

Supreme Court of Florida

No. 73,227

FLORIDA RULES OF CRIMINAL PROCEDURE
RE: SENTENCING GUIDELINES
(RULES 3.701 AND 3.988)

[June 15, 1989]

PER CURIAM.

The Sentencing Guidelines Commission has petitioned this Court for changes in the sentencing guidelines rules. We have jurisdiction. Art. V, § 2(a), Fla. Const. These changes are merely procedural, intended to incorporate new felonies created by the legislature into the sentencing guidelines.

The first, section 381.411(4), Florida Statutes (Supp. 1988), makes the battery of an employee of the Department of Health and Rehabilitative Services a third-degree felony. The Sentencing Guidelines Commission recommends that this felony be classified as a Category 4 felony, involving violent personal crimes. We agree, and amend rule 3.701(c) and the heading to rule 3.988(d) accordingly. The form which accompanies rule 3.988(d) remains unamended.

In addition, the legislature has made it a third-degree felony to unlawfully dump over 500 pounds in weight or 100 cubic feet in volume of litter. § 403.413(5)(c), Fla. Stat. (Supp. 1988). Also, section 787.03(1), Florida Statutes (Supp. 1988), makes it a third-degree felony to unlawfully interfere with the custody of a child or incompetent. The Sentencing Guidelines

Commission has recommended that these felonies be classified as Category 9 offenses, encompassing all felonies not listed in any of the prior categories. We approve this recommendation, though no amendment to the rules is necessary in this regard.

Accordingly, we amend rules 3.701(c) and 3.988(d) as stated in the appendix to this opinion. New language is indicated by underscoring. No language is deleted. These changes are to be effective as of July 1, 1989.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KGOAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

RULE 3.701 SENTENCING GUIDELINES

c. Offense Categories. Offenses have been grouped into nine (9) offense categories encompassing the following statutes:

Category 1: Murder, manslaughter: Chapter 782 [except subsection 782.04(1)(a)], and subsection 316.193(3)(c)3, and section 327.351(2)

Category 2: Sexual offenses: Chapters 794 and 800 and section 826.04

Category 3: Robbery: Section 812.13

Category 4: Violent personal crimes: Chapters 784 and 836 and section 843.01 and subsection 381.411(4).

Category 5: Burglary: Chapter 810 and subsection 806.13(3)

Category 6: Thefts, forgery, fraud: Chapters 322, 409, 443, 509, 812 (except section 812.13), 815, 817, 831, and 832.

Category 7: Drugs: Chapter 893

Category 8: Weapons: Chapter 790 and section 944.40

Category 9: All other felony offenses

RULE 3.988 FORMS

d. Category 4: Violent Personal Crimes Chapters 784 and 836 and section 843.01 and subsection 381.411(4).

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