

ISSUE	FLORIDA	FEDERAL
Appeal	<p>PNC w/ dispositive issue</p> <p>Def must appeal w/in 30d</p> <p>State w/in 15d</p> <p>NEW RULE 3.800(b) Motion to Correct Criminal Appeal Reform Act</p> <p>Everything but Fundamental Error must be preserved</p> <p>Preserved error only 3.800 Mtn to correct w/in 30d of rendition</p> <p>Tolls time for filing notice of appeal</p> <p>Preserved Prejudicial Error or Fundamental Error</p> <p>PNC w/ reservation and dispositive issue</p> <p>No collateral relief if cd raise on direct appeal</p>	<p>Plead nolo or conditional guilty plea</p> <p>Def w/in 10d of den new trial</p> <p>Govt w/in 30d</p> <p>RULE 35</p> <p>Can move to extend for exc neglect, not miscalc of time</p> <p>RULE 33</p> <p>Timely mot for new trial can extend until 10d aft ruling</p> <p>JOA to preserve at:</p> <ol style="list-style-type: none"> 1. close of govt 2. close of all evidence <p>If lose pretrial try to get it in at trial to preserve error</p> <p>•Appeal of Denial of Habeas is 30d (is civil)</p> <p>Appeal of Magistrate Discovery rulings are never denovo</p>
Appeal Release Pending	Can get b-4 or after file notice of appeal	Must file Notice of Appeal b-4 can get release
Arraignment	Can waive DEF. presence	DEF. must be present

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Attempted Felony Murder	<p>No such crime</p> <p>Can retry on any lessers that the orig jury was instructed on</p>	
Brady Material	<p>-Brady violation if:</p> <ul style="list-style-type: none"> •Fail to diclose& •Probably different result <p>•High burden on Prosecution</p> <p>•Not a piecemeal evaluation</p>	
Charging Document	<p>Indict if PBdeath</p> <p>Indict if b/l 13 yoa</p>	Indict if Felony required
Child Abuse	<ul style="list-style-type: none"> •Physical mental emot or dev age 11 or under •Indicia of trust Time impt. •O/s presence of jury •V need not testify at trial •Unavailable=subst likelihood of sev emot or ment harm •10 days notice •Testimony of Victim 	
Codefendant Testimony		Coconspirators stmts made in futherance of conspir admitted w/o sep. hearing

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Correction /Red. of Sentence	<p>Rule 3.800</p> <p>W/in 60 d</p> <p>NEW RULE Mot to Correct Error filed w/in 30d after rendition</p> <p>State can move for substantial assist more than 60 days after</p> <p>•Venue where confined</p>	<p>Rule 35</p> <p>W/in 1 yr</p> <ul style="list-style-type: none"> •Appeal d/n toll or divest trial ct of juris •Only Govt can move for Red. Rule 5K •Ct can correct error w/in 7d & aft that no juris. <p>18usc3742 Appeal of Sentence</p> <p>28usc2254 & 2255 Habeas Corpus</p> <ul style="list-style-type: none"> •No answer required u/l ct orders •May deny hearing if state ct already full & fair hearing of claim•successive petition •Federal Question •Not 4th Amend •Total exhaust remedy •In custody •Is the exclusive federal remedy to challenge fact of confinement •no rt to counsel <p>•Venue where sentenced</p> <p>NEW RULES</p> <ul style="list-style-type: none"> •File w/in 1 yr of state review (tolled during state review) •File w/in 180d if death •Certificate of Appealability
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Appeal Pretrial	<p>State:</p> <ul style="list-style-type: none"> •Dismiss Ct of Indict •Motion to Suppress <p>Defendant:</p> <ul style="list-style-type: none"> •Double Jeopardy 	<ul style="list-style-type: none"> -Double Jeopardy Dismissal •Speech and Debate Dismissal •Reduce excessive bail denied
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Discovery	<p>Open Discovery</p> <p>R. 3.220</p> <p>Depositions Witness List</p> <p>W/in 15d of Demand</p> <p><u>Richardson</u> Hrg shows Prejudice Wilful vs. Inadvertent</p> <p>NEW RULES Category A Material wits, experts w/o rpts, <u>Frye</u> wits, investigating offs</p> <p>No leave for Depo</p> <p>Category B Wits not in A or C</p> <p>Depo w/ Leave of Court</p> <p>Category C ministerial wits or state d/n intend to call at trial <u>and</u> whose involve set out in Pol Rpt or stmts furnished to defense</p> <p>No Depo unless ct says in wrong category</p> <p>No Subs for Cops 5 day written notice</p>	<p>Not Open Discovery</p> <p>Rule 16</p> <p>NO Depositions (perpetuate) NO Witness List (except for experts) NO time limit</p> <p>Discovery Letter.</p> <p>Motion of the def can get:</p> <ul style="list-style-type: none"> •Interrogation Stmtms of def to agents then known to be LEO and stmtms of def generally •Recorded GJ Testimony •Prior Record of def. •Docs and objects in Case in chief •Exams or tests •Expert test w/ notice of intent <p>Example: GRAND JURY TRANSCRIPTS (compare w/ secrecy in Fl.)</p> <ul style="list-style-type: none"> •<u>Jencks</u> after wit (not def) testifies as relates to s/m of testimony <p>Stmt =writ &sign or adopted OR Subst Verbatim OR Stmt before the GJ</p> <p>WITNESS STATEMENTS RULE 26.2</p> <ul style="list-style-type: none"> •Produce wit stmtms aft dir. •In Camera if claim privilege <p>•No reciprocal oblig to disclose wit stmtms made to def representatives BUT</p> <ul style="list-style-type: none"> •Reciprocal oblig to produce docs once def requests docs from gov
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DNA	<ul style="list-style-type: none"> •De Novo Review •GA in SC as to Match •<u>Frye</u> as to Procedures used •<u>Frye</u> as to Statistical Signif. 	<u>Frye</u> is OUT
Double Jeopardy	<p><u>Blockburger</u></p> <p>Trafficking & Possess are OK b/c can sell w/o possessing</p> <p>Dual sovereignty</p>	<p>Blockburger analysis of the elements does each count require proof of an element the other does not</p> <p>AG approval of dual prosecution</p>
Elder / Disabled Abuse	<p>Fla. Supreme Court Ruled Unconstitutional</p> <p>-Crime of Violence/Exploitation</p> <ul style="list-style-type: none"> •Physical age 60 or •Disabled over 18yoa •Indicia of trust Time impt. •O/s presence of jury •V need not testify at trial •Unavailable=subst likelihood of sev emot or ment harm •10 days notice w/ details re: circumstance and indicia of trustworthiness <p>NEW CASE • NOTE MUST BE VICTIM JUST AS WITH CHILD ABUSE</p>	
Ex Post Facto	<p>USSCT cannot retroactively cancel provisional early release credits resulted in rearrest and reincarceration</p>	<p>Applies if:</p> <ul style="list-style-type: none"> •increase punishment •change element of offense •mere disadvantage is not enough

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Jencks Statements		<p>The Jencks Act</p> <p>Requires disclosure of govt wit stmts aft testify on direct at:</p> <p>Suppression Hearing Detention Hearing Sentencing Hearing Probation Hearing Probation Hearing Habeas Hearing</p>
JOA	<p>Rule 3.380</p> <p>Same as Federal Rule</p> <p>May renew up to 10 Days</p>	<p>Rule 29</p> <p>After Evidence for either side closes</p> <p>1994 amend can reserve until close of all evid.</p> <p>May renew up to 7 days after verdict</p> <p>Ct cannot sua sponte enter joa once case submitted to jury</p>
Joinder	Rule 3.150	<p>Same act/transaction Or Common scheme or plan If mtn to sever in camera stmts or confessions examined</p>
Jury Instructions		<p>Necessarily Lesser Included Definition:</p> <p>Cannot commit the greater offense w/o also committing the lesser</p>

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<p>Jury Selection</p>	<p>Number of Jurors:</p> <p>12 if Cap 6 on Others</p> <p>Peremptory Challenges</p> <p>10 if Capital PBL 6 Felonies 3 M/M</p> <p>Atty Voir Dire</p> <p><u>Neil</u> once raised ct must inquire if Group and them inquire for race neutral</p> <p>Backstrikes allowed until sworn</p> <p>Whole panel must be sworn together</p> <p>NEW RULE 3.180 presence means immed present in ct w/ oppty to be heard <u>Coney</u></p> <p>To Preserve Error: •Exhaust preemptory •Ask for more strikes •Objectionable juror seated</p>	<p>12 Jurors</p> <p>11 can decide w/o consent</p> <p>20 if Death Penalty 10/6 Def/Govt 3 M/M</p> <p>Court Voir Dire</p> <p>Magistrate can pick jury w/ consent</p> <p>Backstrikes not allowed</p> <p>Alternate can be present for deliberations</p> <p>11 can decide w/ or w/o consent after deliberations begin</p> <p>Alternates are Discharged aft deliberations begun</p> <p>Magistrate can pick jury and w/ consent of def can try M/M</p>
<p>Jury Trial</p>	<p>Jury trial if 6 months or more imprison or indictable at commom law</p>	<p>No Right to Jury Trial even if petit offenses and up to 6 mos.</p> <p>Imprison G/T 6 months</p>

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Juveniles	<p>Methods to Transfer</p> <ul style="list-style-type: none"> •Indict •Direct File •Involuntary Waiver •Waiver on Demand <p>Jurisdiction</p> <ul style="list-style-type: none"> •Discretionary •16 yoa and/or older •14-15 yoa w/ enumerated •Mandatory 	
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Methods to Secure Appearance	<p>Warrant Notice to Appear Summons (m/m or corp) Capias</p>	<p>Warrant Summons(usually corp)</p>
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Mistrial	<p>Rule 3.191</p> <ul style="list-style-type: none"> •Preserves Error <p>Retry w/in 90 days Manifest Necessity</p>	<p>Rule 26.3</p> <p>Court must allow comment prior to granting</p> <p>Consent, object, or alternatives</p> <p>Manifest Necessity</p> <p>Double Jeopardy issue if govt goads def into mistrial by intentional act</p>
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Murder Degrees	<p>-1st Degree</p> <ul style="list-style-type: none"> •Premeditated •Felony <p>-2d Degree</p> <ul style="list-style-type: none"> •Ill will / Spite •Felony (co-def killed) <p>-3d Degree</p> <ul style="list-style-type: none"> •Non enumerated Felony <p>-Manslaughter</p> <ul style="list-style-type: none"> •Culpable Negligence <p>-DUI Manslaughter</p> <ul style="list-style-type: none"> •Impairment <p>-Vehicular Homicide</p> <ul style="list-style-type: none"> •Recklessness •Vehicle 	
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New Trial	<p>R. 3.600-a Verdict by lot Contrary to law or weight New evid prob wd have changed verdict</p> <p>R. 3.600-b D not present at req proceedings Jury evid out of ct Jurors separated Juror misconduct Ct erred in dec of law Erroneous jury instr.</p> <ul style="list-style-type: none"> •File motion w/in 10 days of rendition 	<p>Rule 33</p> <p><u>Brady</u> violation if: Fail to disclose & Probably diff result</p> <ul style="list-style-type: none"> •Mtn w/in 7 days or 2 years if newly disc'd evidence <p>If appealed time runs from mandate</p>
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Neil Inquiry	<p>Procedure:</p> <ul style="list-style-type: none"> •Object to preemptory •ID the Juror •ID the cognizable group •allege discriminatory manner •Court then must find: •race neutral reason that was •not pretextual 	
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Outline of Sentencing Guidelines	Date Of Offense	Date of Sentencing
	<ul style="list-style-type: none"> •Guidelines applicable to beginning date of a continuing offense •Prior record means prior conviction committed b-4 offense for sentencing Do not include older than 10 years w/ clean record Juvenile w/in 3 years Legal Status violation 4 pts PTI or probation 6 pts Prior serious felony 30 pts <ul style="list-style-type: none"> •Level 8,9,10 and •Prior 8,9,10 w/in 3yrs Prior Capital Felony <ul style="list-style-type: none"> •Triple word score but do not score the cap fel Firearm or Auto Weapon <ul style="list-style-type: none"> •18 or 25 pts Drug Trafficking <ul style="list-style-type: none"> •1.5 multiplier Law Enforcement <ul style="list-style-type: none"> 1.5 to 2.5 multiplier GTMV <ul style="list-style-type: none"> •3 priors 1.5 multiplier L/T 40 ANSPS 40-52 Discretionary G/T 52 Prison G/T 363 Life If G/L is G/T Max gets G/L But can Rec Max Stat Pen Departure (written) <ul style="list-style-type: none"> •w/in 6 mos of discharge from rel program or prison 	<ul style="list-style-type: none"> •D/n apply to class BorC m/m's or •Narrow range Min c/n vary from max by 6mos or 25% •43 Levels w/ 6 Categories •6 Levels doubles sentence •Fraud Loss Table -Offense Level <ul style="list-style-type: none"> •Relevant Conduct including conduct not separated by an intervening sentence •FRE d/n apply at sent •Even if acquitted 96-97 USSCT •Grouping Adjustments •Adjustments Aggravating <ul style="list-style-type: none"> •Hate Crime BARD 3 Levels •Vulnerable Victim 2 Levels •Official Victim 3 Levels •Restraint Victim 2 Levels •Terrorism 12 Levels Crim Hist Level VI •Role in Offense 2 to 4 Levels eg Leadership •Position of Trust 2 Levels (No Double Counting) •Using a Minor •Obstruction Enhancement 2 Levels •Leadership 4 Levels •Reckless Endange. during Flight Mitigating <ul style="list-style-type: none"> •Minimal Participant 4 Levels -Acceptance of Responsibility Adjustment 2-3 Level -Criminal History (Based on Length of sentence not degrees of offenses) <ul style="list-style-type: none"> •10-15 Year Limits •No Related Cases (not separated by intervening arrest) •All Felonies & Some M/M's are scored •Revocations Count •If sent in state ct they count -Guideline Range <ul style="list-style-type: none"> •Zones A-D •Bootcamp 12 -30 mos -Departures (Heartland) 5 K

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Parole		Applies to cases before 11/1/87
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Plea Agreements	<p>Rule 3.171</p> <p>Court can participate in deal</p>	<p>Rule 11</p> <p>Written Res rt to appeal Nolo only if ct approves Ct cannot participate in Plea bargain</p> <p>R. 11 proffer inadmissible even for impeachment</p> <p>Derivative use for new chgs or investigation is OK</p>
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Pleas	<p>PNC w/ rt to appeal, if dispositive or stip to dispositive.</p> <p>Post conviction rel avail if promise conc when sent was consec.</p>	<p>Conditional Guilty Plea</p> <p>Pleas waive preindict issues except juris of ct and/or ineff assist issue</p> <p><u>Alford</u> Pleas in best interest</p>
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<p>Post Conviction</p>	<p>3.850</p> <ul style="list-style-type: none"> •2year window (1 in cap) •Time discovered w/due diligence •Under oath •Form in Rules •15d for rehearing •30d to appeal <p>State Habeas Corpus FRAP 9.140</p> <ul style="list-style-type: none"> •Use to attack ineff assist of appellate counsel <p>•2 year limit</p> <ul style="list-style-type: none"> •Proper vehicle to w/draw plea after sentencing 	<p>28usc2254 & 2255 Habeas Corpus</p> <ul style="list-style-type: none"> •One year window •Tolled during collateral state proceedings •No answer required u/ ct orders •May deny hearing if state ct already full & fair hearing of claim •Federal Question •Not 4th Amend •Total exhaust remedy •In custody <p>NEW RULE: Certificate of Appealability must be issued by federal judge and list the appealable issues</p>
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<p>Pretrial Motions to Dismiss</p>	<p>3.190-b and c c-4 sworn w/ pers knowl</p> <ul style="list-style-type: none"> •no dispute mat facts & •no prima facie evid of guilt <p>Traverse denies an/or adds Demurrer admits</p>	<p>JOA at Close of Govt case</p>
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Pretrial Notice Requirements	<p>Alibi 10 days Williams Rule 10 days Child Abuse h/say 10 days Fl. S. Ct. Ruled Unconstitutional Elder Abuse h/say 10days Battered Spouse 10 days</p> <ul style="list-style-type: none"> •Insanity 15 d from WPNG or ARRA •No diminished capacity •Reverse <u>Williams</u> Rule •Inextricably Intertwined 	<p>Alibi w/in 10 days of demand 404-b Reasonable</p> <p>Public Authority 20 days of demand</p> <p>Insanity pretrial notice req'd the gov't can have the def examined</p>
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<p>Pretrial Release</p>	<p>R. 3.131</p> <ul style="list-style-type: none"> •Reasonable u/l Cap or PBL AND Guilt Evident OR •Protect Com. Assure Presence •3 Hours notice to State 	<p>18 U.S.C. §3142</p> <ul style="list-style-type: none"> •No Rel. if no condits ass presence and safety •Detain for 10 d to revoke prev bond if new charge <p>Presumption of Detention if:</p> <p>ON RELEASE</p> <p>The DEF. On rel. for violent crime or 10+Drug or Convict w/in 5 years (regardless of offense).</p> <p>OR CRIME COMMITTED</p> <p>Is a crime that is:</p> <ol style="list-style-type: none"> a) crime of viol. b) PBL c) Drug +10 d) 2 or more of a-c
<p>Prior Convictions</p>	<p>90.610</p> <p>Can only ask if and how many and impeach if untruthful</p>	<p>FRE 609</p> <p>Dishonesty, Felony or M/M is per se admissible to impeach the def.</p> <p>Can discuss the nature of the crimes, date of offenses, e/t wit answers truthfully</p> <p>If g/t 10yrs notice req'd</p> <p>403 balancing test applies to crimes that do not involve dishon or false stmt</p>

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<p>Prior Convictions</p>	<p>Convictions: Admissible to impeach if punishable by death or imprisonment in excess of one year, or involved dishonesty or false statement. Admissible even if on appeal or pardoned. No remote conviction in civil cases. No juvenile crimes.</p> <p>Federal Rule 609 is the corresponding Federal Rule. There are two significant differences: Florida Rule does not contain a balancing test or any provision excluding convictions in criminal cases on the grounds that they are too remote.</p> <p><u>State v. Page</u> (Fla 1984) held that contrary to the federal courts' rulings misdemeanor convictions for shoplifting and other petit theft, as well as any crime involving cheating stealing or stealth (<u>US v Hayes</u> defined cocaine smuggling as a crime involving stealth), are admissible to impeach. See Ehrhardt. The Federal Rule 609 Balancing test is whether "the probative value of admitting this evidence outweighs its prejudicial effect," is different than the test to be applied under 90.403 and Federal Rule 403 i.e. whether the probative value "is substantially outweighed by the danger of unfair prejudice." A greater showing must be made under Federal Rule 403 to exclude the evidence. Consequently, when Florida applies its 90.403 std, in lieu of the Fed Rule 609 std it would seem to be an unusual case in which a Florida court would find convictions to be inadmissible. See <u>Ehrhardt</u>.</p>	<p>(a) General rule.</p> <p>admitted if elicited from him or established by public record during cross-examination (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted,</p> <p>and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant,</p> <p>or (2) involved dishonesty or false statement, regardless of the punishment</p> <p>(b) Time limit.</p> <p>not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 year old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.</p>
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Probable Cause Hearing	<p>Non adversary W/in 48 hours w/ 24 hour extension</p> <p>24 hours pretrial det. under FS 907</p> <p>FRCrP 3.132 must see judge "w/o unnecessary delay"</p> <p>Adversarial PC Hearing</p> <p>21 days of arrest w/o information</p> <p>Preliminary even if filed late</p>	<p>Gerstein Hearing</p> <p>•Non Adversary PC determination if not indicted</p> <p>FRE d/n apply to detention hearing so hearsay is admissible</p> <p>Prelim. Examination adversarial w/in</p> <p>10 days of initial appearance (w/o unreas delay),</p> <p>20 days if p/t release</p> <p>No Preliminary Exam if info is filed</p> <p>If no PC found then must indict</p>
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Probation	<ul style="list-style-type: none"> •Cannot Extend Beyond Stat Max •Bump One Cell •Add 6 Points 	<ul style="list-style-type: none"> •Can extend beyond Stat Max must issue warrant or summons b-4 expiration •P/O arrest w/o warrant •Three Grades of Violations •A(new viol or drug felony) •B(any other felony), •C(technical or m/m) •Must Revoke if A or B •Must Revoke refuse drug test •No Credit for T/S •Shd be Consecutive •Depart w/o findings •Revocation Table in mos.
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Rights Fifth Amend		<p>Attach Def in Custody Not invoke b-4 Custodial Q Stops All Questions Applies to Express Quest.</p> <p>Notes: •Not Offense Specific •Custodial Interrogation •If asserts can stop & requestion after time</p> <p>The Warning: •silent •counsel •stop anytime</p>
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Rights Sixth Amend	<p>Attaches earlier in Florida</p> <p><u>Traylor</u> says attaches: •Formal Charge or •First Appearance •Whichever is earliest</p>	<p>Attach Formal Charge Invoke at Initial Appearance Stops Q's Re: Pending Chg Applies to Deliberate Elicits</p> <p>Notes: •Offense Specific •Arraignment •Scrupulously honored •Ambiguous Request stop Q and clarify •Can supress agents of LEOS</p>
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Sealing Records	<p>•No prior adjudications •Only One sealing</p> <p>•Expunge (remove) only if Sealed for 10 yrs, PTI, or Dismissal, but can Seal</p>	
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Search w/o Warrant	Three Levels <ul style="list-style-type: none"> •Consensual Encounter -Free to go •Investigative Stop (& Frisk) -Reasonable Articulable Susp -Armed •Arrest/Seizure -Probable Cause -<u>Illinois v. Gates</u> (tip) •Exceptions -Auto -Imminent Threat -Plain View -Hot Pursuit <p>OR</p> <ul style="list-style-type: none"> -No Standing -No Fourth Amend Interest <p>Forced linkage A1S12</p>	
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Search Warrants	Serve w/in 14 days Daytime = 8 am to 6pm	Serve w/in 10 days Daytime = 6am to 10pm
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Sentencing Dates Guidelines	Guidelines Pre 1983 Old Old 1983 to 5/31/91 Old 6/1/91 to 1/1/94 New 1/1/94 to 10/1/95 1995 10/1/95 to 10/1/98 10/1/98 to Date Criminal Punish Code	11/1/87
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<p>Sentencing Generally</p>		<p>Jencks Material and Rule 32 applies to prior stmts at sentencing</p> <p>How to avoid minman?</p> <p>R5k mtn, but may be more than minman</p> <p>Safety Valve 18usc3553-f NO minman if:</p> <ul style="list-style-type: none"> •No m/t 1 crim hist pt •No violence/firearm •No death or ser b/i •Not leader & •Truthful testimony <p>•Same date or transaction can =1 crim hist pt.</p> <p>•W/h=Conviction for g/l sent</p> <p>•Added levels for Obstruction of Justice</p> <ul style="list-style-type: none"> •Threat, false docs, destroy evid, escape •Not Obstruction to run from police to avoid, false name or ID, d/n apply if inherent in offense <p>•Leadership Role enhances points</p> <p>•Accept Responsibility reduces pts</p> <p>•Subst. Assist may be s/t spec perform , but is in sole discre of Govt</p> <p>•Ct may down depart if bad faith of govt and breach of agrmt</p>
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Sentencing Guidelines	Guidelines in effect on date of offense	Guidelines in effect on date of sentencing
	<p>What you were Charged with.</p> <p>HFO</p> <ul style="list-style-type: none"> •2 Fels •Last w/in 5 of release •No pardon •Conviction necess to protect public •No contr subst for new off •Discretion •Notice <p>Penalties</p> <p>1st= Life (30) 2d= 30 (15) 3d= 10 (5)</p> <p>HVFO</p> <ul style="list-style-type: none"> •1 violent prior w/in 5 •PSI in all •Written notice to d & dc •Prints checked •Discretion <p>Penalties</p> <p>1st= Life w/ 15 minman 2nd= 30 w/ 10 minman 3rd= 10 w/ 5 minman</p> <ul style="list-style-type: none"> •Current case need not be violent •Cannot use if on appeal 	<p>What you Did</p> <p>Career Offender</p> <ul style="list-style-type: none"> •18 yoa on doo •Crime of Viol or Drug •2 Priors of viol and/or drugs <p>•No Notice</p> <p>Penalties</p> <p>Automatic Cr Hist level VI</p> <p>Serious Violent</p> <p>•3 strikes</p> <p>Penalty</p> <p>•Life minman</p> <p>•Drug Trafficking 2d Offense</p> <p>Penalty</p> <p>•Double the Max minman</p> <p>BOP on Enhancements is Preponderance except:</p> <ul style="list-style-type: none"> •Hate Crime is BARD •Weapon Govt proves is present def then proves was not connected to offense <p>Commentary is binding <u>Stinson</u></p> <p>Limit liability by proffering info about operations since then info cannot be used in calculating guidelines</p> <p>Ex Post Facto and One Book Rule</p>

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Sentencing Guidelines Enhancements

GORT
•Previous **Prison**
•**Enumerated** Viol Felonies
•**3 Separate** date convicts
•**1 of viol w/in 5 years**
•Discretion

1t = **Life minman**
2d = **40 w/ 30 minman**
3d = **15 w/ 10 minman**
Departure in writing, not for reason inherent in offense, arrests alone c/n enhance

PRR
Specified Felony
w/in 3 yrs of Rel
Life = **Life minman**
1t = **30 minman**
2d = **15minman**
3d = **-5 minman**

THREE TIME VIOLENT FELONY OFFENDER
2 Specified Adult Convicts
Win 5 yrs of convict or Release
Life = **Life minman**
1t = **30 minman**
2d = **15minman**
3d = **-5 minman**

Firearm or Auto Weapon
•18 or 25 pts
•applies only to nonviol & nondrug

Drug Trafficking
•1.5 multiplier

Law Enforcement
•1.5 to 2.5 multiplier
•1.5 Agg Assa or AgBatt LEO
•2.0 Murder/Mans LEO
•2.5 1st deg Murder

GTMV
•3 priors 1.5 multiplier

Gang Member 1.5

ISSUE	FLORIDA	FEDERAL
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Sentencing Issues	NEW CRIME	
	<p>Violent Career Criminal in Poss of a Firearm 790.235</p>	<p>Armed Career Criminal</p>
	<ul style="list-style-type: none"> •GORT Offender •No discretion 	<ul style="list-style-type: none"> •Convicted of 18 USC 922 •3 Prior Drug or Violent •No notice required
	<p>Penalty</p> <ul style="list-style-type: none"> •15 Year minman 	<p>Penalty</p> <ul style="list-style-type: none"> •15 Min Man
		<p>PossessFirearm in Drug Off</p> <ul style="list-style-type: none"> •Govt BOP = "present" •Def then prove "clearly improbable" is connected •Codef can possess
		<p>Use or Carry Firearm "in furtherance of" Timmons 283F3d1246 11th 2002</p>
	<p>Cannot Stack</p> <p>If TOGL is g/t stat max then g/l applies</p>	<p>Stacking Min Man is OK</p> <p>If TOGL is g/t stat max then stat max applies</p>
	<p>Pre 1994 cases is departure for CJ and CC</p>	<p>Cannot go b/l min/man unless</p>
	<p>Can get 3 consec yrs for MM but if one in Felony is a departure</p>	<ul style="list-style-type: none"> •subst assist 5 K •Safety Valve
		<p>Can Enhance e/t Acquitted USSCT</p>

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Sentencing Options	<p>-Confinement •Prison/Jail</p> <p>-Probationary Split •Prison + Probation</p> <p>-True Split •Suspended Prison + Prob</p> <p>-Villery •Prob w/ Cond of Prison</p> <p>-Straight Probation •Probation</p> <p>Felony Degrees Capital=Death/Life w/o Life=40 Years 1st=30 Years 2nd=15 Years 3rd=5 years</p> <p>Misdemeanors Degrees 1st=12 Months 2nd=60 Days</p>	<p>Zone D •Imprisonment</p> <p>Zone C •Imprisonment 1/2 min + CC •Imprisonment</p> <p>•Twilight Zone</p> <p>Zone B •Prob + CC •1 m Prison + CC •Imprisonment</p> <p>Zone A •Fine •Straight Probation •Imprisonment</p> <p>Felony Classes A = Death or Life B = 25 Years or More C = 10 up to 25 Years D = 5 up to 10 Years E = 1 up to 5 Years</p> <p>Misdemeanor Classes A = 6 up to 12 mos B = 30 d up to 6 mos C = 5 days up to 30 days Guidelines only apply to class A misdemeanors</p>
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Similar Fact Evidence	<p>Williams Rule</p> <ul style="list-style-type: none"> •Motive, oppty, intent, preparation, plan, knowledge, identity, absence of mist or accid •10 d notice •No notice for impeach or rebut. •Specificity of an Information <p>Prior record can open door</p>	<p>R. 404-b</p> <p>Upon req of accused</p> <ul style="list-style-type: none"> •Reasonable notice (ct may waive) •Only need to show general nature (not specific) <p>Admit for Same purposes</p>
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Speedy Trial	<p>50d after demand or 175d Felony or 90d M/m then not of expiration</p> <p>Hearing w/in 5d Trial set w/in 10d</p> <p>15 days total aft expiration</p>	<p>90d after arrest 70d after info filed</p> <ul style="list-style-type: none"> •Tolled for excludable delay •Not per se dismissal •Constitutional Delay -Actual prejudice OR -Intentional Delay •Cannot be too speedy l/t 30d after first appearance
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Standards of Review	<p>Harmless Error</p> <ul style="list-style-type: none"> •little likelihood the result was affected •most freq std <p>Plain Error</p> <ul style="list-style-type: none"> •clear/obvious •constitutional significance •improper jury instructs <p>Many times no need to preserve</p>	
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Statutes of Limitation	<p>No Limit</p> <ul style="list-style-type: none"> •Capital Felony •Life Felony •Felony involving Death <p>Five Years</p> <ul style="list-style-type: none"> •812 Theft •Securities Transactions •Felony Environmental <p>Four Years</p> <ul style="list-style-type: none"> •1st Degree Felony <p>Three Years</p> <ul style="list-style-type: none"> •All other Felonies •Elder Abuse m/m's <p>Two Years</p> <ul style="list-style-type: none"> •1st Deg M/M <p>One Year</p> <ul style="list-style-type: none"> •2d Deg M/M •Noncrim violations <p>•Can toll for up to three yrs if out of state w/o reas ascertain</p> <p>•Can toll w/ victim until 16 yoa if sex offense</p>	<p>No Limit</p> <ul style="list-style-type: none"> •PBL <p>Five Years</p> <ul style="list-style-type: none"> •All Others <p>•Runs form DOO to date information or indictment is filed</p>
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Supervised Release		Applies to Federal Cases
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Venue	<ul style="list-style-type: none"> •In County of Offense •Where Commenced or Consummated (Multi State) •Accused may elect multi county 	<ul style="list-style-type: none"> •In District of Offense •May be waived in writing Govt must agree if upon Plea <p>Change of Venue</p> <ul style="list-style-type: none"> •Prejudice against def, cannot obt fair & impartial trial <p>Procedure</p> <ul style="list-style-type: none"> •Try to seat Jury •Extensive Voir Dire •Law d/n req no opinion •Law req set aside •Law req base on evid •Upon <u>Def motion</u> can move for convenience of parties
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Voluntary Intoxication	<p>New 1999 FS 775.051 Voluntary intoxication; not a defense; evidence not admissible for certain purposes; exception. Prescription drug.</p>	
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<p>Wiretap</p>	<p>Chapter 934</p> <ul style="list-style-type: none"> •PC to bel evidence will be obtained •PC to bel crime was committed •Other tried and failed or too dangerous •30 d max •Specific crimes •Specific items monitored •Cordless phone from home needs warrant •No warrant if one consents at direction of LEO <p>No <u>Leon</u> good faith</p>	<p>18 USC 2510 et seq</p> <ul style="list-style-type: none"> •Relevant to ongoing investigation •DEF.'s must be notified 90 days after terminates •Same •No warrant if one consents
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Abbreviations

Aft	After	Mitig	Mitigate/Mitigator
AG	Attorney General	M/t	More than
Agg	Aggravated	Mtn	Motion
Arra	Arraignment	Murd	Murder
Ass	Assure	Noncrim	Noncriminal
Assa	Assault	Nonviol	Non Violent
Atty	Attorney	Not	Notice
B/l	Below	O/s	Outside
B-4	Before	Oblig	Obligation
BARD	Beyond all reasonable doubt	Obt	Obtain
Batt	Battery	Offs	Officers
Bel	Believe	Oppty	Opportunity
BOP	Burden of Proof	Orig	Original
C/n	Cannot Could Not	PB	Punishable By
Cap	Capital	PBL	Punishable by Life
CC	Community Control	PC	Probable Cause
CCE	Continuing Criminal Enterprise	Pers.	Personal
Cd	Could	PNC	Plead No Contest
Chgs	Charges	Pol	Police
CJ	County Jail	Poss	Possession
Conspir	Conspirator	Prelim	Preliminary
Corp	Corporation	Prepond	Preponderance
Ct	Court	Prev	Previous
D	Day	Pts	Points
D/n	Do or Did not	R	Rule
Dec	Decision	R5k	Rule 5k
DEF	Defense, Defendant	Reas	Reasonable
Deg	Degree	Rec	Recommendation
Depo	Depose/Deposition	Red	Reduction
Det	Detention	Rel	Release
Dev.	Developmental	Rel	Release
Dishon	Dishonesty	Req	Required
Emot	Emotional	Res	Reserve
Endange	Endangerment	Rpts	Reports
Evid	Evidence	Rt	Right
Exc	Excusable	S/m	Subject Matter
Freq	Frequent	SC	Scientific Community
G/l	Guidelines	Sent	Sentence
GA	Generally Accepted	Sep	Separate
GJ	Grand Jury	Sev	Severe
GORT	Officer Gort	Signif	Significant/Significance
Govt	Government	Stat	Statutory/Statute
GTMV	Grand Theft Motor Vehicle	Stmts	Statements
H/say	Hearsay	TOGL	Top of the Guidelines
Hrg	Hearing	U/l	Unless
Immed	Immediately	W/	With
Impt	Important	W/in	Within
Ineff	Ineffective	WPNG	Written Plea of Not Guilty
JOA	Judgement of Acquittal	YOA	Years of Age
Juris	Jurisdiction	Yr	Year
Knowl	Knowledge		
LEO	Law Enforcement Officer		
M/M	Misdemeanor		
Mat	Material		
Max	Maximum		
Ment	Mental		
Minman	Minimum Mandatory		
Miscalc	Miscalculation		
Mist	Mistake		