

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF CRIMINAL PROCEDURE –
RULE 3.992**

CASE NO.

PETITION TO AMEND FLORIDA RULE OF CRIMINAL PROCEDURE 3.992(a)

The Criminal Court Steering Committee, by and through the undersigned Chair of the Committee, the Honorable O. H. Eaton, Jr., Circuit Court Judge, Eighteenth Judicial Circuit, files this petition pursuant to *Fla. R. Jud. Admin.* 2.140(a), and Supreme Court Administrative Order AOSC06-50, to amend Florida Rule of Criminal Procedure 3.992(a). The proposed amended rule is attached at Appendix A. The amendments are shown as strike throughs and underlines. The proposed amendment has not been published in *The Florida Bar News* for comment. Rule 3.992(b) (Supplemental Criminal Punishment Code Scoresheet) is also attached as part of Appendix A. There are no proposed changes to this portion of the rule.

Section 921.0024(4), Florida Statutes (2007), requires the Department of Corrections, in consultation with the Office of the State Courts Administrator, state attorneys, and public defenders, to develop and submit a revised Criminal Punishment Code scoresheet to the Supreme Court for approval.

The Department of Corrections wrote a letter to the Chief Justice of the Florida Supreme Court dated June 12, 2008. In the letter, the department advised the Court that the Public Defender of the Seventeenth Judicial Circuit, and the State Attorney of the Seventeenth Circuit, recommended changes to Rule 3.992(a), Criminal Punishment Code Scoresheet. The letter from the department is attached at Appendix B. The recommendations and comments of the committee are set forth below.

The Public Defender of the Seventeenth Judicial Circuit has recommended an amendment to subdivision V of the rule as shown by the underlined text.

V. Legal Status = 4 points (does not apply to technical violations of probation)

The committee, by a unanimous vote, recommends that subdivision V of the rule remain unchanged. Legal status points (subdivision V) are assessed when

“any form of legal status existed at the time the offender committed an offense before the court for sentencing.” See s. 921.0024(1)(b), Florida Statutes (2007). The Criminal Punishment Code Scoresheet Preparation Manual defines “legal status points” as follows:

“Escapes from incarceration; flees to avoid prosecution; fails to appear for a criminal proceeding; violates any condition of a supersedeas bond; is incarcerated; is under any form of a pretrial intervention or diversion program; or is under any form of court-imposed or post-prison release community supervision and commits an offense that results in a conviction.”

“Legal status” violations are distinct from “community sanction” violations covered in subdivision VI of the rule. It is clear that a “technical violation” of probation or community control would fall under section VI of the scoresheet as part of a community sanction violation. What sets section V apart from section VI is the fact that for section V to apply, the offender must be in a defined “status” in order for the court to assess 4 points on the scoresheet. Since the difference between the two subdivisions is clear, the suggestion of the public defender to add “does not apply to technical violations of probation” in the rule potentially blurs the distinction between subdivisions V and VI.

The public defender suggests that the following underlined text be added to subdivision VI of the rule as follows:

VI. Community Sanction violation before the court for sentencing

6 points for technical violation of probation x _____ each successive violation OR

New felony conviction = 12 points x _____ each successive violation if new felony results in conviction before or at same time as sentence for violation of probation OR

12 points x _____ each successive violation for a violent felony offender of special concern when the violation is not based solely on failure to pay costs, fines or restitution OR

New felony conviction = 24 points x _____ each successive violation for a violent felony offender of special concern if new offense results in a conviction before or at the same time as the sentence for violation of probation

The proposal of the public defender is shown in rule form and is attached at Appendix C.

The committee, by a unanimous vote, has adopted the recommendations of the public defender with regard to subdivision VI, with some modifications, as noted below. The recommendation of the committee is as follows.

VI. Community Sanction violation before the court for sentencing

6 points for any violation other than new felony conviction x _____
each successive violation OR

New felony conviction = 12 points x _____ each successive violation
if new offense results in conviction before or at same time as sentence for violation of probation OR

12 points x _____ each successive violation for a violent felony
offender of special concern when the violation is not based solely on failure to pay costs, fines or restitution OR

New felony conviction = 24 points x _____ each successive violation
for a violent felony offender of special concern (if new offense results in a conviction before or at the same time for violation of probation)

The committee believes that amending subdivision VI of the rule will give clearer guidance to practitioners in preparing the scoresheet. The committee has modified the recommendation of the public defender. Section 921.0024(1)(b), Florida Statutes (2007), does not use the term “technical violation” with regard to assessing 6 points for a community sanction violation. The committee opted to use the term “any violation other than new felony conviction.” The public defender recommendation adds the word “felony” to that portion of subdivision VI of the rule regarding the assessment of 12 sentencing points. The committee opted to use the word “offense” since the word “felony” already appears in the sentence. The remainder of the recommendations of the public defender has been adopted by the committee.

The State Attorney for the Seventeenth Judicial Circuit has objected to any changes to subdivision V and VI of the rule. It is the position of the state attorney that the recommendations of the public defender are not technical in nature. The state attorney has noted that definitions for the Criminal Punishment Code are found in Chapter 921 of the Florida Statutes and the Florida Rules of Criminal

Procedure, both of which have been interpreted by the courts through case law. Amending subdivisions V and VI may result in conflicting interpretations and are not necessary. The state attorney did recommend one change to subdivision IV (Prior Record) of the rule. Since the prior record of the offender includes both misdemeanors as well as felonies, the lack of additional lines under subdivision IV requires prosecutors to use the supplemental scoresheet (Rule 3.992(b)). The committee unanimously agreed that additional lines should be added to subdivision IV of the scoresheet. However, if more than one additional line were to be added, it would be necessary to expand the scoresheet from two to three pages. Therefore, the committee has expanded the form to include the entry of one additional offense as part of the prior record of the offender. Although it is not possible to show the additional line by underlining in Appendix A, there are now nine check boxes for the prior record, rather than eight as shown on the current form.

The committee has voted unanimously to amend subdivision IX of the rule to conform the form to the statutory language found in s. 921.0024(1)(a), Florida Statutes, 2007. The changes are shown below.

IX. Enhancements (only if the primary offense qualifies for enhancement)

Law Enforcement Protection is changed to Law Enf. Protect. Grand Theft Motor Vehicle now reads Motor Vehicle Theft. Street Gang has been changed to Criminal Gang Offense. Chapter 2008-238, Laws of Florida, amended s. 921.0024(1)(a), Florida Statutes (2007), by striking the word "Street" from "Criminal Street Gang Offense." Chapter 2008-238, Laws of Florida, is attached at Appendix D. Domestic Violence has been amended to read Domestic Violence in the Presence of Related Child.

Finally, the committee has voted unanimously to include the Department of Corrections link to the scoresheet manual, as shown below.

The Criminal Punishment Code Scoresheet Preparation Manual is available at: http://www.dc.state.fl.us/pub/sen_cpcm/index.html.

Respectfully submitted this _____ day of July, 2008.

THE HONORABLE O. H. EATON, JR.
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Chair, Criminal Court Steering Committee
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CERTIFICATE OF FONT SIZE

I hereby certify that this petition has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

THE HONORABLE O. H. EATON, JR.
Chair, Criminal Court Steering Committee
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