



June Appendix

Criminal Punishment Code Task Force Subcommittee Recommendations

Non-Prison Sanctions

NPS-4: A) Establish or expand adult prearrest diversion programs in each judicial circuit that incorporate evidence-based interventions and treatment services.

B) Outline a broad set of guidelines within the statutes based on standards set by the Steering Committee on Problem Solving Courts and approved by the Florida Supreme Court. These guidelines will act as a roadmap for State Attorneys, courts, and other important justice stakeholders to follow when developing problem solving courts in their respective circuits.

Scoresheets

P-Scoresheets (SS)-1: Resolved that an Enhancement in Part IX should not be used if the enhancement is identical to an element of the Primary Offense of conviction. Instead, the Offense Level for each offense that involves an element identical to any Enhancement should be increased to reflect the failure to apply the multiplier, so this change does not reduce the total number of points a defendant would receive.

P-SS-2: Resolved that, in Part V of the Scoresheet concerning Legal Status Violations, the Escape and Failure to Appear enhancements should be eliminated. The Offense Level for each offense that involves Escape or Failure to Appear as an element should be addressed to reflect the failure to add these points. This change does not reduce the total number of points a defendant who commits these offenses would receive.

P-SS-3: Resolved that Victim Injury Point Adjustments in Part III should not be applied to any offense for which the basis for the adjustment is identical to an element. Instead, the Offense Level for each offense that involves an element identical to any Victim Injury Point Adjustment should be adjusted to reflect the failure to apply the adjustment. This change does not reduce the total number of points a

defendant would receive. Pursuant this recommendation, the Victim Injury Enhancements for Second-Degree Murder, Death, Severe Injury, Sexual Penetration, and Sexual Contact would be deleted. The Victim Injury Enhancements for Moderate Injury and Slight Injury would be retained.

SS-4:-This recommendation has been withdrawn by the subcommittee after further discussion.

P-SS-5: State Attorneys shall ensure that score sheets are completed accurately, with all legally required enhancements, multipliers, and other adjustments consistently applied. The Task Force recommends that the Florida Supreme Court require the use of an electronic, computer-based scoresheet program that has been developed by the Department of Corrections, or another materially identical or superior program, that automatically populates points and applies enhancements, multipliers, and other adjustments. The Attorney General should also compile a "best practices" guide to assist State Attorneys in implementing a uniform sentencing system."

SS-6: The subcommittee reviewed the following caselaw regarding downward departures. The subcommittee had an opportunity to suggest to the Legislature the codification of current caselaw or to take no action, leaving interpretation to the courts.

* Issues 1, 5-10 were voted on at the previous task force meeting.

ISSUE #2 Tabled

In light of the Florida Supreme Court's holding in *State v. Rife*, 789 So.2d 288 (Fla. 2001) should section 921.0026(2)(f) be amended to reflect the holding in *Rife*?

Amend section 921.0026(2)(f) to state he victim, including a minor, was the initiator, willing participant, aggressor, or provoker of the incident

or

should section 921.0026(2)(f) be amended to expressly prohibit the trial court from imposing a downward departure pursuant to section 921.0026(2)(f) if the victim is a minor?

The subcommittee considered the caselaw and concluded to take no action.

P-ISSUE #3

Should section 921.0026(2)(e) be amended to require evidence of the following:

- the nature of the victim's loss, including the impact of the crime on the victim;
- the effectiveness of restitution, including the defendant's ability to pay restitution and the impact of the restitution plan on the victim; and
- the consequences of imprisonment?

The subcommittee considered the caselaw and concluded to take no action.

P-ISSUE #4

Is it ever possible for DUI manslaughter to be committed in an unsophisticated manner when it is not a sophisticated crime? See *State v. Warner*, 721 So.2d 767 (Fla. 4th DCA 1998), *State v. VanBebber*, 805 So.2d 918 (Fla. 2d DCA 2001), and *State v. VanBebber*, 848 So.2d 1046 (Fla. 2003).

The subcommittee considered the caselaw and concluded to take no action.

SS -7a: Increasing the number of offense levels

Resolved that the Legislature should increase the number of offense levels used to determine the number of points assigned to each offense. The Criminal Punishment Code currently classifies offenses into ten (10) different offense levels. More offense levels are necessary to ensure the accurate classification of offenses based on severity of the consequences each entails, the amount of money or quantities of goods or illicit substances involved, vulnerability of the victims, risk to public safety, and other relevant considerations. The number of offense levels should be increased to sixteen (16), along with four (4) additional enhanced offense levels to reflect the elimination of many sentencing enhancements and multipliers. Points should be attributed to each offense level as follows:

Current System

Existing Offense Level	Current Points
1	4
2	10
3	16
4	22
5	28
6	36
7	56
8	74
9	92
10	116
<p><i>Levels 1 – 4 (22 or less points): non-prison sanction may be required</i></p> <p><i>Levels 1 – 6 (44 or less points): non-prison sanction possible</i></p> <p><i>Levels 7 – 10 (over 44 points): prison sentence required</i></p>	

Potential New System

New Offense Level	Recommended Points
1	4
2	8
3	12
4	16
5	22
6	28
7	36
8	46
9	52
10	60
11	68
12	76
13	84
14	92
15	108
16	124
17	140
18	180
19	240
20	360
<p>White background: general offense levels Grey background: enhanced offense levels to reflect eliminating large enhancements</p> <p><i>Levels 1 – 5 (22 or less points): non-prison sanction may be required</i></p> <p><i>Levels 1 – 7 (44 or less points): non-prison sanction possible</i></p> <p><i>Levels 8 – 16 (over 44 points): prison sentence required</i></p>	

SS-7b: Increasing the number of felony degrees

Resolved that the Legislature should increase the number of felony degrees into which crimes are sorted, so that the maximum statutorily authorized penalty is more specifically and accurately calibrated to the severity of the consequences each offense entails, the amount of money or quantities of goods or illicit substances involved, vulnerability of the victims, risk to public safety, and other relevant considerations.

SS-7c: Recategorize offenses based on offense level

Resolved that certain offenses have been assigned inappropriate offense levels, because those offense levels are either disproportionately harsh or unreasonably lenient in light of the magnitude and severity of the harm and risks the offenses cause. Offense levels for certain offenses should be increased or decreased, as appropriate, to more accurately reflect the gravity of those offenses and the harm they cause. In adjusting offense levels, offenses in which the statute includes additional aggravating factors or circumstances should be assigned a higher offense level than the 'base' offense that does not involve such aggravating factors.

Withdrawn-SS-8: Move Prior Serious Felony points to Prior Records Points

Resolved that additional points should not be added for a Serious Felony in Part VIII. Instead, the Prior Record points in Part IV for offenses that qualify as serious felonies for Prior Release Reoffenders ("PRR") should be increased to reflect the failure to apply this adjustment.

Under the current offense level system, these adjustments should be made as follows:

Offense Level	Current Prior Record Points in Part IV	Revised Prior Record Points in Part IV for Prior Release Reoffenders to Offset Eliminating Part VIII
8	19	37 (<i>i.e.</i> , add 18 points to current adjustment)
9	23	47 (<i>i.e.</i> , add 24 points to current adjustment)
10	29	59 (<i>i.e.</i> , add 30 points to current adjustment)

The amount of the enhancement for Serious Felonies would generally be less under this proposal, but a defendant would be receiving it for **each prior serious felony**, potentially receiving a greater total number of points as a result.

Part IV of the Scoresheet should be adjusted as follows:

(Level =Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

(For Prior Release Reoffenders, Level = Points: 8=37, 9=47, 10=59)

SCORESHEET ENHANCEMENTS AND MULTIPLIERS

This document reflects changes that would have to be made to the offense levels for various offenses in order to:

- (i) eliminate certain enhancements and multipliers from the scoresheet, while
- (ii) ensuring that defendants who commit such acts receive approximately the same number of points as they would have scored as a result of those enhancements and multipliers.

Current System

Existing Offense Level	Current Points
1	4
2	10
3	16
4	22
5	28
6	36
7	56
8	74
9	92
10	116
<i>Levels 1 – 4 (22 or less points): non-prison sanction may be required</i>	
<i>Levels 1 – 6 (44 or less points): non-prison sanction possible</i>	
<i>Levels 7 – 10 (over 44 points): prison sentence required</i>	

Potential New System

New Offense Level	Recommended Points
1	4
2	8
3	12
4	16
5	22
6	28
7	36
8	46
9	52
10	60
11	68
12	76
13	84
14	92
15	108
16	<u>124</u>
17	140
18	180
19	240
20	360
White background: general offense levels Grey background: enhanced offense levels to reflect eliminating large enhancements	
<i>Levels 1 – 5 (22 or less points): non-prison sanction may be required</i>	
<i>Levels 1 – 7 (44 or less points): non-prison sanction possible</i>	
<i>Levels 8 – 16 (over 44 points): prison sentence required</i>	

DRAFT

PART III OF SCORESHEET: VICTIM INJURY ENHANCEMENTS

RECOMMENDATION 1(a): Remove the *Second-Degree Murder*, *Death*, *Severe Injury*, *Sexual Penetration*, and *Sexual Contact* enhancements in Part III from the scoresheet. Offense levels for the offenses to which these enhancements apply should then be increased in the accompanying chart to offset elimination of these enhancements.

RECOMMENDATION 1(b): Retain the *Moderate Injury* (18 points) and *Slight Injury* (4 points) Enhancements, since they do not constitute elements of any offenses.

Second Degree Murder (240 points)

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Fla. Stat. 782.071 – Killing of human or unborn child w/ reckless driving (veh manslaughter)
(level 13, #11)

Currently level 7 out of 10 (56 points) + 120-point enhancement = 176 points
Current version of suggested chart: Level 13 out of 16 (84 points)
Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 782.072 – Killing of human with reckless driving of vessel (level 13, #12)
Currently level 7 out of 10 (56 points) + 120-point enhancement = 176 points
Current version of suggested chart: Level 13 out of 16 (84 points)
Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 316.193(3)(c)3.a – DUI Manslaughter (level 14, #2)
Currently level 8 out of 10 (74 points) + 120-point enhancement = 194 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 316.193(3)(c)3.b – DUI Manslaughter + Failure to Render Aid or Give Information
(level 14, #3)

Currently level 9 out of 10 (92 points) + 120-point enhancement = 212 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 19 out of 20 (240 points)
NOTE: This is a more serious offense than DUI Manslaughter alone (discussed above)

Fla. Stat. 316.1935(3)(b) – Causing SBI/Death while driving at high speed to evade law enforcement with siren and lights activated (level 14, #4)

Currently level 7 out of 10 (56 points) + 120-points = 176 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 327.35(3)(c)3.b – BUI Manslaughter + Failure to Render Aid or Give Information
(level 14, #5)

Currently level 9 out of 10 (92 points) + 120-point enhancement = 212 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 19 out of 20 (240 points)
NOTE: This is a more serious offense than BUI Manslaughter alone (discussed below)

Fla. Stat. 327.35(3)(c)3 – Vessel BUI Manslaughter (level 14, #6)
Currently level 8 out of 10 (74 points) + 120-point enhancement = 194 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 782.07(2) – Aggravated manslaughter of elderly or disabled adult (level 14, #11)
Currently level 9 out of 10 (92 points) + 120-point enhancement = 212 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 19 out of 20 (240 points)

Fla. Stat. 782.071(1)(b) – Committing vehicular homicide and failing to render aid or give information (level 14, #12)

Currently level 8 out of 10 (74 points) + 120-point enhancement = 194 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 782.072(2) – Committing vessel homicide and failing to render aid or give information (level 14, #13)

Currently level 8 out of 10 (74 points) + 120-point enhancement = 194 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 499.0051(9) – Knowing sale or purchase of contraband prescription drugs resulting in death (level 15, #1)

Currently level 10 out of 10 (116 points) + 120-point enhancement = 236 points
Current version of suggested chart: Level 15 out of 16 (108 points)
Necessary new ranking: Level 19 out of 20 (240 points)

Fla. Stat. 782.04(3) – Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies (level 15, #2)

Currently level 9 out of 10 (92 points) + 120-point enhancement = 212 points
Current version of suggested chart: Level 15 out of 16 (108 points)
Necessary new ranking: Level 19 out of 20 (240 points)

Fla. Stat. 782.07(3) – Aggravated manslaughter of a child (level 16, #2)

Currently Level 10 out of 10 (116 points) + 120-point enhancement = 236 points
Current version of suggested chart: Level 16 out of 16 (124 points)
Necessary new ranking: Level 19 out of 20 (240 points)

Severe Injury (40 points)

Fla. Stat. 322.34(6) – Carelessly operating a motor vehicle with suspended license, resulting in death or serious bodily injury (level 6, #5)

Currently Level 5 out of 10 (28 points) + 40-point enhancement = 68 points

Current version of suggested chart: Level 6 out of 16 (28 points)

Necessary new ranking: Level 11 out of 20 (68 points)

Fla. Stat. 944.35(3)(a)2 – Malicious Battery / Inhuman Treatment on Inmate or Offender on Community Supervision Resulting in Great Bodily Harm (level 7, #55)

Currently Level 6 out of 10 (36 points) + 40-point enhancement = 76 points

Current version of suggested chart: Level 7 out of 16 (36 points)

Necessary new ranking: Level 12 out of 20 (76 points)

Fla. Stat. 316.193(3)(c)2 – DUI Resulting in Serious Bodily Injury (level 9, #2)

Currently Level 7 out of 10 (56 points) + 40-point enhancement = 96 points

Current version of suggested chart: Level 9 out of 16 (52 points)

Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 327.35(3)(c)2 – Vessel BUI Resulting in Serious Bodily Injury (level 9, #4)

Currently Level 7 out of 10 (56 points) + 40-point enhancement = 96 points

Current version of suggested chart: Level 9 out of 16 (52 points)

Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 825.102(3)(b) – Neglecting an Elderly Person or Disabled Adult + Great Bodily Harm, Disability, or Disfigurement (level 11, #15)

Currently Level 7 out of 10 (56 points) + 40-point enhancement = 96 points

Current version of suggested chart: Level 11 out of 20 (68 points)

Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 827.03(2)(b) – Neglecting a Child + Great Bodily Harm, Disability, or Disfigurement (level 11, #17)

Currently Level 7 out of 10 (56 points) + 40-point enhancement = 96 points

Current version of suggested chart: Level 11 out of 20 (68 points)

Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 402.319(2) – Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, or permanent disability (level 12, #1)

Currently Level 7 out of 10 (56 points) + 40-point enhancement = 96 points

Current version of suggested chart: Level 12 out of 20 (76 points)

Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 456.065(2) – Practicing health care without a license which results in serious bodily injury (level 12, #2)

Currently Level 7 out of 10 (56 points) + 40-point enhancement = 96 points

Current version of suggested chart: Level 12 out of 20 (76 points)

Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 784.045(1)(a)1 – Aggravated battery; intentionally causing great bodily harm or disfigurement (level 12, #5)

Currently Level 7 out of 10 (56 points) + 40-point enhancement = 96 points
Current version of suggested chart: Level 12 out of 20 (76 points)
Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 316.1935(4)(b) – Aggravated Fleeing or Attempted Eluding with Serious Bodily Injury (level 13, #1)

Currently level 8 out of 10 (74 points) + 40 points = 114 points
Current version of suggested chart: Level 13 out of 16 (84 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 784.07(2)(d) – Aggravated Battery on Law Enforcement Officer (level 13, #13)
(triggers two enhancements)

Currently level 7 out of 10 (56 points) + 40 points x 1.5 (LEO multiplier) = 144 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 17 out of 20 (140 points) (taking into account 1.5x law enforcement point multiplier, as well)

Fla. Stat. 784.074(1)(a) – Aggravated Battery on Sexual Violent Predators Facility Staff (level 13, #14) (triggers two enhancements)

Currently level 7 out of 10 (56 points) + 40 points x 1.5 (LEO multiplier) = 144 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 17 out of 20 (140 points) (taking into account 1.5x law enforcement point multiplier, as well)

Fla. Stat. 784.08(2)(a) – Aggravated Battery on Person 65+ (level 13, #15)

Currently level 7 out of 10 (56 points) + 40-point enhancement = 96 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 784.081(1) – Aggravated Battery on Specified Official/Employee (level 13, #16)

Currently level 7 out of 10 (56 points) + 40-point enhancement = 96 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 784.082(1) – Aggravated Battery by Detained Person on Visitor or Other Detainee (level 13, #17) (triggers two enhancements)

Currently level 7 out of 10 (56 points) + 40 points + 4 points incarceration = 100 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 15 out of 20 (108 points) (taking into account 4-point incarceration enhancement, as well)

Fla. Stat. 784.083(1) – Aggravated Battery on Code Inspector (level 13, #18)

Currently level 7 out of 10 (56 points) + 40-point enhancement = 96 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 860.121(2)(c) – Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm (level 13, #35)

Currently level 8 out of 10 (74 points) + 40-point enhancement = 114 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 499.0051(8) – Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm (level 14, #8)

Currently Level 9 out of 10 (92 points) + 40-point enhancement = 132 points

Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 825.102(2) – Aggravated Abuse of Elderly Person or Disabled Adult (level 14, #30)
Currently Level 8 out of 10 (74 points) + 40-point enhancement = 114 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 827.03(2)(a) – Aggravated child abuse (level 14, #32)
Currently Level 9 out of 10 (92 points) + 40-point enhancement = 132 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(3) – Sexual battery; victim 12 years or older; offender uses/threatens to use deadly weapon or force to cause serious injury (level 16, #8) (triggers two enhancements)
Currently Level 10 of 10 (116 points) + 80 points penetration + 40 points = 236 points
Current version of suggested chart: Level 16 out of 16 (124 points)
Necessary new ranking: Level 19 out of 20 (240 points) (taking into account 80-point sexual penetration enhancement as well, discussed below)

Sexual Penetration (80 points)

Fla. Stat. 827.071(2) and (3) – Using or inducing a child in a sexual performance or promote or direct such performance – (level 9, #26)

Currently level 6 out of 10 (36 points) + 80 points = 116 points

Current version of suggested chart: Level 9 out of 16 (52 points)

Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 794.05(1) – Unlawful sexual activity with specified minor (16-17 year-old victim and 24+ year-old defendant) (with penetration) (level 10, #7)

Currently level 6 out of 10 (36 points) + 80 points = 116 points

Current version of suggested chart: Level 10 out of 16 (60 points)

Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 827.04(3) – Impregnation of Child Under 16 by Defendant 21 or older (level 10, #18)

Currently level 7 out of 10 (56 points) + 80 points = 136 points

Current version of suggested chart: Level 10 out of 16 (60 points)

Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(5)(b) – Sexual battery, victim 18+, offender 18+, no force likely to cause serious injury (with penetration) (level 12, #8)

Currently level 8 out of 10 (74 points) + 80 points = 154 points

Current version of suggested chart: Level 12 out of 16 (76 points)

Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(5)(c) – Sexual battery, victim 12+, offender under 18, no force likely to cause serious injury (with penetration) (level 12, #9)

Currently level 8 out of 10 (74 points) + 80 points = 154 points

Current version of suggested chart: Level 12 out of 16 (76 points)

Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(5)(a) – Sexual battery, victim 12-18, offender 18+, no force likely to cause serious injury (with penetration) (level 13, #25)

Currently level 8 out of 10 (74 points) + 80 points = 154 points

Current version of suggested chart: Level 13 out of 16 (84 points)

Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(4)(b) – Sexual battery, certain circumstances, victim and offender 18 or older (with penetration) (level 14, #23)

Currently level 9 out of 10 (92 points) + 80 points = 172 points

Current version of suggested chart: Level 14 out of 16 (92 points)

Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 794.011(4)(c) – Sexual battery, certain circumstances, victim 12 or older, offender under 18 (with penetration) (level 14, #24)

Currently level 9 out of 10 (92 points) + 80 points = 172 points

Current version of suggested chart: Level 14 out of 16 (92 points)

Necessary new ranking: Level 18 out of 18 (180 points)

Fla. Stat. 794.011(5)(d) – Sexual battery, victim 12 or older, no force likely to cause serious injury, offender has prior sex conviction (with penetration) (level 14, #25)

Currently level 8 out of 10 (74 points) + 80 points = 154 points

Current version of suggested chart: Level 14 out of 16 (92 points)

Necessary new ranking: Level 17 out of 20 (140 points) or Level 18 of 18 (180 points)

Fla. Stat. 794.011(2) – Sexual battery; victim under 12 and offender under 18 (with penetration) (level 15, #8)

Currently level 9 out of 10 (92 points) + 80 points = 172 points

Current version of suggested chart: Level 15 out of 16 (108 points)

Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 794.011(4)(a) – Sexual battery; victim 12-18; offender 18 or older (with penetration) (level 15, #9)

Currently Level 9 out of 10 (116 points) + 80 points = 196 points

Current version of suggested chart: Level 15 out of 16 (108 points)

Necessary new ranking: Level 19 out of 20 (240 points) (taking into account 80-point sexual penetration enhancement as well, discussed below)

Fla. Stat. 794.011(3) – Sexual battery; victim 12 years or older; offender uses/threatens to use a deadly weapon or force to cause serious bodily injury (with penetration) (level 16, #8) (triggers two enhancements)

Currently Level 10 out of 10 (116 points) + 80 points + 40 points (severe inj)= 236 points

Current version of suggested chart: Level 16 out of 16 (124 points)

Necessary new ranking: Level 19 out of 20 (240 points) (taking into account 40-point severe injury enhancement as well, discussed above)

Fla. Stat. 794.011(4)(d) – Sexual battery; victim 12 years or older; offender had previous sex crime conviction (with penetration) (level 16, #9)

Currently Level 9 out of 10 (92 points) + 80 points = 172 points

Current version of suggested chart: Level 16 out of 16 (124 points)

Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 794.011(8)(b) – Sexual battery; victim 12-18, offender has familial or custodial authority (with penetration) (level 16, #10)

Currently Level 9 out of 10 (92 points) + 80 points = 172 points

Current version of suggested chart: Level 16 out of 16 (124 points)

Necessary new ranking: Level 18 out of 20 (180 points)

Fla. Stat. 800.04(5)(b) – Lewd or Lascivious Molestation; victim under 12, offender 18 or older (with penetration) (level 16, #11)

Currently Level 9 out of 10 (92 points) + 80 points = 172 points

Current version of suggested chart: Level 16 out of 16 (124 points)

Necessary new ranking: Level 18 out of 20 (180 points)

Sexual Contact (40 points)

Fla. Stat. 800.04(5)(d) – Lewd or lascivious molestation, victim 12-15, offender under 18
(level 8, #5)

Currently level 6 out of 10 (36 points) + 40 points = 76 points
Current version of suggested chart: Level 8 out of 16 (46 points)
Necessary new ranking: Level 12 out of 20 (76 points)

Fla. Stat. 800.04(6)(b) – Lewd or Lascivious conduct; offender 18+ (level 9, #16)

Currently level 6 out of 10 (36 points) + 40 points = 76 points
Current version of suggested chart: Level 9 out of 16 (52 points)
Necessary new ranking: Level 12 out of 20 (76 points)

Fla. Stat. 806.031(2) – Arson w/ great bodily harm to firefighter or other person (level 9,
#17)

Currently level 6 out of 10 (36 points) + 40 points = 76 points
Current version of suggested chart: Level 9 out of 16 (52 points)
Necessary new ranking: Level 12 out of 20 (76 points)

Fla. Stat. 825.1025(3) – Lewd or lascivious molestation of elderly person or disabled adult
(level 9, #25)

Currently level 6 out of 10 (36 points) + 40 points = 76 points
Current version of suggested chart: Level 9 out of 16 (52 points)
Necessary new ranking: Level 12 out of 20 (76 points)

Fla. Stat. 794.05(1) – Unlawful sexual activity with specified minor (16-17 year-old victim
and 24+ year-old defendant) (union/contact) (level 10, #7)

Currently level 6 out of 10 (36 points) + 40 points = 76 points
Current version of suggested chart: Level 10 out of 16 (60 points)
Necessary new ranking: Level 12 out of 20 (76 points)

Fla. Stat. 847.0135(2) – Facilitating sexual contact of or with a minor or the visual depiction
of such conduct (level 10, #26)

Currently level 6 out of 10 (36 points) + 40 points = 76 points
Current version of suggested chart: Level 10 out of 16 (60 points)
Necessary new ranking: Level 12 out of 20 (76 points)

Fla. Stat. 800.04(4)(b) – Lewd or lascivious battery (level 11, #9)

Currently level 8 out of 10 (74 points) + 40 points = 114 points
Current version of suggested chart: Level 11 out of 16 (68 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 800.04(5)(c)1 – Lewd or lascivious molestation, victim < 12, def. < 18 (level 11,
#10)

Currently level 7 out of 10 (56 points) + 40 points = 96 points
Current version of suggested chart: Level 11 out of 16 (68 points)
Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 800.04(5)(c)2 – Lewd or lascivious molestation, victim 12-16, def. 18+ (level 11,
#11)

Currently level 7 out of 10 (56 points) + 40 points = 96 points
Current version of suggested chart: Level 11 out of 16 (68 points)
Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 794.011(5)(b) – Sexual battery, victim 18+, offender 18+, no force likely to cause serious injury (union/contact) (level 12, #8)

Currently level 8 out of 10 (74 points) + 40 points = 114 points
Current version of suggested chart: Level 12 out of 16 (76 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 794.011(5)(c) – Sexual battery, victim 12+, offender under 18, no force likely to cause serious injury (union/contact) (level 12, #9)

Currently level 8 out of 10 (74 points) + 40 points = 114 points
Current version of suggested chart: Level 12 out of 16 (76 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 794.011(5)(a) – Sexual battery, victim 12-18, offender 18+, no force likely to cause serious injury (union/contact) (level 13, #25)

Currently level 8 out of 10 (74 points) + 40 points = 114 points
Current version of suggested chart: Level 13 out of 16 (84 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 800.04(5)(e) – Lewd or lascivious molestation; victim 12-16; def. 18+ w/ prior sex conviction (level 13, #27)

Currently level 7 out of 10 (56 points) + 40 points = 96 points
Current version of suggested chart: Level 13 out of 16 (84 points)
Necessary new ranking: Level 14 out of 20 (92 points)

Fla. Stat. 794.011(4)(b) – Sexual battery, certain circumstances, victim and offender 18 or older (union/contact) (level 14, #23)

Currently level 9 out of 10 (92 points) + 40 points = 132 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(4)(c) – Sexual battery, certain circumstances, victim 12 or older, offender under 18 (union/contact) (level 14, #24)

Currently level 9 out of 10 (92 points) + 40 points = 132 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(5)(d) – Sexual battery, victim 12 or older, no force likely to cause serious injury, offender has prior sex conviction (union/contact) (level 14, #25)

Currently level 8 out of 10 (74 points) + 40 points = 114 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 800.04(4)(c) – Lewd or lascivious battery; def 18+ w/ prior sex conviction (level 14, #27)

Currently level 8 out of 10 (74 points) + 40 points = 114 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 825.1025(2) – Lewd or lascivious battery upon an elderly person or disabled adult
(level 14, #31)

Currently level 8 out of 10 (74 points) + 40 points = 114 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 16 out of 20 (124 points)

Fla. Stat. 794.011(2) – Sexual battery; victim under 12 and offender under 18 (union/contact)
(level 15, #8)

Currently level 9 out of 10 (92 points) + 40 points = 132 points
Current version of suggested chart: Level 15 out of 16 (108 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(4)(a) – Sexual battery; victim 12-18; offender 18 or older (union contact)
(level 15, #9)

Currently Level 9 out of 10 (116 points) + 40 points = 156 points
Current version of suggested chart: Level 15 out of 16 (108 points)
Necessary new ranking: Level 17 out of 20 (140 points) (taking into account 40-point union/contact enhancement as well, discussed below)

Fla. Stat. 794.011(3) – Sexual battery; victim 12 years or older; offender uses/threatens to use a deadly weapon or force to cause serious bodily injury (union/contact) (level 16, #8)

Currently Level 10 out of 10 (116 points) + 40 points = 156 points
Current version of suggested chart: Level 16 out of 16 (124 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(4)(d) – Sexual battery; victim 12 years or older; offender had previous sex crime conviction (union/contact) (level 16, #9)

Currently Level 9 out of 10 (92 points) + 40 points = 132 points
Current version of suggested chart: Level 16 out of 16 (124 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 794.011(8)(b) – Sexual battery; victim 12-18, offender has familial or custodial authority (union/contact) (level 16, #10)

Currently Level 9 out of 10 (92 points) + 40 points = 132 points
Current version of suggested chart: Level 16 out of 16 (124 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Fla. Stat. 800.04(5)(b) – Lewd or Lascivious Molestation; victim under 12, offender 18 or older (union/contact) (level 16, #11)

Currently Level 9 out of 10 (92 points) + 40 points = 132 points
Current version of suggested chart: Level 16 out of 16 (124 points)
Necessary new ranking: Level 17 out of 20 (140 points)

PART V OF SCORESHEET: LEGAL STATUS VIOLATIONS

RECOMMENDATION 2(a): Remove the *Escape* and *Failure to Appear* enhancements from the scoresheet. Offense levels for the offenses to which these enhancements apply should then be increased to offset failure to apply the enhancements.

Escape (4-point enhancement)

Fla. Stat. 985.721 – *Escapes from a juvenile facility: secure detention or residential commitment facility* (level 4, #41)

Currently: Level 3 out of 10 (16 points) + 4 points = 20 points

Current version of suggested chart: Level 4 out of 16 (16 points)

Necessary new ranking: Level 5 out of 20 (22 points)

Fla. Stat. 944.40 – *Escape* (level 7, #56)

Currently: Level 6 out of 10 (36 points) + 4 points = 40 points

Current version of suggested chart: Level 7 out of 16 (36 points)

Necessary new ranking: Level 8 out of 20 (46 points)

Failure to appear (4-point enhancement)

Fla. Stat. 843.15(1)(a) – *Failure to appear while on bail for felony* (level 5, #37)

Currently: Level 4 out of 10 (22 points) + 4 points = 26 points

Current version of suggested chart: Level 5 out of 16 (22 points)

Necessary new ranking: Level 6 out of 16 (28 points)

RECOMMENDATION 2(b): Retain the *Incarceration* enhancement, but apply it only when it is not included as an element of the offense of conviction. The offense levels of crimes where this enhancement is included as an element have already been increased in the accompanying chart to offset failure to apply it.

Incarceration (4-point enhancement)

Fla. Stat. 784.082(3) – *Battery by detained person on visitor or other detainee* (level 5, #15)

Currently: Level 4 out of 10 (22 points) + 4 points = 26 points

Current version of suggested chart: Level 5 out of 16 (22 points)

Necessary new ranking: Level 6 out of 16 (28 points)

Fla. Stat. 944.47(1)c – *Possessing Contraband on Grounds of Correctional Institution* (level 5, #43)

Currently: Level 3 out of 10 (16 points) + 4 points = 20 points

Current version of suggested chart: Level 5 out of 16 (22 points) [OK]

Fla. Stat. 784.082(1) – *Aggravated Battery by Detained Person on Visitor or Other Detainee* (level 13, #17) (triggers two enhancements)

Currently level 7 out of 10 (56 points) + 4 points = 60 points

Current version of suggested chart: Level 13 out of 20 (84 points)

Necessary new ranking: Level 15 out of 20 (108 points) (taking into account 40-point severe injury enhancement, as well)

RECOMMENDATION 2(c): Retain the *Fleeing* (4 points), *Supersedeas Bond* (4 points), *Pretrial Intervention or Diversion Program* (4 points), and *Community Supervision* (4 points) enhancements on the scoresheet.

PART VII OF SCORESHEET: FIREARM/SEMI-AUTOMATIC OR MACHINE GUN

RECOMMENDATION 3: Retain the *Firearm/Semi-Automatic or Machine Gun* (18 or 25 points) enhancement

PART VIII OF SCORESHEET: PRIOR SERIOUS FELONY

RECOMMENDATION 4: Delete the *Prior Serious Felony* enhancement and replace with alternate charts as described in Resolution #9.

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PART IX OF SCORESHEET – ENHANCEMENTS

RECOMMENDATION 5(a) – Remove the Drug Trafficking, Motor Vehicle Theft, Domestic Violence in Presence of Related Child, and Adult-on-Minor Sex Offenses enhancements from the scoresheet. Offense levels for the offenses to which these enhancements applied have been increased to offset failure to apply the enhancements.

Drug Trafficking (1.5x point multiplier)

- Fla. Stat. 893.135(1) – trafficking various illegal drugs – (level 12, #25-42)
Currently: Level 7 out of 10 (56 points) x 1.5 = 84 points
Current version of suggested chart: Level 12 out of 16 (76 points)
Necessary new ranking: Level 13 out of 20 (84 points)
- Fla. Stat. 499.0051(6) – Knowing trafficking in contraband prescription drugs (level 13, #2)
Currently: Level 8 out of 10 (74 points) x 1.5 = 111 points
Current version of suggested chart: Level 13 out of 16 (84 points)
Necessary new ranking: Level 15 out of 20 (108 points)
- Fla. Stat. to 893.135(1)(a)2 to 893.135(1)(b)1.b – trafficking various controlled substances (level 13, #41-55)
Currently: Level 8 out of 10 (74 points) x 1.5 = 111 points
Current version of suggested chart: Level 13 out of 16 (84 points)
Necessary new ranking: Level 15 out of 20 (108 points)
- Fla. Stat. 893.135(1)(a)-(n) – trafficking various illegal drugs (level 14, #37-50)
Currently: Level 9 out of 10 (92 points) x 1.5 = 138 points
Current version of suggested chart: Level 14 out of 16 (92 points)
Necessary new ranking: Level 17 out of 20 (140 points)

Motor Vehicle Theft (1.5x point multiplier)

- Fla. Stat. 812.014(2)(c)6 – Grand theft auto, 3rd degree, three or more prior grand theft auto convictions (level 8, #6)
Currently: New offense – no current listing on the offense severity ranking chart
Current version of suggested chart: Level 8 out of 16 (46 points)
Necessary new ranking: Level 10 out of 20 (60 points)

Domestic Violence in Presence of Related Child (1.5x multiplier)

- Fla. Stat. 784.041 – Felony Battery; domestic battery by strangulation in the presence of a child under 16 (level 9, #9)
Currently: New offense – no current listing on the offense severity ranking chart
Current version of suggested chart: Level 9 out of 16 (52 points) [OK]

Adult-on-(Detained)-Minor Sex Offense (2x point multiplier)

Fla. Stat. 787.01(3)(a) – *kidnapping of child under 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition (level 16, #4)*

Currently: Level 10 of 10 (116 points) x 2 = 232 points
Current version of suggested chart: Level 16 of 16 (124 points)
Necessary new ranking: Level 19 of 20 (240 points)

Fla. Stat. 787.02(3)(a)– *false imprisonment of child under 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition (level 16, #5)*

Currently: Level 9 of 10 (92 points) x 2 = 184 points
Current version of suggested chart: Level 16 of 16 (124 points)
Necessary new ranking: Level 18 of 20 (180 points)

RECOMMENDATION 5(b): Retain the *Law Enforcement Officer Protection Act* (including 2.0 and 2.5 multipliers) and *Criminal Gang Offense* enhancements, but apply them only when they are not included as an element of the offense of conviction. The offense levels of crimes where this enhancement is included as an element have already been increased in the accompanying chart to offset failure to apply it.

Law Enforcement Protection Act (1.5x point multiplier)

Fla. Stat. 775.0875(1) – *Taking Firearm from Law Enforcement Officer* (level 8, #1)

Currently Level 6 out of 10 (36 points) x 1.5 = 54 points
Current version of suggested chart: Level 9 out of 16 (52 points)
Necessary new ranking: Level 9 out of 20 (52 points)

Fla. Stat. 784.07(2)(c) – *Aggravated Assault on Law Enforcement Officer* (level 9, #10)
(triggers two enhancements)

Currently Level 6 out of 10 (36 points) x 1.5 = 54 points
Current version of suggested chart: Level 9 out of 16 (52 points)
Necessary new ranking: Level 14 out of 20 (92 points) (taking into account 40-point enhancement for severe injury as well)

Fla. Stat. 784.07(2)(d) – *Aggravated Battery on Law Enforcement Officer* (level 13, #13)
(triggers two enhancements)

Currently level 7 out of 10 (56 points) x 1.5 = 84 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 16 out of 20 (122 points) (taking into account 40-point severe injury enhancement, as well)

Fla. Stat. 784.074(1)(a) – *Aggravated Battery on Sexual Violent Predators Facility Staff*
(level 13, #14) (triggers two enhancements)

Currently level 7 out of 10 (56 points) x 1.5 = 84 points
Current version of suggested chart: Level 13 out of 20 (84 points)
Necessary new ranking: Level 16 out of 20 (122 points) (taking into account 40-point severe injury enhancement, as well)

Criminal Gang Offense (1.5x point multiplier)

Fla. Stat. 874.05(1)(a) – Encouraging or recruiting another to join a criminal gang (level 6, #45)

Currently Level 4 out of 10 (22 points) x 1.5 = 33 points

Current version of suggested chart: Level 6 out of 16 (28 points)

Necessary new ranking: Level 7 out of 20 (36 points)

Fla. Stat. 874.05(1)(b) – Encouraging or recruiting another to join a criminal gang, second or subsequent offense (level 9, #30)

Currently Level 5 out of 10 (28 points) x 1.5 = 42 points

Current version of suggested chart: Level 9 out of 16 (52 points) [OK]

Fla. Stat. 874.05(2)(a) – Encouraging or recruiting a person under 13 to join a criminal gang (level 9, #31)

Currently Level 5 out of 10 (28 points) x 1.5 = 42 points

Current version of suggested chart: Level 9 out of 16 (52 points) [OK]

Fla. Stat. 874.05(2)(b) – Encouraging or recruiting a person under 13 to join a criminal gang; second or subsequent offense (level 12, #21)

Currently Level 7 out of 10 (56 points) x 1.5 = 84 points

Current version of suggested chart: Level 12 out of 16 (76 points)

Necessary new ranking: Level 13 out of 20 (84 points)

Fla. Stat. 874.10 – Knowingly, initiating, organizing, planning, financing, directing, managing, or supervising criminal gang activity (level 13, #37)

Currently Level 7 out of 10 (56 points) x 1.5 = 84 points

Current version of suggested chart: Level 13 out of 16 (84 points) [OK]