

Supreme Court of Florida

No. 78,709

ORIGINAL

IN RE AMENDMENTS TO FLORIDA RULES OF
CRIMINAL PROCEDURE--SENTENCING GUIDELINES
(RULES 3.701 & 3.988).

[November 7, 1991]

PER CURIAM.

Based on statutory changes made by the legislature in 1991, the Florida Sentencing Guidelines Commission petitions the Court to amend Florida Rule of Criminal Procedure 3.701(c) and the forms contained in rule 3.988 as set out in the appendix attached to this opinion. The proposed amendments are hereby adopted, effective immediately upon the filing of this opinion.

It is so ordered.

SHAW, C.J. and OVERTON, McDONALD, BARKETT, GRIMES, KOGAN and HARDING, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

APPENDIX

[Additions underlined; deletions ~~struck through~~]

RULE 3.701 SENTENCING GUIDELINES

. . . .

c. Offense Categories. Offenses have been grouped into 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, section 826.04, and section 491.0112

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, section 817.025, and subsection 806.13(3)

Category 6: Thefts, forgery, fraud: Sections 192.037 and 206.56, chapters 322 and 409, section 370.142, section 415.111, chapter 443, section 493.3175, sections 494.0018, 496.413 and 496.417, and chapters 509, subsections 585.145(3) and 585.85(2), section 687.146, and chapters 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(a)
Category 1: Murder, Manslaughter

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	165	226	286	346	_____
1st pbl	150	195	276	336	_____
1st	136	165	226	286	_____
2nd	77	93	106	121	_____
3rd	45	55	65	75	_____

Primary offense counts in excess of four:

- Add 60 for each additional life _____
- Add 60 for each additional 1st pbl _____
- Add 60 for each additional 1st _____
- Add 15 for each additional 2nd _____
- Add 10 for each additional 3rd _____
- Total _____

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	61	73	79	85	_____
1st pbl	45	54	58	63	_____
1st	29	35	38	41	_____
2nd	16	19	21	22	_____
3rd	10	12	13	14	_____
MM	2	3	4	5	_____

Additional offense counts in excess of four:

- Add 6 for each additional life _____
- Add 5 for each additional 1st pbl _____
- Add 3 for each additional 1st _____
- Add 1 for each additional 2nd _____
- Add 1 for each additional 3rd _____
- Add 1 for each additional MM _____
- Total _____

III. A. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	50	110	180	270	_____
1st pbl	40	88	138	216	_____
1st	30	66	96	162	_____
2nd	15	33	48	81	_____
3rd	5	11	18	27	_____
MM	1	2	4	6	_____

Prior convictions in excess of four:

- Add 90 for each additional life _____
- Add 78 for each additional 1st pbl _____
- Add 66 for each additional 1st _____
- Add 33 for each additional 2nd _____
- Add 9 for each additional 3rd _____
- Add 2 for each additional MM _____
- Total _____

III. B. Prior DUI Convictions

Add 32 for each prior DUI conviction only where primary offense is DUI manslaughter.

_____ Priors x 32 = _____ Total Points

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	21
Total	_____

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None		0		_____
Slight		7		_____
Moderate		14		_____
Death or severe		21		_____
Total				_____

Rule 3.988(a)
 Category 1: Murder, Manslaughter

Chapter 782 - Homicide (except subsection 782.04(1)(a) - capital murder)

Subsection 316.193(3)(c)(3) - DUI Manslaughter (automobile)

Subsection 327.351(2) - DUI Manslaughter (vessel)

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
66	any nonstate prison sanction	any nonstate prison sanction
67 - 92	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 7 years incarceration
93 - 135	5 (3 - 7)	community control or 1 - 12 years incarceration
136 - 164	10 (7 - 12)	3 - 17
165 - 225	15 (12 - 17)	7 - 22
226 - 285	20 (17 - 22)	12 - 27
286 - 345	25 (22 - 27)	17 - 40
346 - 381	30 (27 - 40)	22 - Life
382 +	Life	27 - Life

Note --- Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1). §921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(b)
Category 2: Sexual Offenses

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	262	314	340	366	_____
1st	216	259	281	302	_____
2nd	158	190	206	222	_____
3rd	149	179	193	204	_____

Primary offense counts in excess of four:

- Add 26 for each additional life _____
- Add 21 for each additional 1st _____
- Add 16 for each additional 2nd _____
- Add 16 for each additional 3rd _____
- Total _____

III. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	264	530	810	1100	_____
1st pbl	211	424	648	880	_____
1st	158	318	486	660	_____
2nd	80	159	243	330	_____
3rd	26	53	81	110	_____
MM	5	10	15	20	_____

Primary convictions in excess of four:

- Add 290 for each additional life _____
- Add 232 for each additional 1st pbl _____
- Add 174 for each additional 1st _____
- Add 87 for each additional 2nd _____
- Add 29 for each additional 3rd _____
- Add 5 for each additional MM _____
- Total _____

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	44	53	69	97	_____
1st pbl	40	48	62	88	_____
1st	36	43	56	78	_____
2nd	26	31	40	56	_____
3rd	25	30	39	55	_____
MM	5	6	8	11	_____

Additional offense counts in excess of four:

- Add 28 for each additional life _____
- Add 26 for each additional 1st pbl _____
- Add 22 for each additional 1st _____
- Add 16 for each additional 2nd _____
- Add 16 for each additional 3rd _____
- Add 3 for each additional MM _____
- Total _____

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	30

Total _____

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
No Contact	0	_____		_____
Contact but no penetration	20	_____		_____
Penetration or slight injury	40	_____		_____
Death or serious injury	85	_____		_____

Total _____

Rule 3.988(b)
Category 2: Sexual Offenses

Chapter 794 - Sexual Battery

Chapter 800 - Lewdness; Indecent Exposure

Section 826.04 - Incest

Section 491.0112 - Sexual Misconduct by a Psychotherapist

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
149 - 169	any nonstate prison sanction	any nonstate prison sanction
170 - 185	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
186 - 207	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
208 - 229	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
230 - 250	5 (4 1/2 - 5 1/2)	3 1/2 - 7
251 - 278	6 (5 1/2 - 7)	4 1/2 - 9
279 - 312	8 (7 - 9)	5 1/2 - 12
313 - 354	10 (9 - 12)	7 - 17
355 - 422	15 (12 - 17)	9 - 22
423 - 486	20 (17 - 22)	12 - 27
487 - 546	25 (22 - 27)	17 - 40
547 - 582	30 (27 - 40)	22 - Life
583 +	Life	27 - Life

Note — Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1). §921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(e)
 Category 5: Burglary

Chapter 810 - Burglary

Subsection 806.13(3) - Criminal Mischief

Section 817.025 - Obtaining Access to a Home or Private Business by False Personation or Representation

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
20 - 46	any nonstate prison sanction	any nonstate prison sanction
47 - 71	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
72 - 90	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
91 - 106	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
107 - 120	5 (4 1/2 - 5 1/2)	3 1/2 - 7
121 - 143	6 (5 1/2 - 7)	4 1/2 - 9
144 - 164	8 (7 - 9)	5 1/2 - 12
165 - 205	10 (9 - 12)	7 - 17
206 - 265	15 (12 - 17)	9 - 22
266 - 325	20 (17 - 22)	12 - 27
326 - 385	25 (22 - 27)	17 - 40
386 - 445	30 (27 - 40)	22 - Life
446 +	Life	27 - Life

Note — Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1). §921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(e)
Category 5: Burglary

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	80	96	104	112	_____
1st pbl	70	84	91	98	_____
1st	60	72	78	84	_____
2nd	30	36	39	42	_____
3rd	20	24	26	28	_____

Primary offense counts in excess of four:

- Add 8 for each additional life _____
- Add 7 for each additional 1st pbl _____
- Add 6 for each additional 1st _____
- Add 3 for each additional 2nd _____
- Add 2 for each additional 3rd _____
- Total _____

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	16	19	21	23	_____
1st pbl	14	16	18	20	_____
1st	12	14	16	17	_____
2nd	6	7	8	9	_____
3rd	4	5	6	7	_____
MM	1	2	3	4	_____

Additional offense counts in excess of four:

- Add 2 for each additional life _____
- Add 2 for each additional 1st pbl _____
- Add 1 for each additional 1st _____
- Add 1 for each additional 2nd _____
- Add 1 for each additional 3rd _____
- Add 1 for each additional MM _____
- Total _____

III. A. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	60	130	210	307	_____
1st pbl	48	104	168	246	_____
1st	36	78	126	184	_____
2nd	18	39	63	90	_____
3rd	6	13	21	30	_____
MM	1	2	3	4	_____

Primary convictions in excess of four:

- Add 97 for each additional life _____
- Add 78 for each additional 1st pbl _____
- Add 58 for each additional 1st _____
- Add 27 for each additional 2nd _____
- Add 9 for each additional 3rd _____
- Add 1 for each additional MM _____
- Total _____

III. B. Same Category Priors

Add 5 for each prior category 5 offense
 _____ Priors x 5 = _____ Total Points

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	10
Total	_____

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None		0		_____
Slight		5		_____
Moderate		10		_____
Death or severe		15		_____
Total				_____

Rule 3.988(f)
Category 6: Thefts, Forgery, Fraud

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	86	103	112	120	_____
1st	70	84	91	98	_____
2nd	35	42	46	49	_____
3rd	13	16	17	18	_____

Primary offense counts in excess of four:

- Add 8 for each additional life _____
- Add 7 for each additional 1st _____
- Add 3 for each additional 2nd _____
- Add 1 for each additional 3rd _____
- Total _____

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	17	20	22	24	_____
1st pbl	16	18	20	22	_____
1st	14	17	18	19	_____
2nd	7	8	9	10	_____
3rd	3	4	5	6	_____
MM	1	2	3	4	_____

Additional offense counts in excess of four:

- Add 2 for each additional life _____
- Add 2 for each additional 1st pbl _____
- Add 1 for each additional 1st _____
- Add 1 for each additional 2nd _____
- Add 1 for each additional 3rd _____
- Add 1 for each additional MM _____
- Total _____

III. A. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	50	110	180	270	_____
1st pbl	40	88	138	216	_____
1st	30	66	96	162	_____
2nd	15	33	48	81	_____
3rd	5	11	18	27	_____
MM	1	2	4	6	_____

Primary convictions in excess of four:

- Add 90 for each additional life _____
- Add 78 for each additional 1st pbl _____
- Add 66 for each additional 1st _____
- Add 33 for each additional 2nd _____
- Add 9 for each additional 3rd _____
- Add 2 for each additional MM _____
- Total _____

III. B. Same Category Priors

Add 5 for each prior category 6 offense

_____ Priors x 5 = _____ Total Points

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	6

Total _____

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	0	_____		_____
Slight	3	_____		_____
Moderate	6	_____		_____
Death or severe	9	_____		_____

Total _____

Rule 3.988(f)
 Category 6: Thefts, Forgery, Fraud

Chapter 322 - Drivers' Licenses
 Chapter 409 - Social and Economic Assistance
 Chapter 443 - Unemployment Compensation
 Chapter 509 - Public Lodging and Public Food Service Establishments
 Chapter 812 - Theft (except section 812.13 - Robbery)
 Chapter 815 - Computer-Related Crimes
 Chapter 817 - Fraudulent Practices
 Chapter 831 - Forgery and Counterfeiting
 Chapter 832 - Worthless Checks

Section 415.11 - Abuse, Neglect or Exploitation of Aged Person or Disabled Adult
 Section 493.3175 - Sale of Property by a Licensee
 Section 192.037 - Escrow Accounts
 Section 206.56 - Theft of State Funds
 Section 370.142 - Lobster Trap Tags
 Section 494.0018 - Mortgage Brokers
 Sections 496.413, 496.417 - Solicitation of Contributions
 Subsections 585.145(3), 585.85(2) - Veterinary Inspection
 Section 687.146 - Loan Brokers

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
13 - 36	any nonstate prison sanction	any nonstate prison sanction
37 - 56	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
57 - 74	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
75 - 90	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
91 - 104	5 (4 1/2 - 5 1/2)	3 1/2 - 7
105 - 122	6 (5 1/2 - 7)	4 1/2 - 9
123 - 146	8 (7 - 9)	5 1/2 - 12
147 - 180	10 (9 - 12)	7 - 17
181 - 240	15 (12 - 17)	9 - 22
241 - 300	20 (17 - 22)	12 - 27
301 - 360	25 (22 - 27)	17 - 40
361 - 420	30 (27 - 40)	22 - Life
421 +	Life	27 - Life

Note — Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1), §921.001(5), Fla. Stat. (Supp. 1988).

Original Proceeding - Florida Rules of Criminal Procedure

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