

12. Plea or Trial

- Check whether the adjudication of the offenses at conviction was obtained by plea or trial. If convictions were obtained by both plea and trial, enter a check mark in the trial field.

13. Primary Offense

“Primary offense” means the offense at conviction pending before the court for sentencing for which the total sentence points recommend a sanction that is as severe as, or more severe than, the sanction recommended for any other offense committed by the offender and pending before the court at sentencing. Only one count of one offense before the court for sentencing shall be classified as the primary offense. All other offenses, including multiple counts of the same offense scored as the primary offense, are to be listed as additional offenses. The primary may be an offense ranked at a lower severity level than other offenses before the court for sentencing due to the operation of multipliers for drug trafficking, grand theft motor vehicle (with the requisite prior record) violations of the Law Enforcement Protection Act, Street Gang and Domestic Violence. The Felony Degree, Florida Statute, Description and Offense Level shall be recorded in the appropriate field of Section I. The points assigned to the severity level of the offense are entered in the space indicated on the scoresheet.

An offense before the court as a result of a finding of violation of a community sanction is the primary offense if the original charge total sentence points recommend a sanction that is as severe as, or more severe than, the sanction recommended for any other offense committed by the offender and pending before the court at sentencing under any single version of the

guidelines, revision of the guidelines or punishment code. This is in accordance with sections 775.082 (8), 921.0021(1), 921.0021(4) and 921.0024(3), Florida Statutes.

14. Prior Capital Felony Points/Primary Offense

If the offender has one or more prior capital felonies in the offender’s criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense. This is recorded by checking the box in Section I and multiplying the Section I subtotal by 3 (three).

A prior capital felony in the offender’s criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty, or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

15. Additional Offenses

“Additional offense” means any offense other than the primary offense for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense. The severity level of each additional offense must be known in order to score it. Multiple counts of the same offense can be listed on a single line with the points indicated for that severity level multiplied by the number of counts. The resulting points are recorded in the fields in the right hand column. Misdemeanors are scored at the level “M” regardless of degree. A supplemental page is available for additional offenses if the available lines are not sufficient for all additional offenses.

An offense before the court as a result of a

finding of violation of a community sanction is an additional offense if the original charge total sentence points do not recommend a sanction that is as severe as, or more severe than, the sanction recommended for any other offense committed by the offender and pending before the court at sentencing under any single version of the guidelines, revision of the guidelines or punishment code. This is in accordance with sections 775.082 (8), 921.0021(1), 921.0021(4) and 921.0024(3), Florida Statutes.

16. Prior Capital Felony Points / Additional Offense

If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the additional offense(s). This is calculated by checking the box in Section II and multiplying the Section II subtotal by 3 (three).

A "prior capital felony" in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Prior capital felonies shall not be scored in the prior record section.

17. Attempts, Conspiracies, Solicitations and Reclassifications

Criminal attempts, criminal solicitations and criminal conspiracies are generally scored one level below the severity level of the completed offense. Where a criminal attempt, solicitation or conspiracy is separately ranked in section 921.0022, Florida Statutes, the severity level at which the inchoate offense is placed is the basis for scoring. Where the inchoate version of an offense is

required to be punished as if the offender had committed the prohibited act, score it at the same level as the completed crime. Conspiracy to commit drug trafficking under section 893.135(5), Florida Statutes, or conspiring to commit bookmaking under section 849.25(4), Florida Statutes, or attempting, soliciting or conspiring to kill or commit aggravated abuse upon registered horses or cattle 828.125(2), Florida Statutes, are examples of legislative intent to punish the inchoate versions of an offense the same as the completed offense. Unless specifically provided otherwise by statute, attempts, conspiracies, and solicitations must be indicated in the space provided on the Criminal Punishment Code scoresheet and must be scored at one severity level below the completed offense.

Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 1 and 2 must be scored as misdemeanors. Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 3, 4, 5, 6, 7, 8, 9, and 10 must be scored as felonies one offense level beneath the incomplete or inchoate offense.

18. Victim Injury

"Victim injury" is scored for physical injury or death suffered by a person as a direct result of any offense pending before the court for sentencing. Except as otherwise provided by law (section 921.0021(7) (c) (d), Florida Statutes) the sexual penetration and sexual contact points will be scored as follows. Sexual penetration points (80) are scored if an offense pending before the court for sentencing involves sexual penetration. Sexual contact points (40) are scored if an offense pending before the court for sentencing involves sexual contact, but no penetration. If the victim of an offense involving sexual penetration or sexual contact without penetration suffers any physical injury as a direct result of an offense pending before the court for sentencing, that physical injury must be scored separately and in addition to any

points scored for the sexual contact or sexual penetration.

Victim injury must be scored for each victim physically injured and for each offense resulting in physical injury whether there are one or more victims. Multiple assessments of the same level of victim injury may be scored by multiplying the appropriate level of injury by the number of counts scoreable. However, victim injury must not be scored for an offense for which the offender has not been convicted.

If the offense at conviction is a second degree murder, 240 points are to be scored for the death. All other deaths are to receive 120 points as victim injury.

Victim injury resulting from one or more capital offenses before the court for sentencing must not be included upon any scoresheet prepared for non-capital offenses also pending before the court for sentencing. This does not prohibit the scoring of victim injury as a result of the non-capital offense or offenses before the court for sentencing.

19. Prior Record

“Prior record” refers to any conviction for an offense committed by the offender prior to the commission of the primary offense. “Conviction” means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

Prior record includes convictions for offenses committed by the offender as an adult or juvenile, convictions by federal, out of state, military, or foreign courts and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law. Federal, out of state, military or foreign convictions are scored at the severity level at which the analogous or parallel Florida crime is located. The

elements of an out-of-state offense are to be the sole consideration for determining an analogous crime.

Convictions for offenses committed more than 10 years before the date of the commission of the primary offense must not be scored as prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or other sanction, whichever is later, to the date of the commission of the primary offense.

Juvenile dispositions of offenses committed by the offender within 5 years before the date of the commission of the primary offense must be scored as prior record if the offense would have been a crime if committed by an adult. Juvenile dispositions of sexual offenses committed by the offender more than 5 years before the date of the primary offense must be scored as prior record if the offender has not maintained a conviction-free record, either as an adult or as a juvenile, for a period of 5 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of commission of the primary offense.

Entries in criminal histories that show no disposition, disposition unknown, arrest only, or a disposition other than conviction must not be scored. Criminal history records expunged or sealed under section 943.058, Florida Statutes, or other provisions of law, including former sections 893.14 and 901.33, Florida Statutes, must be scored as prior record where the offender whose record has been expunged or sealed is before the court for sentencing.

Any uncertainty in the scoring of the offender’s prior record must be resolved in favor of the offender and disagreement as to the propriety of scoring specific entries in the prior record must be resolved by the sentencing judge.

When unable to determine whether the conviction to be scored as prior record is a felony or a misdemeanor, the conviction must be scored as a misdemeanor. When the degree of felony is ambiguous or the severity level cannot be determined, the conviction must be scored at severity level 1.

20. Legal Status Violations

“Legal status points” are assessed when an offender:

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 conviction. Legal status violations receive a score of 4 sentence points and are scored when the offense committed while under legal status is before the court for sentencing. Points for a legal status violation must only be assessed once regardless of the existence of more than one form of legal status at the time an offense is committed or the number of offenses committed while under any form of legal status.

21. Violating the Conditions of a Community Sanction

“Community sanction violation points” occur when the offender is found to have violated one or more conditions of a community sanction. Community sanctions include probation, community control or pretrial intervention or diversion.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing as a primary or additional offense. Six (6) sentence points are

assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation does not include a new felony conviction; and the community sanction violation is not based solely on the probationer or offender’s failure to pay costs or fines or make restitution payments.

Twenty-four (24) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new a new felony conviction.

Where there are multiple violations, points may be assessed only for each successive violation that follows a continuation of supervision, or modification or revocation of the community sanction before the court for sentencing and are not to be assessed for violation of several conditions of a single community sanction.

Multiple counts of community sanction violations before the sentencing court may not be the basis for multiplying the assessment of community sanction violation points.

22. Prior Serious Felony Points

A single assessment of thirty prior serious felony points is added if the offender has a primary offense or any additional offense ranked in level 8, 9, or 10 (under sections 921.0022 or 921.0023, Florida Statutes) and one or more prior serious felonies. A “prior serious felony” is an offense in the offender’s prior record ranked in level 8, 9, or 10 and for which the offender is serving a sentence of confinement, supervision or other sanction or for which the offender’s date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offenses were committed. Out of state convictions wherein the analogous or parallel Florida offenses are located in offense severity level 8, 9, or 10 must be considered prior serious felonies.

23. Possession of a Firearm, Semiautomatic Weapon or Machine Gun

Possession of a firearm, semiautomatic firearm, or a machine gun during the commission or attempt to commit a crime will result in additional sentence points. Eighteen sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(2), Florida Statutes, while having in his or her possession a firearm as defined in subsection 790.001(6), Florida Statutes. Twenty-five sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(3), Florida Statutes, while having in his or her possession a semiautomatic firearm as defined in subsection 775.087(3), Florida Statutes, or a machine gun as defined in subsection 790.001(9), Florida Statutes. Only one assessment of either 18 or 25 points can be made.

Firearm points may not be assessed where the possession of the firearm is necessary in order for the underlying felony to exist. In other words, if the offense is possession of a firearm by a convicted felon or carrying a concealed firearm, the additional points should not be assessed. Also, if the offense is one of those enumerated in section 775.087 (2) or (3), Florida Statutes, firearm points may not be assessed.

24. Subtotal Sentence Points

“Subtotal sentence points” are the sum of the primary offense points, the total additional offense points, the total victim injury points, the total prior record points, any legal status points, community sanction points, prior serious felony points, prior capital felony points and points for possession of a firearm or semiautomatic weapon.

25. Sentencing Enhancements

If the primary offense is drug trafficking under section 893.135, Florida Statutes, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5.

If the primary offense is a violation of the Law Enforcement Protection Act under subsection 775.0823(2), (3), or (4), Florida Statutes, the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of subsection 775.0823(5), (6), (7), (8), or (9), Florida Statutes, the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of subsection 784.07(3), Florida Statutes or subsection 775.0875(1), Florida Statutes, or of the Law Enforcement Protection Act under subsection 775.0823(10) or (11), Florida Statutes, the subtotal sentence points are multiplied by 1.5.

If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, the subtotal sentence points are multiplied by 1.5. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under Chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in section 741.28, Florida Statutes, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in section 741.28(3), Florida Statutes, with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

If the offender was 18 years of age or older and the victim was younger than 18 at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 794.011(10); s. 800.04; or s. 847.0135(5), the subtotal sentence points are multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply

the multiplier and must sentence the defendant to the statutory maximum sentence.

26. Total Sentence Points

"Total sentence points" are the subtotal sentence points or the enhanced subtotal sentence points. Do not add the subtotal sentence points and the enhanced subtotal points to arrive at total sentence points.

The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate.

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 section 775.082, Florida Statutes.

When the total sentence points exceed 44 points, the lowest permissible sentence in prison months must be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points must be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing must be the lowest permissible sentence up to and including the statutory maximum, as defined in section 775.082,

Florida Statutes, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the Code exceeds the statutory maximum sentence as provided in section 775.082, Florida Statutes, the sentence required by the Code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. The sentence imposed must be entered on the scoresheet.

27. Mandatory Minimum Sentence

For those offenses having a mandatory minimum sentence, a scoresheet must be completed and the lowest permissible sentence under the code calculated. If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties will apply. Mandatory minimum sentences must be recorded on the scoresheet.

28. Split Sentence

If a split sentence is imposed, the total sanction (incarceration and community control or probation) must not exceed the term provided by general law or the maximum sentence under the Criminal Punishment Code.

29. Revocation of Supervision

Sentences imposed after revocation of probation or community control must be imposed pursuant to the sentencing law applicable at the time of the commission of the original offense.

30. Departures

Any downward departure from the lowest permissible sentence, as calculated according to the total sentence points pursuant to section 921.0024, Florida Statutes, is prohibited unless there are circumstances or factors that reasonably justify the downward departure. Circumstances or factors that can be considered include, but are not limited to, those listed in subsection 921.0026(2), Florida Statutes, and attached in Appendix D.

If a sentencing judge imposes a sentence that is below the lowest permissible sentence, it is a departure sentence and must be accompanied by a written statement by the sentencing court delineating the reasons for the departure, filed within 7 days after the date of sentencing. A written transcription of orally stated reasons for departure articulated at the time sentence was imposed is sufficient if it is filed by the court within 7 days after the date of sentencing. The sentencing judge may also list the written reasons for departure in the space provided on the Criminal Punishment Code scoresheet.

The written statement delineating the reasons for departure must be made a part of the record. The written statement, if it is a separate document, must accompany the scoresheet required to be provided to the Department of Corrections pursuant to section 921.0024(6), Florida Statutes.

The imposition of a sentence below the lowest permissible sentence is subject to appellate review under Chapter 924, but the extent of the downward departure is not subject to appellate review.

If the lowest permissible sentence under the criminal punishment code is a state prison sanction but the total sentencing points do not exceed 48 points (or 54 points if six of those points are for a

violation of probation, community control, or other community supervision that does not involve a new crime), the court may sentence the defendant to probation, community control or community supervision with mandatory participation in a prison diversion program, as provided for in s. 921.00241, Florida Statutes, if the defendant meets the requirements for that program as set forth in section 921.00241.

If the total sentence points equal 22 or less, the court must sentence the offender to a nonstate prison sanction unless it makes written findings that a nonstate prison sanction could present a danger to the public.

APPENDIX A

Rule 3.704. The Criminal Punishment Code

(a) **Use.** This rule is to be used in conjunction with the forms located at rule 3.992. This rule implements the 1998 Criminal Punishment Code, in compliance with chapter 921, Florida Statutes. This rule applies to offenses committed on or after October 1, 1998, or as otherwise required by law.

(b) **Purpose and Construction.** The purpose of the 1998 Criminal Punishment Code and the principles it embodies are set out in subsection 921.002(1), Florida Statutes. Existing case law construing the application of sentencing guidelines will continue as precedent unless in conflict with the provisions of this rule or the 1998 Criminal Punishment Code.

(c) **Offense Severity Ranking.**

(1) Felony offenses subject to the 1998 Criminal Punishment Code are listed in a single offense severity ranking chart located at section 921.0022, Florida Statutes. The offense severity ranking chart employs 10 offense levels, ranked from least severe to most severe. Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. The numerical statutory reference in the left column of the chart and the felony degree designations in the middle column of the chart determine whether felony offenses are specifically listed in the offense severity ranking chart and the appropriate severity level. The language in the right column is merely descriptive.

(2) Felony offenses not listed in section 921.0022, Florida Statutes, are assigned a severity level in accordance with section 921.0023, Florida Statutes, as follows:

- (A) A felony of the third degree within offense level 1.
- (B) A felony of the second degree within offense level 4.
- (C) A felony of the first degree within offense level 7.
- (D) A felony of the first degree punishable by life within offense level 9.
- (E) A life felony within offense level 10.

An offense does not become unlisted and subject to the provisions of section 921.0023 because of a reclassification of the degree of felony under section 775.0845, section 775.087, section 775.0875, section 794.023, Florida Statutes, or any other law that provides an enhanced penalty for a felony offense.

(d) **General Rules and Definitions.**

(1) One or more Criminal Punishment Code scoresheets must be prepared for each offender covering all offenses pending before the court for sentencing, including offenses for which the offender may qualify as an habitual felony offender, an habitual violent felony offender, a violent career criminal or a prison releasee reoffender. The office of the state attorney must prepare the scoresheets and present them to defense counsel for review for accuracy. If sentences are imposed under section 775.084, or section 775.082(9), Florida Statutes, and the Criminal Punishment Code, a scoresheet listing only those offenses sentenced under the Criminal Punishment Code must be filed in addition to any sentencing documents filed under sections 775.084 or section 775.082(9).

(2) One scoresheet must be prepared for all offenses committed under any single version or revision of the guidelines or Criminal Punishment Code pending before the court for sentencing.

(3) If an offender is before the court for sentencing for more than one felony and the felonies were committed under more than one version or revision of the guidelines or Criminal Punishment Code, separate scoresheets must be prepared and used at sentencing. The sentencing court may impose such sentence concurrently or consecutively.

(4) The sentencing judge must review the scoresheet for accuracy and sign it.

(5) Felonies, except capital felonies, with continuing dates of enterprise are to be sentenced under the guidelines or Criminal Punishment Code in effect on the beginning date of the criminal activity.

(6) "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(7) "Primary offense" means the offense at conviction pending before the court for sentencing for which the total sentence points recommend a sanction that is as severe as, or more severe than, the sanction recommended for any other offense committed by the offender and pending before the court at sentencing. Only one count of one offense before the court for sentencing shall be classified as the primary offense.

(8) "Additional offense" means any offense other than the primary offense for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense.

(9) "Victim injury" is scored for physical injury or death suffered by a person as a direct result of any offense pending before the court for sentencing. Except as otherwise provided by law, the sexual penetration and sexual contact points will be scored as follows. Sexual penetration points are scored if an offense pending before the court for sentencing involves sexual penetration. Sexual contact points are scored if an offense pending before the court for sentencing involves sexual contact, but no penetration. If the victim of an offense involving sexual penetration or sexual contact without penetration suffers any physical injury as a direct result of an offense pending before the court for sentencing, that physical injury must be scored in addition to any points scored for the sexual contact or sexual penetration.

Victim injury must be scored for each victim physically injured and for each offense resulting in physical injury whether there are one or more victims. However, victim injury must not be scored for an offense for which the offender has not been convicted.

Victim injury resulting from one or more capital offenses before the court for sentencing must not be included upon any scoresheet prepared for non-capital offenses also pending before the court for sentencing. This does not prohibit the scoring of victim injury as a result of the non-capital offense or offenses before the court for sentencing.

(10) Unless specifically provided otherwise by statute, attempts, conspiracies, and solicitations must be indicated in the space provided on the Criminal Punishment Code scoresheet and must be scored at one severity level below the completed offense.

Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 1 and 2 must be scored as misdemeanors. Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 3, 4, 5, 6, 7, 8, 9, and 10 must be scored as felonies one offense level beneath the incomplete or inchoate offense.

(11) An increase in offense severity level may result from a reclassification of felony degrees under sections 775.0845, 775.087, 775.0875, or 794.023. Any such increase must be indicated in the space provided on the Criminal Punishment Code scoresheet.

(12) A single assessment of thirty prior serious felony points is added if the offender has a primary offense or any additional offense ranked in level 8, 9, or 10 and one or more prior serious felonies. A “prior serious felony” is an offense in the offender’s prior record ranked in level 8, 9, or 10 and for which the offender is serving a sentence of confinement, supervision or other sanction or for which the offender’s date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offenses were committed. Out of state convictions wherein the analogous or parallel Florida offenses are located in offense severity level 8, 9, or 10 must be considered prior serious felonies.

(13) If the offender has one or more prior capital felonies, points must be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. Out-of-state convictions wherein the analogous or parallel Florida offenses are capital offenses must be considered capital offenses for purposes of operation of this section.

(14) “Prior record” refers to any conviction for an offense committed by the offender prior to the commission of the primary offense. Prior record includes convictions for offenses committed by the offender as an adult or as a juvenile, convictions by federal, out of state, military, or foreign courts and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law. Federal, out of state, military or foreign convictions are scored at the severity level at which the analogous or parallel Florida crime is located.

(A) Convictions for offenses committed more than 10 years before the date of the commission of the primary offense must not be scored as prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or other sanction, whichever is later, to the date of the commission of the primary offense.

(B) Juvenile dispositions of offenses committed by the offender within 5 years before the date of the commission of the primary offense must be scored as prior record if the offense would have been a crime if committed by an adult. Juvenile dispositions of sexual offenses committed by the offender more than 5 years before the date of the primary offense must be scored as prior record if the offender has not maintained a conviction-free record, either as an adult or as a juvenile, for a period of 5 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of commission of the primary offense.

(C) Entries in criminal histories that show no disposition, disposition unknown, arrest only, or a disposition other than conviction must not be scored. Criminal history records expunged or sealed under section 943.058, Florida Statutes, or other provisions of law, including former sections 893.14 and 901.33, Florida Statutes, must be scored as prior record where the offender whose record has been expunged or sealed is before the court for sentencing.

(D) Any uncertainty in the scoring of the offender's prior record must be resolved in favor of the offender and disagreement as to the propriety of scoring specific entries in the prior record must be resolved by the sentencing judge.

(E) When unable to determine whether the conviction to be scored as prior record is a felony or a misdemeanor, the conviction must be scored as a misdemeanor. When the degree of felony is ambiguous or the severity level cannot be determined, the conviction must be scored at severity level 1.

(15) "Legal status points" are assessed when an offender:

(A) Escapes from incarceration;

(B) Flees to avoid prosecution;

(C) Fails to appear for a criminal proceeding;

(D) Violates any condition of a supersedeas bond;

(E) Is incarcerated;

(F) Is under any form of a pretrial intervention or diversion program; or

(G) Is under any form of court-imposed or post-prison release community supervision and commits an offense that results in conviction. Legal status violations receive a score of 4 sentence points and are scored when the offense committed while under legal status is before the court for sentencing. Points for a legal status violation must only be assessed once regardless of the existence of more than one form of legal status at the time an offense is committed or the number of offenses committed while under any form of legal status.

(16) Community sanction violation points occur when the offender is found to have violated a

condition of:

- (A) Probation;
- (B) Community Control; or
- (C) Pretrial intervention or diversion.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six community sanction violation points must be assessed for each violation or if the violation results from a new felony conviction, 12 community sanction violation points must be assessed. For violations occurring on or after March 12, 2007, if the community sanction violation that is not based upon a failure to pay fines, costs, or restitution is committed by a violent felony offender of special concern as defined in s. 948.06, twelve community sanction violation points must be assessed or if the violation results from a new felony conviction, 24 community sanction points must be assessed. Where there are multiple violations, points may be assessed only for each successive violation that follows a continuation of supervision, or modification or revocation of the community sanction before the court for sentencing and are not to be assessed for violation of several conditions of a single community sanction. Multiple counts of community sanction violations before the sentencing court may not be the basis for multiplying the assessment of community sanction violation points.

(17) Possession of a firearm, semiautomatic firearm, or a machine gun during the commission or attempt to commit a crime will result in additional sentence points. Eighteen sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(2) while having in his or her possession a firearm as defined in subsection 790.001(6), Florida Statutes. Twenty-five sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(3) while having in his or her possession a semiautomatic firearm as defined in subsection 775.087(3) or a machine gun as defined in subsection 790.001(9). Only one assessment of either 18 or 25 points can be made.

(18) "Subtotal sentence points" are the sum of the primary offense points, the total additional offense points, the total victim injury points, the total prior record points, any legal status points, community sanction points, prior serious felony points, prior capital felony points and points for possession of a firearm or semiautomatic weapon.

(19) If the primary offense is drug trafficking under section 893.135, Florida Statutes, ranked in offense severity level 7 or 8, the subtotal sentence points may be multiplied, at the discretion of the sentencing court, by a factor of 1.5.

(20) If the primary offense is a violation of the Law Enforcement Protection Act under subsection 775.0823(2), (3), or (4) Florida Statutes, the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of subsection 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of section 784.07(3) or 775.0875(1) or the Law Enforcement Protection Act under subsection 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

(21) If the primary offense is grand theft of the third degree of a motor vehicle and the offender's prior record includes three or more grand thefts of the third degree of a motor vehicle, the subtotal sentence points are multiplied by 1.5.

(22) If the offender is found to have committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang under section 874.04, Florida Statutes, at the time of the commission of the primary offense, the subtotal sentence points are multiplied by 1.5.

(23) If the primary offense is a crime of domestic violence as defined in section 741.28, Florida Statutes, which was committed in the presence of a child under 16 years of age who is a family household member as defined in section 741.28(2) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

(24) If the offender was 18 years of age or older and the victim was younger than 18 at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2 or (3)(a)3; s. 787.02(3)(a)2 or (3)(a)3; s. 794.011, excluding s. 794.011(10); s. 800.04; or s. 847.0135(5), the subtotal sentence points are multiplied by 2.0.

(25) "Total sentence points" are the subtotal sentence points or the enhanced subtotal sentence points.

(26) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months must be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total

sentence points must be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing must be the lowest permissible sentence up to and including the statutory maximum, as defined in section 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the Code exceeds the statutory maximum sentence as provided in section 775.082, the sentence required by the Code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. The sentence imposed must be entered on the scoresheet.

(27) For those offenses having a mandatory minimum sentence, a scoresheet must be completed and the lowest permissible sentence under the Code calculated. If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties apply. Mandatory minimum sentences must be recorded on the scoresheet.

(28) Any downward departure from the lowest permissible sentence, as calculated according to the total

sentence points under section 921.0024, Florida Statutes, is prohibited unless there are circumstances or factors that reasonably justify the downward departure. Circumstances or factors that can be considered include, but are not limited to, those listed in subsection 921.0026(2), Florida Statutes.

(A) If a sentencing judge imposes a sentence that is below the lowest permissible sentence, it is a departure sentence and must be accompanied by a written statement by the sentencing court delineating the reasons for the departure, filed within 7 days after the date of sentencing. A written transcription of orally stated reasons for departure articulated at the time sentence was imposed is sufficient if it is filed by the court within 7 days after the date of sentencing. The sentencing judge may also list the written reasons for departure in the space provided on the Criminal Punishment Code scoresheet.

(B) The written statement delineating the reasons for departure must be made a part of the record. The written statement, if it is a separate document, must accompany the scoresheet required to be provided to the Department of Corrections under subsection 921.0024(6).

If a split sentence is imposed, the total sanction (incarceration and community control or probation) must not exceed the term provided by general law or the maximum sentence under the Criminal Punishment Code.

(29) If the lowest permissible sentence under the criminal punishment code is a state prison sanction but the total sentencing points do not exceed 48 points (or 54 points if six of those points are for a violation of probation, community control, or other community supervision that does not involve a new crime), the court may sentence the defendant to probation, community control or community supervision with mandatory participation in a prison diversion program, as provided for in s. 921.00241, Florida Statutes, if the defendant meets the requirements for that program as set forth in section 921.00241.

(30) If the total sentence points equal 22 or less, the court must sentence the offender to a nonstate prison sanction unless it makes written findings that a nonstate prison sanction could present a danger to the public.

(31) Sentences imposed after revocation of probation or community control must be imposed according to the sentencing law applicable at the time of the commission of the original offense.

Committee Note

The terms must and shall, as used in this rule, are mandatory and not permissive.

APPENDIX B

RULE 3.992

CRIMINAL PUNISHMENT CODE SCORESHEET

Rule 3.992(a) Criminal Punishment Code Scoresheet

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

1. DATE OF SENTENCE	2. PREPARER'S NAME	3. COUNTY	4. SENTENCING JUDGE	
5. NAME (LAST, FIRST, M.I.)	6. DOB	8. RACE <input type="checkbox"/> B <input type="checkbox"/> W <input type="checkbox"/> OTHER	10. PRIMARY OFF. DATE	12. PLEA <input type="checkbox"/>
	7. DC #	9. GENDER <input type="checkbox"/> M <input type="checkbox"/> F	11. PRIMARY DOCKET #	TRIAL <input type="checkbox"/>

I. PRIMARY OFFENSE: If Qualifier, please check ___ A ___ S ___ C ___ R (A=Attempt, S=Solicitation, C=Conspiracy, R=Reclassification)

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
---------------	-------	-------------	---------------	--------

_____/_____/_____ / _____ / _____ / _____

(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)

Prior capital felony triples Primary Offense points **I.** _____

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET#	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS	POINTS	TOTAL
---------	---------------	-------	---------------	-----------------	--------	--------	-------

_____/_____/_____ / _____ / _____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	x	_____	=	_____
---	---	-------	---	-------	---	-------

DESCRIPTION _____

_____/_____/_____ / _____ / _____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X	_____	=	_____
---	---	-------	---	-------	---	-------

DESCRIPTION _____

_____/_____/_____ / _____ / _____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X	_____	=	_____
---	---	-------	---	-------	---	-------

DESCRIPTION _____

_____/_____/_____ / _____ / _____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	x	_____	=	_____
---	---	-------	---	-------	---	-------

DESCRIPTION _____

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

Prior capital felony triples Additional Offense points Supplemental page points _____

II. _____

III. VICTIM INJURY:

	Number	Total		Number	Total
2nd Degree Murder	240 x	_____ = _____	Slight	4 x	_____ = _____
Death	120 x	_____ = _____	Sex Penetration	80 x	_____ = _____
Severe	40 x	_____ = _____	Sex Contact	40 x	_____ = _____
Moderate	18 x	_____ = _____			

III. _____

IV. PRIOR RECORD: Supplemental page attached

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
---------------	-------	---------------	------------------	-------------	--------	--------	-------

_____/_____/_____ / _____ / _____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X	_____	=	_____
_____/_____/_____ / _____ / _____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X	_____	=	_____

_____ / _____	□□□□	_____ X _____ = _____
_____ / _____	□□□□	_____ X _____ = _____
_____ / _____	□□□□	_____ X _____ = _____
_____ / _____	□□□□	_____ X _____ = _____
_____ / _____	□□□□	_____ X _____ = _____
_____ / _____	□□□□	_____ X _____ = _____
_____ / _____	□□□□	_____ X _____ = _____

(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)

Supplemental page points _____

IV. _____

Page 1 Subtotal: _____

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committee on or after October 1, 1998 and subsequent revisions.

NAME (LAST, FIRST, MI)	DOCKET #
------------------------	----------

Page 1 Subtotal: _____

V. Legal Status violation = 4 Points

- Escape Fleeing Failure to appear Supersedeas bond Incarceration Pretrial intervention or diversion program
- Court imposed or post prison release community supervision resulting in a conviction

V. _____

VI. Community Sanction violation before the court for sentencing

- Probation Community Control Pretrial Intervention or diversion
- 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

VI. _____

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 Points

VII. _____

VIII. Prior Serious Felony - 30 Points

VIII. _____

Subtotal Sentence Points _____

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

Law Enf. Protect.	Drug Trafficker	Motor Vehicle Theft	Criminal Gang Offense	Domestic Violence in the Presence of Related Child (offenses committed on or after 3/12/07)	Adult-on-Minor Sex Offense (offenses committed on or after 10/1/14)
____ x 1.5 ____ x 2.0 ____ x 2.5	____ x 1.5	____ x 1.5	____ x 1.5	____ x 1.5	____ x 2.0

Enhanced Subtotal Sentence Points IX. _____

TOTAL SENTENCE POINTS _____

SENTENCE COMPUTATION

If 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.

If total sentence points are greater than 44:

_____ total sentence points minus 28 = _____ x .75 = _____ lowest permissible prison sentence in months

If total sentence points are 60 points or less and court makes findings pursuant to both Florida Statutes 948.20 and 397.334(3), the court may place the defendant into a treatment-based drug court program.

The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s. 775.082, F.S., unless the lowest permissible sentence under the Code exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively. If total sentence points are greater than or equal to 363, a life sentence may be imposed.

_____ maximum sentence In years

TOTAL SENTENCE IMPOSED

Years Months Days

- State Prison Life
- County Jail Time Served
- Community Control
- Probation Modified

Please check if sentenced as habitual offender, habitual violent offender, violent career criminal, prison releasee reoffender, or a mandatory minimum applies.

- Mitigated Departure Plea Bargain Prison Diversion Program

Other Reason _____

JUDGE'S SIGNATURE	
--------------------------	--

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998, and subsequent revisions.

RULE 3.992(b) Supplemental Criminal Punishment Code Scoresheet

NAME (LAST, FIRST, MI.)	DOCKET #	DATE OF SENTENCE
-------------------------	----------	------------------

ADDITIONAL OFFENSES(S):

DOCKET#	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS	POINTS	TOTAL
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ =	_____
DESCRIPTION _____							
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ =	_____
DESCRIPTION _____							
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ =	_____
DESCRIPTION _____							
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ =	_____
DESCRIPTION _____							

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

II. _____

IV. PRIOR RECORD

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X	_____ =	_____
_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X	_____ =	_____
_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X	_____ =	_____

_____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X _____ = _____
_____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X _____ = _____
_____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X _____ = _____

(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)

IV. _____

REASONS FOR DEPARTURE - MITIGATING CIRCUMSTANCES
(reasons may be checked here or written on the scoresheet)

- Legitimate, uncoerced plea bargain.
- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction, or for a physical disability, and the defendant is amenable to treatment.
- The need for payment of restitution to the victim outweighs the need for a prison sentence.
- The victim was an initiator, willing participant, aggressor, or provoker of the incident.
- The defendant acted under extreme duress or under the domination of another person.
- Before the identity of the defendant was determined, the victim was substantially compensated.
- The defendant cooperated with the State to resolve the current offense or any other offense.
- The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- At the time of the offense the defendant was too young to appreciate the consequences of the offense.
- The defendant is to be sentenced as a youthful offender.
- The defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program.
- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Pursuant to 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).
 Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998 and subsequent revisions.