

THE SUPREME COURT OF FLORIDA

IN RE RULES OF CRIMINAL PROCEDURE
(3.701, 3.988 - SENTENCING GUIDELINES)

No. 67,703

AMENDED PETITION

Pursuant to the provisions of section 921.001(4) (b), Florida Statutes (1983), the Sentencing Guidelines Commission presents these recommendations for changes in sentencing guidelines requiring modification of criminal rules of procedure 3.701 and 3.988.

1. The Sentencing Guidelines Commission has readopted and does recommend those changes presented to this Court prior to the 1985 legislative session. Those changes are as follows:

a) Add section 327.351, Florida Statutes (Supp. 1984), to Category 1: Murder, Manslaughter. The 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, shall be guilty of manslaughter and punished as provided by the existing law relating to manslaughter.

b) Rule 3.701(d) (5) (a) is revised by elimination of the 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 does not alter the intent of this section.

c) Rule 3.701(d) (5) (b) and (d) (5) (c) are revised by the substitution of the wording "primary offense" for the wording "instant offense." This change will conform to changes to the prior record definition of the rule and is susceptible of definition under the rule.

d) Rule 3.701(d) (6) is 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) is 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. The additional sentence shall read: "Victim injury shall be scored for each count in which victim injury is an element of the offense, whether there are one or more victims."

f) Rule 3.701(d) (3) is 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), original guidelines manual, is included as rule 3.701(d) (15). Inclusion of this wording will 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) is 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 moved from category 9 to category 8. In addition, section 944.40, Florida Statutes (1971), is added to category 8 under Appendix B of the guidelines manual and to rule 3.701(c).

j) The primary offense points for a second-degree felony in category 5 are increased from their present values of 30, 36, 39, and 42 to 40, 48, 52, and 56 and the multiplier value of prior category 5 convictions is increased from 5 to 40.

2. Eliminate the last sentence of the Committee Note to Florida Rule of Criminal Procedure 3.701(d) (3). This revision is in line with the redefinition of "primary offense" previously approved and is intended to conform with the Committee Note to the text of revised Florida Rule of Criminal Procedure 3.701(d) (3).

3. Replace the forms that now appear at Florida Rule of Criminal Procedure 3.988(a)-(i) with those forms promulgated by the Office of the State Courts Administrator and utilized in all Circuit Courts in the State of Florida. (Attached are copies of all offense category scoresheets.)

4. Revise the first sentence of Florida Rule of Criminal Procedure 3.701(d) (1) to replace the word "prepared" with the word "utilized." This change will clarify the apparent inconsistency between the wording appearing at Florida Rule of Criminal Procedure 3.701(d) (1) and (d) (3) as it applies to the procedure for determination of primary offense.

5. Revise the form appearing at Florida Rule of Criminal Procedure 3.988(a) to incorporate a point value for inclusion in the prior record factor to be utilized in the determination of recommended sentence by scoring each prior conviction under section 316.193, Florida Statutes (Supp. 1984) or section 316.1931, Florida Statutes (Supp. 1984) or section 327.351, Florida Statutes (Supp. 1984), at a value of thirty-two (32) points. This point value will be applied only where the offender is convicted of a violation of section 316.1931, Florida Statutes (Supp. 1984) or section 327.351, Florida Statutes (Supp. 1984), where the operation of a motor vehicle or vessel by the offender while intoxicated as defined in section

316.1931(1), Florida Statutes (Supp. 1984) or section 327.351(1), Florida Statutes (Supp. 1984), results in the death of any human being and the scoresheet utilized in sentencing is the form appearing at Florida Rule of Criminal Procedure 3.988(a). For purposes of determining a prior conviction for violation of the above enumerated statute, a prior conviction for violation of s. 316.1931 or s. 316.193 or former s. 860.01 or former s. 316.028, or a previous conviction for any substantially similar alcohol-related or drug-related traffic offense outside this state, shall also be considered as a prior conviction.

6. Expand the Committee Note to Florida Rule of Criminal Procedure 3.701(d)(4) by the addition of the following wording: "In the event of multiple counts of the same distinct offense and degree of felony being scored as primary offense, they shall be scored as additional counts of the primary offense. All other offenses for which the defendant is convicted and are pending before the court for sentencing shall be scored as additional offenses." This revision is intended to eliminate confusion concerning the scoring of multiple counts of primary offense and represents no change in the intent of the Commission concerning the point valuation for primary offense.

7. Expand the wording appearing at Rule 3.701(d)(4) to read: "Additional offenses at conviction: All other offenses for which the offender is convicted and which are pending before the court for sentencing at the same time shall be scored as additional offenses based upon their degree and the number of counts of each."

8. Expand the Committee Note to Florida Rule of Criminal Procedure 3.701(d)(5) to add: "For any offense where sentence was previously suspended pursuant to the imposition of probation and such offense is now before the court for sentencing, upon a revocation of that probation based upon a subsequent criminal offense (which subsequent offense is also before the court for sentencing at the same time), the earlier offense shall be scored as 'prior record' and not as 'additional offense'." The Commission took this action to clarify its intent concerning the application for scoring purposes of the offense which results in the imposition of probation where the offender commits an offense subsequent to the date probation is imposed and where both offenses are before the court for sentencing and the subsequent offense is scored as "primary offense."

9. Expand the Committee Note to Florida Rule of Criminal Procedure 3.701(d)(13) by adding the following sentence: "Community control is not an alternative sanction from the recommended range of any non state prison sanction unless the provisions of Florida Rule of Criminal Procedure 3.701(d)(11) are applied." This revision is intended to clarify the intent of the Commission that community control is not to be considered as a non state prison sanction under the guidelines.

10. Expand Florida Rule of Criminal Procedure 3.701(d)(14) by adding language to the second sentence.


The revised Committee Note will read as follows:
"Sentences imposed after revocation of probation or community control must be in accordance with the guidelines. The sentence imposed after revocation of probation or community control may be included within the original cell (guidelines range) or may be increased to the next higher cell (guidelines range) without requiring a reason for departure.

11. Revise Florida Rule of Criminal Procedure 3.701(d) (13) by eliminating certain language. The revised first sentence of (d) (13) will now read: "Community control, a form of intensive supervised custody in the community involving restriction of the freedom of the offender." The second sentence of that portion of the rule will remain unaltered.

12. Expand the Committee Note to Florida Rule of Criminal Procedure 3.701 (d) (13) by adding a second sentence to read: "It is appropriate to impose a sentence of community control to be followed by a term of probation. The total sanction (community control and probation) shall not exceed the term provided by general law."

13. Expand the Committee Note to Florida Rule of Criminal Procedure 3.701(d) (11) by the addition of the following sentence: "Where deemed appropriate, the sentencing courts may include the following language in the written statement articulating the reasons for departures: If one or more of the foregoing reasons for departure are determined, upon appellate review, to be impermissible, it would still be the decision of this court to depart from the guidelines recommended sentence, upon the basis of the remaining permissible reason or reasons, and to impose the same sentence herein announced."

(Attached here to is the text of Florida Rule of Criminal Procedure 3.701 incorporating all of the above described changes. Portions of the rule which have been deleted will be stricken through. Additions to the rule will be underlined. Also attached are exemplars of the none offense category scoresheets found at rule 3.988(a)-(i), including the revision to Category 1 incorporating the prior record factor as described above in paragraph 5.)


Leonard Holton, Director
Sentencing Guidelines
Commission

Dated this 10th day
of October, 1985

that a fine be paid. The presumptive sentences are found in forms 3.988(a)-(i).

(d)(10) If an offender is convicted under an enhancement statute, the reclassified degree should be used as the basis for scoring the primary offense in the appropriate category. If the offender is sentenced under section 775.084 (habitual offender), the maximum allowable sentence is increased as provided by the operation of that statute. If the sentence imposed departs from the recommended sentence, the provisions of paragraph (d)(11) shall apply.

(d)(11) Reasons for departure shall be articulated at the time sentence is imposed. The written statement shall be made a part of the record, with sufficient specificity to inform all parties, as well as the public, of the reasons for departure. The court is prohibited from considering offenses for which the offender has not been convicted. Other factors, consistent and not in conflict with the Statement of Purpose, may be considered and utilized by the sentencing judge.

(d)(12) The sentencing court shall impose or suspend sentence for each separate count, as convicted. The total sentence shall not exceed the guideline sentence, unless the provisions of paragraph (11) are complied with.

If a split sentence is imposed (i.e., a combination of state prison and probation supervision), the incarcerative portion imposed shall not be less than the minimum of the guideline range nor exceed the maximum of the range. The total sanction (incarceration and probation) shall not exceed the term provided by general law.

(d)(13) Community control is a viable alternative for any state prison sentence less than twenty-four (24) months without requiring a reason for departure. It is appropriate to impose a sentence of community control to be followed by a term of probation. The total sanction (community control and probation) shall not exceed the term provided by general law.

Community control is not an alternative sanction from the recommended range of any nonstate prison sanction unless the provisions of Florida Rule of Criminal Procedure 3.701(d)(11) are applied.