

RULE 3.701 | SENTENCING GUIDELINES

(a) Use with Forms. This rule is to be used in conjunction with forms 3.988(a)-(i).

(b) Statement of Purpose. The purpose of sentencing guidelines is to establish a uniform set of standards to guide the sentencing judge in the sentence decision-making process. The guidelines represent a synthesis of current sentencing theory and historic sentencing practices throughout the state. Sentencing guidelines are intended to eliminate unwarranted variation in the sentencing process by reducing the subjectivity in interpreting specific offense-related and offender-related criteria and in defining their relative importance in the sentencing decision. The sentencing guidelines embody the following principles:

- (1) Sentencing should be neutral with respect to race, gender, and social and economic status.
- (2) The primary purpose of sentencing is to punish the offender. Rehabilitation and other traditional considerations continue to be desired goals of the criminal justice system but must assume a subordinate role.
- (3) The penalty imposed should be commensurate with the severity of the convicted offense and the circumstances surrounding the offense.
- (4) The severity of the sanction should increase with the length and nature of the offender's criminal history.
- (5) The sentence imposed by the sentencing judge should reflect the length of time to be served, shortened only by the application of gain time.
- (6) While the sentencing guidelines are designed to aid the judge in the sentencing decision and are not intended to usurp judicial discretion, departures from the presumptive sentences established in the guidelines shall be articulated in writing and made when circumstances or factors reasonably justify the aggravation or mitigation of the sentence. The level of proof necessary to establish facts supporting a

departure from a sentence under the guidelines is a preponderance of the evidence.

(7) Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those persons convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.

(c) Offense Categories. Offenses have been grouped into 9 offense categories encompassing the following statutes:

Category 1: Murder, manslaughter: Chapter 782 (except subsection 782.04(1)(a)), subsection 316.193(3)(c)3, and subsection 327.351(2).

Category 2: Sexual offenses: Section 775.22, chapters 794 and 800, section 826.04, and section 491.0112.

Category 3: Robbery: Section 812.13, and sections 812.133 and 812.135.

Category 4: Violent personal crimes: Section 231.06, chapters 784 and 836, section 843.01, and subsection 381.411(4).

Category 5: Burglary: Chapter 810, section 817.025, and subsection 806.13(3).

Category 6: Thefts, forgery, fraud: Sections 192.037 and 206.56, chapters 322 and 409, section 370.142, section 415.111, chapter 443, section 493.3175, sections 494.0018, 496.413, and 496.417, chapter 509, subsection 517.301(1)(a), subsections 585.145(3) and 585.85(2), section 687.146, and chapters 812 (except section 812.13), 815, 817, 831, and 832.

Category 7: Drugs: Section 499.005 and chapter 893.

Category 8: Weapons: Chapter 790 and section 944.40.

Category 9: All other felony offenses.

(d) General Rules and Definitions.

(1) One guideline scoresheet shall be utilized for each defendant covering all offenses pending before the court



for sentencing. The state attorney's office will prepare the scoresheets and present them to defense counsel for review as to accuracy in all cases unless the judge directs otherwise. The sentencing judge shall approve all scoresheets.

(2) "Conviction" means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

(3) "Primary offense" is defined as the offense at conviction that, when scored on the guidelines scoresheet, recommends the most severe sanction. In the case of multiple offenses, the primary offense is determined in the following manner:

(A) A separate guidelines scoresheet shall be prepared scoring each offense at conviction as the "primary offense at conviction" with the other offenses at conviction scored as "additional offenses at conviction."

(B) The guidelines scoresheet that recommends the most severe sentence range shall be the scoresheet to be utilized by the sentencing judge pursuant to these guidelines.

(4) All other offenses for which the offender is convicted and that are pending before the court for sentencing at the same time shall be scored as additional offenses based on their degree and the number of counts of each.

(5) "Prior record" refers to any past criminal conduct on the part of the offender, resulting in conviction, prior to the commission of the primary offense. Prior record includes all prior Florida, federal, out-of-state, military, and foreign convictions, as well as convictions for violation of municipal or county ordinances that bring within the municipal or county code the violation of a state statute or statutes. Provided, however, that:

(A) Entries in criminal histories that show no disposition, disposition unknown, arrest only, or

other nonconviction disposition shall not be scored.

(B) When scoring federal, foreign, military, or out-of-state convictions, assign the score for the analogous or parallel Florida statute.

(C) When unable to determine whether an offense at conviction is a felony or a misdemeanor, the offense should be scored as a misdemeanor. When the degree of the felony is ambiguous or impossible to determine, score the offense as a third-degree felony.

(D) Prior record shall include criminal traffic offenses, which shall be scored as misdemeanors.

(E) Convictions that do not constitute violations of a parallel or analogous state criminal statute shall not be scored.

(F) An offender's prior record shall not be scored if the offender has maintained a conviction-free record for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense.

(G) All prior juvenile dispositions that are the equivalent of convictions as defined in subdivision (d)(2), occurring within 3 years of the commission of the primary offense and that would have been criminal if committed by an adult, shall be included in prior record.

(6) "Legal status at time of offense" is defined as follows: Offenders on parole, probation, or community control; offenders in custody serving a sentence; escapees; fugitives who have fled to avoid prosecution or who have failed to appear for a criminal judicial proceeding or who have violated conditions of a supersedeas bond; and offenders in pretrial intervention or diversion programs. Legal status points are to be assessed where these forms of legal constraint existed at the time of the commission of offenses scored as primary or additional offenses at conviction. Legal



status points are to be assessed only once whether there are one or more offenses at conviction.

(7) Victim injury shall be scored for each victim physically injured during a criminal episode or transaction, and for each count resulting in such injury whether there are one or more victims.

(8) The recommended sentences provided in the guideline grids are assumed to be appropriate for the composite score of the offender. A range is provided to permit some discretion. The permitted ranges allow the sentencing judge additional discretion when the particular circumstances of a crime or defendant make it appropriate to increase or decrease the recommended sentence without the requirement of finding reasonable justification to do so and without the requirement of a written explanation.

(9) For those offenses having a mandatory penalty, a scoresheet should be completed and the guideline sentence calculated. If the recommended sentence is less than the mandatory penalty, the mandatory sentence takes precedence. If the guideline sentence exceeds the mandatory sentence, the guideline sentence should be imposed.

(10) If the composite score for a defendant charged with a single offense indicates a guideline sentence that exceeds the maximum sentence provided by statute for that offense, the statutory maximum sentence should be imposed.

(11) Departures from the recommended or permitted guideline sentence should be avoided unless there are circumstances or factors that reasonably justify aggravating or mitigating the sentence. Any sentence outside the permitted guideline range must be accompanied by a written statement delineating the reasons for the departure. Reasons for deviating from the guidelines shall not include factors relating to prior arrests without conviction or the instant offenses for which convictions have not been obtained.

(12) A sentence must be imposed for each offense. However, the total sentence cannot exceed the total



guideline sentence unless a written reason is given. Where the offender is being sentenced for a capital felony and other noncapital felonies that arose out of the same criminal episode or transaction, the sentencing court may impose any sentence authorized by law for the noncapital felonies.

(13) Community control is a form of intensive supervised custody in the community involving restriction of the freedom of the offender. When community control is imposed, it shall not exceed the term provided by general law.

(14) Sentences imposed after revocation of probation or community control must be in accordance with the guidelines. The sentence imposed after revocation of probation or community control may be included within the original cell (guidelines range) or may be increased to the next higher cell (guidelines range) without requiring a reason for departure.

(15) Categories 3, 5, and 6 contain an additional factor to be scored under the heading of Prior Record: Prior convictions for similar offenses. Prior convictions scored under this factor should be calculated in addition to the general prior record score. Scoring is limited to prior felony convictions included within the category.

Sentencing Guidelines Commission Notes

1988 Amendments.

(a) The operation of this rule is not intended to change the law or requirements of proof as regards sentencing.

(b) These principles are binding on the sentencing court.

(c) Only 1 category is proper in any particular case. Category 9, "All Other Felony Offenses," should be used only when the primary offense at conviction is not included in another, more specific category. The guidelines do not apply to capital felonies.

Inchoate offenses are included within the category of the offense attempted, solicited, or conspired to, as modified by chapter 777.

The form appearing at Florida Rule of Criminal Procedure 3.988(a) has been revised to incorporate a point value for inclusion in the prior record factor utilized in the determination of



recommended sentence by scoring each prior conviction under section 316.193, Florida Statutes (Supp. 1984), or section 316.1931, Florida Statutes (Supp. 1984), or section 327.351, Florida Statutes (Supp. 1984), at a value of 32 points. This point value will be applied only if the offender is convicted for a violation of section 316.193(3)(c)3, Florida Statutes (Supp. 1986), or section 327.351, Florida Statutes (Supp. 1984), if the operation of a motor vehicle or vessel by the offender while intoxicated as defined in section 316.193(1), Florida Statutes (Supp. 1986), or section 327.351(1), Florida Statutes (Supp. 1984), results in the death of any human being and the scoresheet utilized in sentencing is the form appearing at Florida Rule of Criminal Procedure 3.988(a). For purposes of determining a prior conviction for a violation of the above enumerated statute, a prior conviction for violation of section 316.1931 or section 316.193 or former section 860.01 or former section 316.028, or a previous conviction for any substantially similar alcohol-related or drug-related traffic offense outside this state shall also be considered a prior conviction.

(d)(1) Ultimate responsibility for ensuring that scoresheets are accurately prepared rests with the sentencing court. Due to ethical considerations, defense counsel may not be compelled to submit a scoresheet. Probation and parole officers may be directed to compile guidelines scoresheets only when a presentence investigation has been ordered. The forms for calculating the guidelines are forms 3.988(a)–(i).

(d)(2) This definition applies to both instant offense and prior record scoring.

(d)(3) The proper offense category is identified on determination of the primary offense. When the defendant is convicted of violations of more than 1 unique statute, the offenses are to be sorted by statutory degree.

(d)(4) No points shall be scored for lesser and included offenses. In the event of multiple counts of the same distinct offense and degree of felony being scored as primary offense, it shall be scored as additional counts of the primary offense. All other offenses for which the defendant is convicted that are pending before the court for sentencing shall be scored as additional offenses.

(d)(5) Each separate prior felony and misdemeanor conviction in an offender's prior record that amounts to a violation of Florida law shall be scored, unless discharged by the passage of time. Any uncertainty in the scoring of the defendant's prior record shall be resolved in favor of the defendant, and disagreement as to the propriety of scoring specific entries in the prior record should be resolved by the trial judge.

Prior record includes all offenses for which the defendant has been found guilty, regardless of whether adjudication was withheld or the record has been expunged.

Juvenile dispositions, with the exclusion of status offenses, are included and considered along with adult convictions by operation of this provision. However, each separate adjudication is discharged from consideration if 3 years have passed between the date of disposition and the commission of the instant offense.

For any offense where sentence was previously suspended pursuant to the imposition of probation and such offense is now before the court for sentencing, upon a revocation of that probation based upon a subsequent criminal offense (which subsequent offense is also before the

court for sentencing at the same time), the earlier offense shall be scored as “prior record” and not as “additional offense.”

(d)(7) This provision implements the intention of the commission that points for victim injury be added for each victim injured during a criminal transaction or episode. The injury need not be an element of the crime for which the defendant is convicted, but is limited to physical trauma. However, if the victim injury is the result of a crime for which the defendant has been acquitted, it shall not be scored.

(d)(8) The first guideline cell in each category (any nonstate prison sanction) allows the court the flexibility to impose any lawful term of probation with or without a period of incarceration as a condition of probation, a county jail term alone, or any nonincarcerative disposition. Any sentence may include the requirement that a fine be paid. The sentences are found in forms 3.988(a)–(i).

(d)(10) If an offender is convicted under an enhancement statute, the reclassified degree should be used as the basis for scoring the primary offense in the appropriate category. If the offender is sentenced under section 775.084 (habitual offender), the maximum allowable sentence is increased as provided by the operation of that statute. If the sentence imposed departs from the recommended sentence, the provisions of (d)(11) shall apply.

(d)(11) A sentencing judge may depart from the recommended sentence and impose a sentence within the permitted range without giving reasons therefor. If a sentencing judge departs from the permitted range, reasons for departure shall be articulated at the time sentence is imposed. The written statement shall be made a part of the record, with sufficient specificity to inform all parties, as well as the public, of the reasons for departure. The court is prohibited from considering offenses for which the defendant has not been convicted. Other factors, consistent and not in conflict with the statement of purpose, may be considered and utilized by the sentencing judge.

(d)(12) The sentencing court shall impose or suspend sentence for each separate count, as convicted. The total sentence shall not exceed the guideline sentence, unless the provisions of subdivision (d)(11) are complied with.

If a split sentence is imposed (i.e., a combination of state prison and probation supervision), the incarcerative portion imposed shall not be less than the minimum of the guideline range nor exceed the maximum of the range. The total sanction (incarceration and probation) shall not exceed the term provided by general law.

(d)(13) Community control is a viable alternative for any state prison sentence less than 24 months without requiring a reason for departure. It is appropriate to impose a sentence of community control to be followed by a term of probation. The total sanction (community control and probation) shall not exceed the term provided by general law.

Community control is not an alternative sanction from the recommended range of any nonstate prison sanction unless the provisions of rule 3.701(d)(11) are applied.

1991 Amendment. The purpose of the 1991 revision to rule 3.701(d)(6) is to clarify the original intent that legal constraint is a status consideration and is not to be considered a function of the number of offenses at conviction.

1991 Amendment. The purpose of the 1991 revision to rule 3.701(d)(7) is to provide consistency in the scoring of victim injury by scoring each offense at conviction for which victim injury can appropriately be scored, whether committed against a single or multiple victims.

1993 Amendments. Inchoate offenses are included within the category of the offense attempted, solicited, or conspired to, as modified by chapter 777. An attempt, solicitation, or conspiracy to commit first-degree murder as defined in subsection 782.04(1)(a) shall be scored in category 1. An attempt, solicitation, or conspiracy to commit capital sexual battery as defined in subsection 794.011(2) shall be scored in category 2.

