

Supreme Court of Florida

No. 80,886

ORIGINAL

AMENDMENTS TO FLORIDA RULES OF CRIMINAL PROCEDURE--
SENTENCING GUIDELINES (RULES 3.701 and 3.988).

[February 11, 1993]

PER CURIAM.

The Florida Sentencing Guidelines Commission petitions the Court to amend Florida Rules of Criminal Procedure 3.701 and 3.988. We have jurisdiction pursuant to article V, section 3(a) of the Florida Constitution.

The 1992 Florida Legislature created several new crimes that require amendment to rules 3.701(c) and 3.988.¹ Chapter 92-45, section 8, Laws of Florida, amended section 517.301, Florida Statutes, to make the rendering of any investment advice in the promotion of a fraudulent scheme a third-degree felony. Chapter

¹ The amendments to the forms in Florida Rule of Criminal Procedure 3.988 are appended to this opinion.

92-67, section 1, Laws of Florida, amended section 231.06, Florida Statutes, to add elected school district officials to the list protecting school board employees from assault or battery. Chapter 92-69, sections 5 and 47, Laws of Florida, amended section 499.069, Florida Statutes, to provide that violations of new subsections of section 499.005, Florida Statutes, relating to the regulation of drugs and cosmetics are third-degree felonies. Based on these statutory changes, and to conform the guidelines to those changes, categories 4, 6, and 7 of rule 3.701(c) are amended to read as follows:

Category 4: Violent personal crimes:
Section 231.06, ~~€~~chapters 784 and 836, section 843.01, **and** subsection 381.411(4).

* * *

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, chapter 509, subsection 517.301(1)(a), 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: Section 499.005 and €chapter 893.

Other amended statutes are already contained in rules 3.701(c) and 3.988 and do not require amendment of those rules.²

² E.g., ch. 92-50, § 1, Laws of Fla. (amending § 784.08(2), Fla. Stat., enhanced penalties for assault or battery committed on a person over the age of 65); ch. 92-73, §§ 3, 4, Laws of Fla. (amending §§ 943.0585(1) and 943.059(1), Fla. Stat., relative to expunction and sealing of criminal records); ch. 92-79, §§ 1, 6, Laws of Fla. (amending §§ 812.014(2)(d) and 812.15, Fla. Stat.,

In response to our request in Bunney v. State, 603 So.2d 1270 (Fla. 1992), the commission recommends that rule 3.701(d) be amended to provide that a sentencing court be allowed to impose any sentence allowed by law where the offender is being sentenced for a capital felony and other noncapital felonies arising from the same criminal episode. Thus, the death would be scored as victim injury, and the court could also impose a departure sentence. This change in the reasons for departure is procedural, and we amend rule 3.701(d)(12) to read as follows:

(12) A sentence must be imposed for each offense. However, the total sentence cannot exceed the total guidelines sentence unless a written reason is given, Where the offender is being sentenced for a capital felony and other noncapital felonies that arose out of the same criminal episode or transaction, the sentencing court may impose any sentence authorized by law for **the** noncapital felonies.

As another procedural change, the commission recommends that the commission note to rule 3.701(c) be amended to clarify that attempts, solicitations, or conspiracies to commit first-degree murder be scored in category 1 and that attempts,

relating to petit theft and to obtaining personal property by trick or false pretenses); ch. 92-83, § 1, Laws of Fla. (amending § 827.071(5), Fla. Stat., regarding possession of material depicting sexual conduct by a child); ch. 92-30, §§ 1, 4, Laws of Fla. (creates §§ 790.115 and 810,095, Fla. Stat., regarding possession of weapons or firearms on school property); ch. 92-141, § 1, Laws of Fla. (adding definitions of proscribed ammunition to § 790.31, Fla. Stat.); ch. 92-155, § 3, Laws of Fla. (creating § 812.15, Fla. Stat., regarding unauthorized reception of cable services); and ch. 92-208, § 1, Laws of Fla. (creates § 784.048, Fla. Stat., regarding stalking).

solicitations, or conspiracies to commit capital sexual batteries be scored in category 2. We agree and amend the first unnumbered paragraph of the commission note on paragraph (c) to read as follows:

Inchoate offenses are included within the category of the offense attempted, solicited, or conspired to, as modified by chapter 777. An attempt, solicitation, or conspiracy to commit first-degree murder as defined in subsection 782.04(1)(a) shall be scored in category 1. an attempt, solicitation, or conspiracy to commit capital sexual battery as defined in subsection 794.011(2) shall be scored in category 2.

The commission has also proposed two other amendments. First, the commission recommends that paragraph (d)(1) of rule 3.701 be amended to provide for consideration of habitual felony or habitual violent felony offenders to prevent an artificial lowering of recommended sentence:

(1) One guideline scoresheet shall be utilized for each defendant covering all offenses pending before the court for sentencing, including offenses for which the defendant has been adjudicated as an habitual felony offender or an habitual violent felony offender. The state attorney's office will prepare the scoresheets and present them to defense counsel for review as to accuracy in all cases unless the judge directs otherwise. The sentencing judge shall approve all scoresheets.

Second, the commission recommends amending the committee note to rule 3.701(d)(7) as follows regarding scoring victim trauma in sexual offenses:

(d)(7) This provision implements the intention of the commission that points far victim injury be added for each victim injured during a criminal transaction or episode. The injury need not be an element of the crime far

which **the** defendant is convicted, but is limited to physical trauma. Physical trauma shall include penetration and sexual contact. However, if the victim injury is the result of a crime for which **the** defendant has been acquitted, it shall not be scored.

These last two proposals, however, are more substantive than procedural and cannot be summarily enacted by this Court,

Therefore, we adopt the proposed revisions to rule 3.701(c) and (d)(12) and to the commission note on paragraph (c), effective immediately on filing of this opinion. The proposed revisions to rule 3.701(d)(1) and to paragraph (d)(7) are to be transmitted to the legislature for consideration during its 1993 regular session and will become effective only upon being implemented by the legislature.

It is so ordered.

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

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

Rule 3.988(d)
Category 4 Violent Personal Crimes

I. Primary Offense at Conviction

Degree	counts				Points
	1	2	3	4	
1st	147	176	191	206	_____
2nd	105	126	136	146	_____
3rd	73	88	95	102	_____

Primary offense counts in excess of four:
 Add 15 for each additional 1st _____
 Add 10 for each additional 2nd _____
 Add 7 for each additional 3rd _____
 Total _____

II. Additional Offenses at Conviction

Degree	counts				Points
	1	2	3	4	
1st	29	35	38	41	_____
2nd	21	25	27	29	_____
3rd	15	18	20	21	_____
MM	3	4	5	6	_____

Additional offense counts in excess of four:
 Add 3 for each additional 1st _____
 Add 2 for each additional 2nd _____
 Add 1 for each additional 3rd _____
 Add 1 for each additional MM _____
 Total _____

III. Prior Record

Degree	counts				Point3
	1	2	3	4	
Life	50	110	160	270	_____
1st pbl	40	88	128	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 88 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 _____

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	36
Total	_____

V. Victim Injury (physical)

Degree of Injury	X	Number	=	Points
None	0	_____		_____
Slight	12	_____		_____
Moderate	24	_____		_____
Death or severe	36	_____		_____
Total				_____

Rule 3.988(d)
Category 4 Violent Personal Crimes

Section 231.06 - Assault or **Battery** Upon District School Board Employee

Chapter 784 - Assault, Battery

Section **836.05 - Threats**, Extortion

Section 836.10 - Written **Threats** to Kill or Do Bodily Injury

Section 843.01 - **Resisting** Officer with Violence

Subsection 381.411(4)(b) - Battery on HRS Employee

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
73 - 112	any nonstate prison sanction	any nonstate prison sanction
113 - 154	community control or 12-30 months incarceration	any nonstate prison sanction or community control or 1- 3 1/2 years incarceration
155 - 176	3 (21/2 - 31/2)	community control or 1 - 4 1/2 years incarceration
177 - 192	4 (31/2 - 41/2)	2 1/2 - 5 1/2
193 - 206	5 (41/2 - 51/2)	3 1/2 - 7
207 - 228	6 (51/2 - 7)	4 1/2 - 9
229 - 254	8 (7- 9)	5 1/2 - 12
255 - 292	10 (9-12)	7-17
293 - 352	15 (12- 17)	9-22
353 - 412	20 (17 - 22)	12- 27
413 - 472	25 (22- 27)	17- 40
473 +	30 (27- 40)	22-40

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 ins. 921.005(1), §921.001(5), Fla. Stat. (Supp. 1988).

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	1	1	2	1	3	1	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	37	_____				
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. 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

V. Victim Injury (physical)

Degree of Inj	X	Number	=	Points
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 192.037 - Escrow Accounts
Section 206.56 - Theft of State Funds
Section 370.142 - Lobster Trap Tags
Section 415.11 - Abuse, Neglect or Exploitation of Aged Person or Disabled Adult
Section 493.3175 - Sale of Property by a Licensee
Section 494.0018 - Mortgage Brokers
Section 496.413, 496.417 - Solicitation of Contributions
Section 517.301(1)(a) - Fraudulent Securities Transactions
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 ins. 921.005(1), §921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(g)
Category 7 Drugs

I. Primary Offense at Conviction

Degree	counts				Points
	1	2	3	4	
Life	151	181	196	211	_____
1st	137	164	178	192	_____
2nd	65	78	84	91	_____
3rd	42	50	55	59	_____

Primary offense counts in excess of four:

- Add 15 for each additional life _____
- Add 14 for each additional 1st _____
- Add 7 for each additional 2nd _____
- Add 4 for each additional 3rd _____

Total _____

II. Additional Offenses at Conviction

Degree	counts				Points
	1	2	3	4	
Life	30	36	39	42	_____
1st pbl	28	34	37	40	_____
1st	27	32	35	38	_____
2nd	13	16	17	18	_____
3rd	8	10	11	12	_____
MM	2	3	4	5	_____

Additional offense counts in excess of four:

- Add 3 for each additional life _____
- Add 3 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. Prior Record

Degree	counts				Points
	1	2	3	4	
Life	60	130	210	300	_____
1st pbl	48	104	168	240	_____
1st	36	78	126	180	_____
2nd	18	39	63	90	_____
3rd	6	13	21	30	_____
MM	1	2	3	4	_____

Prior convictions in excess of four:

- Add 90 for each additional life _____
- Add 72 for each additional 1st pbl _____
- Add 54 for each additional 1st _____
- Add 27 for each additional 2nd _____
- Add 9 for each additional 3rd _____
- Add 1 for each additional MM _____

Total _____

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	14
Total	_____

V. Victim Injury (physical)

Degree of Inj	X	Number	Points
Moderate	10	_____	_____
Death or severe	15	_____	_____
Total		_____	_____



**Rule 3.988(g)
Category 7 Drugs**

**Section 499.005 - Regulation of Drugs and Cosmetics
Chapter 893 - Drugs**

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
42-75	any nonstate prison sanction	any nonstate prison sanction
76 - 113	community control or 12-30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
114- 133	3 (21/2- 31/2)	community control or 1 - 4 1/2 years incarceration
134- 147	4 (31/2- 41/2)	2 1/2- 5 1/2
148- 162	5 (41/2- 5 1/2)	3 1/2- 7
163- 184	6 (51/2- 7)	4 1/2- 9
185- 208	8 (7- 9)	5 1/2- 12
209 - 244	10 (9-12)	7-17
245 - 304	15 (12- 17)	9-22
305 - 364	20 (17- 22)	12- 27
365 - 424	25 (22- 27)	17- 40
425 - 483	30 (27- 40)	22 - Life
484 +	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 -
Sentencing Guidelines

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