bernie McCabe

Secretary Simone Marsteller

The Honorable Charles E. Williams

Sheriff William Snyder

The Honorable Melissa Nelson

Chief Melanie Bevan

Absent:

The Honorable Larry Eger

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

II. Presentations

Marla Ferrera, Task Force staff, gave a historical overview of the Criminal Punishment Code and an overview of State and Federal Sentencing Guidelines.

Richard Martin with the Department of Legal Affairs gave a presentation on Caselaw Considerations.

The Honorable Carey Haughwout of the Fifteenth Judicial Circuit presented on behalf of the Florida Public Defender Association. Ms. Haughwout proposed a return to sentencing guidelines, with a floor and a ceiling. Ms. Haughwout also proposed strengthening the role of the CPC score in addition to language that prohibits judges from departing without written reason. Senator Pizzo pointed out that a lot of the disparity lies with the person preparing the scoresheet. Judge McIntosh inquired as to how departures not approved by the defense would be brought to appellate court. Ms. Haughwout said that would happen the same way it does now. Judge Sisco asked if there were any jurisdictions that anchor the court; Ms. Haughwout said that most abide by a guideline system.

The Honorable Philip Archer of the Eighteenth Judicial Circuit presented on behalf of the Florida Prosecuting Attorneys Association. Mr. Archer cited the system as effective- pointing to the lower crime rate. Additionally, Mr. Archer advocated for more specialty courts and funding to accompany them. Mr. Archer pushed for slow, incremental change in light of the lower crime rates. Mr. Archer asked for an opportunity to provide feedback to the recommendations proposed by the subcommittees. As a result, Judge Sisco refrained from taking a formal vote at this meeting to allow for stakeholder feedback.

Professor Stinneford asked if the association would oppose a 'guideline system appropriately defined', to which Mr. Archer said no.

III. Task Force subcommittee Updates and Recommendations

Sheriff Nocco gave a brief report from the Non-Prison Sanctions subcommittee. The subcommittee is looking at "may" and "shall" language around Young Adult Court, Drug Court, Boys and Girls Court and Mental Health Court. The subcommittee plans to provide recommendations to the Task Force in March.

Judge Sisco gave a brief report on behalf of the Enhancements subcommittee. The subcommittee brought forth the following recommendations, which are also included in the meeting materials packet:

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.*

There was discussion around whether this would be proactive or retroactive. The subcommittee will discuss this further and clarify their recommendation.

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 shall 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.

Although there was a consensus that this is rarely employed, Professor Stinneford advocated to amend the language. Professor Morley was also in favor of narrowing the language.

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 if 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.

Judge Sisco presented **Proposed Discussion Item #1**, which would allow the subcommittee to discuss case review for individuals who have been sentenced to an extensive period of incarceration or life, similar to that of juvenile offender case review under section 921.1402.

Judge McIntosh pointed out that Department of Corrections will be impacted by this shift if supervision is a component of this future recommendation. Members also discussed the shifting of the burden to the community to care for those released. Mr. Steely informed the Task Force of Conditional Medical Release, to which Senator Pizzo countered by referencing a long waiting list of those yet to be approved. Judge Sisco cited the goal of the discussion item as humanitarian. There are just over 1,000 inmates who would be impacted by this proposal, which Ms. Nelson noted

could potentially close a prison. The Task Force agreed to allow further discussion of this topic amongst the Enhancements subcommittee.

There was no public comment on the aforementioned recommendations.

Senator Pizzo presented the following recommendations, which are also included in the meeting materials packet, on behalf of the Scoresheets subcommittee:

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.

Judge Sisco would like to see what a real-life sentence would look like in light of these recommendations 1-4.

Recommendation SS-5 was withheld, to be discussed at a later date.

There was no public comment on the aforementioned recommendations.

IV. Public Comment

None

V. Adjournment

The meeting was adjourned at approximately 4:55 P.M.

The next Task Force meeting will be held in Miami on March 27, 2020.

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