

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA
RULES OF CRIMINAL PROCEDURE

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 AOSC08-30, to amend Florida Rule of Criminal Procedure 3.992(a). The proposed amended rule is attached at Appendix A. The applicable chapter law is attached at Appendix B. The amendments are shown with underlining. The proposed amendments have not been published in *The Florida Bar News* for comment.

Section 921.0024(4), Florida Statutes (2008), 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 no later than June 15 of each year. Upon approval by the court, the department has until September 30 of each year to provide copies of the revised scoresheet to those persons charged with the responsibility for preparing scoresheets.

The Department of Corrections wrote a letter to the Chief Justice of the Florida Supreme Court dated June 1, 2009. The letter is attached at Appendix C. The department recommended one amendment to the scoresheet in light of the enactment of Senate Bill 1722 passed in the 2009 legislative session. Senate Bill 1722 was approved by the Governor on May 27, 2009, and codified as Chapter 2009-63, Laws of Florida. No recommendations for change were received from either the state attorneys or public defenders. The committee agrees with the recommended change as submitted by the department to the court.

Chapter 2009-63 amends s. 775.082, Florida Statutes (2008), by adding subsection (10). The additional language reads as follows:

“(10) If a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third-degree felony but not a forcible felony as defined in s. 776.08, and excluding any third-degree felony violation under chapter 810, and if

the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.”

This statutory change affects that portion of rule 3.992(a) that addresses the sentence computation. The existing language states:

SENTENCE COMPUTATION

“If the total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction”

The committee recommends that the sentence be amended to read:

If the total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction. If the total sentence points are 22 points or less, see Section 775.082(10), Florida Statutes, to determine if the court must sentence the offender to a non-state prison sanction.

The committee also received a recommendation to amend rule 3.992 from the Honorable Charles Alan Lawson from the Fifth District Court of Appeal. Judge Lawson noted that Chapter 2009-63, Laws of Florida, establishes a prison diversion program by creating s. 921.00241, Florida Statutes (2009). Under this new statute, if an offender scores more than 44 points (which would produce a minimum state prison sanction under the Criminal Punishment Code), he or she can still receive a nonstate prison sanction with a condition of participation in a prison diversion program. In order to qualify for the diversion program, the offense before the court must be a third degree felony and the total sentencing points cannot exceed 48 (or 54 points if six of the points are for a violation of probation, community control, or other community supervision), and the offender has not been previously convicted of a forcible felony. Judge Lawson suggested that a check box be included under the “Total Sentence Imposed” section of the rule to show that the defendant was sentenced to a nonstate prison sanction by being placed in a diversion program. The committee agrees with the recommendation.

The amendments to rule 3.992(a) track the statutory language as closely as possible. The suggested changes have not been published in *The Florida Bar*

News for two reasons. First, the changes to the rule have no substantive impact on the preparation of the scoresheet. Second, the deadline for the department to prepare and disseminate scoresheets is September 30 of each year. It would be extremely difficult, if not impossible, for the suggested amendments to be published for comments, allow a comment period of thirty days, and then submit the proposed changes to the court with an expectation that the court could enter an opinion no later than September 30th. This would be true even if the court handled the petition on an expedited basis. The committee recommends that the court issue an opinion approving the amendments to rule 3.992(a), but permitting time for the filing of comments with the court before the opinion becomes final.

Respectfully submitted this _____ day of June, 2009.

THE HONORABLE O. H. EATON, JR.
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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).

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