

SUPREME COURT OF FLORIDA

No. 66801

AMENDMENT TO RULES  
OF CRIMINAL PROCEDURE  
(3.701, 3.988 -  
SENTENCING GUIDELINES)

**FILED**

S'D J. WHITE

APR 1 1985

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

PETITION

Pursuant to the requirements of Section 921.001(4)(b), Florida Statutes (1982), the Sentencing Guidelines Commission does recommend to the members of the Supreme Court the need for changes in the sentencing guidelines.

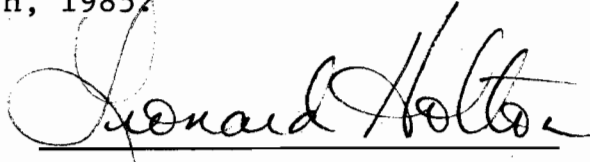
- 1) The commission has met on four separate occasions since the effective date of the last changes to the sentencing guidelines and has studied the operation of the guidelines, receiving and considering recommendations from members of the bench, bar, others serving the criminal courts, and the public regarding the sentencing guidelines. As a result, the Commission recommends the following revisions:
  - (a) Add Section 327.351, Florida Statutes (1984), to Category 1: Murder, Manslaughter. The Florida Legislature has provided that upon conviction, any person who operates any vessel on the waters of this state while intoxicated, resulting in the death of any human being, such person shall be guilty of manslaughter and punished as provided by the existing law relating to manslaughter.

- (b) Rule 3.701(d)(5)(a), Fla. R. Crim. P., is to be revised by the elimination of the two words "disposed of." These words are not susceptible of definition within the context of the rule and have generated confusion. The elimination of this wording should not alter the intent of this section.
- (c) Rule 3.701(d)(5)(b) and (d)(5)(c), Fla. R. Crim. P., are to be revised by the substitution of the wording "primary offense" for the wording "instant offense." This change will conform to changes to the prior record section of the rule and is susceptible of definition under the rule.
- (d) Rule 3.701(d)(6), Fla. R. Crim. P., is to be revised by the substitution of the word "escapees" for the word "escapes" as it appears in the present text of the rule. The inclusion of the word "escapes" was a typographical error.
- (e) The Committee Note to Rule 3.701(d)(7), Fla. R. Crim. P., is to be revised to include language to clarify that victim injury is to be scored for each victim and each occurrence in excess of one where the same victim is involved. The present text of the rule has caused confusion.
- (f) Rule 3.701(d)(3), Fla. R. Crim. P., is to be revised to define primary offense as that offense at conviction which, when scored on the guidelines scoresheet, recommends the most severe sanction. The definition appearing in the present text of the rule has generated confusion.

- (g) The comment to Rule 3.701(d)(5), Fla. R. Crim. P., original guidelines manual is recommended for inclusion as Rule 3.701(d)(15), Fla. R. Crim. P. The effect of the inclusion of this wording will be to limit the scoring of prior convictions under the same category, prior conviction multiplier in Categories 3, 5, and 6 to felony convictions.
- (h) The Committee Note to Rule 3.701(d)(10), Fla. R. Crim. P., is to be revised to clarify the relation of both types of enhancement statute, i.e., reclassification and habitual offender, to the sentencing guidelines. The present text of the Note speaks only to reclassification and has generated confusion.
- (i) The scoring of the offense of escape is to be moved from Category 9 to Category 8. In addition, Section 944.40, Florida Statutes (1971), is to be added to Category 8 under Appendix B of the guidelines manual and to Rule 3.701(c), Fla. R. Crim. P.
- (j) The Commission voted to recommend that the primary offense points for a second-degree felony in Category 5 be increased from their present value of 30, 36, 39, and 42 to 40, 48, 52, and 56 and to increase the multiplier value for prior Category 5 convictions from 5 to 40.
- (k) The Commission voted to include in the rule a policy statement that revisions to the Sentencing Guidelines are intended to be procedural in nature.

- 2) The Commission has scheduled a meeting in Tallahassee for April 15, 1985. Further recommendations will be forthcoming and will be filed promptly with this Court and the legislature.

Dated this 25th day of March, 1985.

A handwritten signature in cursive script that reads "Leonard Holton". The signature is written in dark ink and is positioned above a horizontal line.

Leonard Holton  
Director, Sentencing  
Guidelines Commission

Copies to:

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