

## IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO FLORIDA  
RULE OF CRIMINAL PROCEDURE  
3.992(A)--CRIMINAL PUNISHMENT CODE  
SCORESHEET**

**CASE NO.: SC09-1053**

### **COMMENT OF THE SUPREME COURT CRIMINAL COURT STEERING COMMITTEE**

The Criminal Court Steering Committee (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 comment pursuant to a request for comments by the Court in the above styled cause.

The Steering Committee filed a petition with the Court on June 23, 2009, to amend rule 3.992(a) – Criminal Punishment Code Scoresheet. On July 20, 2009, staff for the committee was contacted by the Department of Corrections. The department advised that the 2009 Florida Legislature had enacted new legislation that could possibly affect subdivision (b) of rule 3.992. Rule 3.992(b) is commonly referred to as the Supplemental Criminal Punishment Code Scoresheet. The supplement provides additional space to include additional offenses at conviction, and the prior record of the defendant, when there is not enough space available on the Criminal Punishment Code Scoresheet form set out in rule 3.992(a). The supplemental scoresheet also contains a section titled “Reasons for Departure – Mitigating Circumstances.” Section 921.0026(1), Florida Statutes (2008), prohibits a downward departure from the lowest permissible sentence unless there are circumstances or factors that reasonably justify the downward departure. Mitigating factors to be considered include, but are not limited to, those listed in subsection (2) of s. 921.0026(1). The supplemental scoresheet lists all of these statutory mitigators, and includes a check box for the court to note which mitigators apply.

Committee Substitute for Senate Bill No. 1726 was approved by the Governor on May 27, 2009. This bill is now codified as Chapter 2009-64, Laws of Florida. The effective date of the chapter law is July 1, 2009. The chapter law is attached at Appendix B. Among other provisions, s. 921.0026(2), Florida Statutes (2008), has been amended to include the following new language that is underlined.

(2) Mitigating circumstances. – This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(m) The defendant’s offense is a nonviolent felony, the defendant’s Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For the purposes of this paragraph, the term “nonviolent felony” has the same meaning as provided in s. 948.08(6).

(3) Except as provided in paragraph (2)(m), the defendant’s substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and does not, under any circumstances, justify a downward departure from the permissible sentencing range.

The Department of Corrections has recommended that the Supplemental Criminal Punishment Code Scoresheet be amended to incorporate this new legislation. The Steering Committee agrees with the recommendation as set forth in the proposed amendment shown below, and attached as Appendix A.

**Reasons for Departure – Mitigating Circumstances  
(reasons may be checked here or written on the scoresheet)**

The defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program.

Pursuant to s. 921.0026(3) the defendant’s substance abuse or addiction does not justify a downward departure from the lowest permissible sentence, except for the provisions of s. 921.0026(2)(m).

The Steering Committee does not believe it is necessary to incorporate verbatim the statutory language found in s. 921.0026(2)(m) into the rule. Both the state and the defense will be able to advise the court if the defendant qualifies for a postadjudicatory treatment-based drug court program based on the nature of the offense before the court, and the total sentencing points that appear on the Criminal Punishment Code scoresheet.

The Steering Committee respectfully requests that the Court amend rule 3.992(b) as outlined in this comment.

Respectfully submitted this \_\_\_\_ day of September, 2009.

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THE HONORABLE O. H. EATON, JR.  
Circuit Court Judge, Eighteenth Judicial Circuit  
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## **CERTIFICATE OF FONT SIZE**

I hereby certify that this comment 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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**THE HONORABLE O. H. EATON, JR.**  
Chair, Criminal Court Steering Committee  
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