

3.20 NONSTATE PRISON SANCTION/DANGER TO PUBLIC

§ 775.082(10), Fla. Stat.

The instruction may need significant edits during the charge conference to comport with local sanctions or conditions that are available for the court to impose. This initial paragraph could also be used as a preliminary instruction for the sentencing phase of the trial.

You have found (defendant) guilty of (insert name(s) of crimes(s)). You must now determine if the State proved beyond a reasonable doubt whether sentencing [him] [her] to a nonstate prison sanction could present a danger to the public.

“A nonstate prison sanction” means probation for up to ____ years, house arrest for up to two years, county jail for up to ____ years, or some combination of these alternatives for up to ____ years.

“Probation” would require the defendant to report to a probation officer as directed. The probation officer could visit [him] [her] at [his] [her] home unannounced. The defendant would be required to work at suitable employment if possible. [He] [She] would be ordered to live without violating the law, to not associate with persons engaged in criminal activity, and [he] [she] would not be allowed to possess a firearm. [[He] [She] could be ordered [to pay restitution] [and] [to submit to random drug testing by a probation officer].] Additionally, I could order other conditions of probation that I find to be appropriate. *(Instruct on other relevant conditions of probation, including those in § 948.03 – § 948.039, Fla. Stats., as requested.)* A violation of any condition of probation, if proven by the State to a judge could result in a resentencing for [this] [these] crime[s].

House arrest requires that the defendant be confined to [his] [her] home except for approved travel such as travel to a job and to other approved activities such as food shopping and attending religious services. The conditions of probation that I previously mentioned would be applicable and I could order additional conditions of house arrest that I find to be appropriate. *(Instruct on other relevant conditions of community control, including those in § 948.101, Fla. Stat., as requested.)* A violation of any condition of house arrest, if proven by the State to a judge, could result in a resentencing for [this] [these] crime[s].

The instructions I previously gave you about your deliberations apply to this phase of the trial.

Give if requested and applicable.

The defendant has a constitutional right to remain silent during and after the trial. The defendant is not required to present evidence or prove anything, even after a guilty verdict. You must not consider the exercise of a constitutional right to remain silent as evidence of anything and the decision to remain silent must not affect your verdict.

Give in all cases.

The State has the burden to prove beyond a reasonable doubt that a nonstate prison sanction could present a danger to the public.

Proof beyond a reasonable doubt does not mean proof beyond all doubt. A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, you do not have an abiding conviction that a nonstate prison sanction could present a danger to the public, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the State's allegation is not proved beyond every reasonable doubt. It is to the evidence introduced in this phase of the trial, and to it alone, that you are to look for that proof.

The jury's verdict must be unanimous, that is, all of you must agree to the same answer to the following question: Did the State prove beyond a reasonable doubt that a nonstate prison sanction could present a danger to the public?

Comments

Absent a plea, a jury must make a dangerousness finding for a judge to impose any sentence above a nonstate prison sanction for an offense committed on or after July 1, 2009, which is a third degree felony, but not a forcible felony, and excluding any third degree felony violation related to burglary or trespass, and if total sentence points pursuant to the Criminal Punishment Code are 22 points or fewer. *Gaymon v. State*, 288 So. 3d 1087 (Fla. 2020).

§ 775.082(10), Fla. Stat., requires the court to make its own written dangerousness finding regardless of a jury finding.

This instruction was adopted on February 21, 2025.