

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1196

SPONSOR: Appropriations Subcommittee on Public Safety & Judiciary, Criminal Justice Committee and Senator Smith

SUBJECT: Waiver of Sentencing Score Computation

DATE: April 18, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable/CS
2.	Pingree	Beck	APJ	Favorable/CS
3.	_____	_____	AP	Withdrawn: Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

When a defendant is before the court for sentencing for a felony offense, regardless of whether the offense was committed before October 1, 1998 (subject to sentencing under the former sentencing guidelines) or on or after October 1, 1998 (subject to sentencing under the Criminal Punishment Code), a scoresheet must be prepared and presented to the court before sentencing. CS/CS/SB 1196 provides that the judge may sentence a defendant without a scoresheet if both the state attorney and defendant agree to waive the presentence preparation of the scoresheet.

In order to ensure that the Legislature continues to have the ability to collect and analyze sentencing data, the bill requires the state attorney to prepare and submit the scoresheet to the sentencing judge within 14 days after sentencing.

This bill substantially amends ss. 921.002(2) and 921.0024(3), Florida Statutes.

II. Present Situation:

The Criminal Punishment Code; Worksheet (Scoresheet).

The Criminal Punishment Code (Code) became effective on October 1, 1998. The Code established definitions, sentencing criteria, and criminal penalties in accordance with a sentencing policy that focused on the punishment of offenders. The Code focused on incarcerating violent criminal offenders and imposing penalties that are commensurate with the crime committed by the offender.

Under the Code, non-capital felony sentences are scored to result in a "permissible sentencing range." Essentially, the Criminal Punishment Code operates somewhat like minimum mandatory sentences. However, the sentences are not as absolute as minimum mandatory sentences because there are circumstances in which the sentencing court can mitigate a sentence by departing down from a permissible sentencing range if the reasons are valid and memorialized in writing, as set forth in ss. 921.0026 and 921.00265, F.S. The range of permissible sentences is broad, which provides more flexibility to the court and to the prosecutor.

The Criminal Punishment Code encompasses an offense ranking chart that is provided in s. 921.002, F.S. Section 921.0022(1), F.S., requires that the offense ranking chart be used with the worksheet to compute a sentence score *for each felony offender* whose offense was committed on or after October 1, 1998.

The ranking of the crimes for which the offender is being sentenced, both the primary offense and any additional offenses, provide the starting point for calculating a permissible sentence under the Code. Crimes are ranked in different "levels" with corresponding sentence point values. Sentence points, point multipliers, victim injury points and other point enhancements are provided in s. 921.0024, F.S.

Sentencing points are also included for an offender's prior criminal record. Convictions for offenses committed by the offender more than 10 years before the primary offense are not included in the offender's 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 sanction, to the date of the primary offense. An offender's prior record subtotal also includes juvenile dispositions for offenses committed by the offender within 3 years before the primary offense.

The defendant's prior record is usually calculated by reference to a FCIC/NCIC printout as a starting point. Occasionally, due to confusion in the printout, some investigation may be required to accurately assess the defendant's prior record and the proper way to score it.

Pursuant to s. 921.0024(2), F.S., if an offender scores less than or equal to 44 points, the lowest permissible sentence is any non-state prison sanction. This may include incarceration in the county jail, probation, community control, or some combination thereof. The court has the discretion to sentence the offender to prison, up to the statutory maximum, even where the sentencing points are 44 or less. If an offender scores more than 44 points, the lowest permissible sentence in terms of prison months is calculated by subtracting 28 from the point total and multiplying that number by .75.

Under the provisions of s. 921.0024(2), F.S., "[t]he total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum...."

A copy of the scoresheet must be attached to the copy of the uniform judgment and sentence form provided to the Department of Corrections. s. 921.0024(7), F.S.

Legislative and Administrative Use of Criminal Punishment Code Scoresheets.

The Criminal Justice Estimating Conference, which is a part of the Legislative branch of government, is statutorily required, with the assistance of the Department of Corrections, to estimate the impact of any proposed changes to the Code on future rates of incarceration and on the prison population. s. 921.002(4)(a), F.S. The information provided on the scoresheets is entered by the Department of Corrections into a database, which is then utilized for monitoring sentencing trends, in individual and aggregate cases. This information is essential to the work of the Estimating Conference and to the Legislature.

Additionally, the Department of Corrections is statutorily authorized to collect and evaluate Code scoresheets from each of the judicial circuits and provide an annual report to the Legislature showing the compliance rate of each circuit in providing scoresheets to the department. s. 921.002(4)(b), F.S. Section 921.0024(6), F.S., requires the clerk of the circuit court to transmit the scoresheets, no less frequently than monthly, to the Department of Corrections.

Rules of Procedure.

The Supreme Court of Florida has adopted the Criminal Punishment Code Scoresheet in Rule 3.992. As revisions occur, due to the Legislative process, the Department of Corrections revises the scoresheet forms as needed and submits them to the Court for adoption. The department must submit the revised scoresheet to the Court by June 15, as it has become necessary, and the department is required, statutorily, to distribute the scoresheet adopted by the Court by September 30. s. 921.0024(4), (5), F.S.

Rule 3.704 implements the Criminal Punishment Code and states that “[e]xisting 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.” R.Cr.P. 3.704 (a),(b).

Rule 3.704 (d) (1) states, in part: “One or more Criminal Punishment Code scoresheets *must be prepared* for each offender *covering all offenses pending before the court for sentencing*...The office of the state attorney or the Department of Corrections, or both where appropriate, *must prepare the scoresheets and present them to defense counsel for review as to accuracy.*”

Rule 3.704 (d) (4) states: “The sentencing judge *must* review the scoresheet for accuracy and sign it.”

Rule 3.704 (d)(14)(C) states: “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, ...must be scored as prior record where the offender whose record has been expunged or sealed is before the court for sentencing.”

Rule 3.704 (d)(14)(D) states: “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.*”

Appeal of Sentence.

Section 921.002(1)(h), F.S., provides “[a] sentence may be appealed on the basis that it departs from the Criminal Punishment Code only if the sentence is below the lowest permissible sentence or as enumerated in s. 924.06(1).”

Section 924.06(1), F.S., provides that a defendant may appeal from:

- a final judgment of conviction when probation has not been granted *except that* if the defendant pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue, at least under the statutory restrictions, he or she may not file a direct appeal;
- an order granting or revoking probation;
- a *sentence* on the grounds that it is *illegal*;
- a sentence imposed under the Code if it exceeds the statutory maximum.

The courts have interpreted the law, in conjunction with the Rules of Procedure, to provide a defendant the right to raise the illegality of a sentence at any time. Under the Code, an illegal sentence could result under limited circumstances, due to the design of the Code to give the sentencing court a wide range of sentencing options. In other words, while the Sentencing Guidelines provided a “floor” and a “ceiling,” the Code only provides a “floor” – the “ceiling” is generally the statutory maximum.

Florida Rule of Criminal Procedure 3.800 (a) states: “A court may at any time correct an *illegal sentence* imposed by it or an *incorrect calculation made by it in a sentencing guideline scoresheet.*”

Procedurally, collateral review is generally governed by Florida Rule of Criminal Procedure 3.850 and may involve, among other things, claims that the defendant’s trial counsel was ineffective. A rule 3.850 motion must be filed in the trial court where the defendant was sentenced. According to rule 3.850, unless the record in the case conclusively shows that the defendant is entitled to no relief, the trial court must order the state attorney to respond to the motion and may then hold an evidentiary hearing. Fla. R. Crim P. 3.850(d). If the trial court denies the motion for post conviction relief with or without holding an evidentiary hearing, the defendant is then entitled to an appeal of this denial to the District Court of Appeal that has jurisdiction over the circuit court where the motion was filed.

III. Effect of Proposed Changes:

CS/CS/SB 1196 amends ss. 921.002(2) and 921.0024(3), F.S., to allow a judge to sentence a defendant without a scoresheet if both the state attorney and defendant agree to waive the presentence preparation of the scoresheet. However, the state attorney must prepare and submit the scoresheet to the sentencing judge within 14 days after sentencing.

Currently, the law provides that either the state attorney or the Department of Corrections, or both where appropriate, may prepare the sentencing scoresheet. This bill removes the option of having the Department of Corrections prepare scoresheets in order to be consistent with budget reductions contained in SB 2000, 1st Engrossed (the General Appropriations Act for FY 01-02). As such, the state attorney will be solely responsible for scoresheet preparation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is unclear whether the scoresheet itself, and its use in the sentencing of a defendant, is purely a substantive matter (within the purview of the Legislature), purely a procedural matter (within the purview of the Court), or a hybrid. This is so because the issue is woven into not only the statutes, but the Rules of Procedure as well (see the "Present Situation" section above).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

At least one State Attorney indicates that court dockets are slow to turn over because the law currently requires the scoresheet(s) to be available to the court at the time of sentencing. If the scoresheet is not prepared ahead of time and a plea is entered, sentencing must be postponed so that the scoresheet can be prepared. This delay may result in the defendant being housed at the local county jail until sentencing can occur. Presumably, this delay would also result in more cases remaining "open" in the State Attorney's office than might otherwise be the case. To the extent that this bill results in cases being disposed of more

quickly, the bill may have a positive fiscal impact on local law enforcement agencies, state attorney and public defender offices and the trial courts.

CS/CS/SB 1196 addresses concerns about the continued availability of sentencing data for legislative and administrative purposes by requiring the scoresheet to be prepared and filed with the sentencing judge within 14 days after sentencing.

To the extent that the Department of Corrections (DOC) has been preparing sentencing scoresheets, relieving state attorneys from that responsibility, this bill (along with SB 2000, 1st Engrossed) will impact the state attorneys' workload. Currently, DOC prepares scoresheets in every circuit and prepares over 50% of them in the following circuits: 1st, 3rd, 7th, 9th, 10th, 14th, 16th, 18th, 19th, and 20th.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is conceivable that claims of ineffective assistance of counsel may arise from the lack of a scoresheet provided for review at sentencing. Although the bill requires a waiver of the scoresheet by the defendant, presumably the plea offer made by the state would be based, to some degree at least, on the point value assigned by the ranking chart to the pending charge and the defendant's prior criminal history as well as the other components assessed in a sentence score to determine the lowest permissible sentence. The oral presentation of a plea offer to a defendant by his or her attorney, his or her (mis)understanding of the offer, the reasons for the offer, the presumption that he or she would or would not score a particular "lowest permissible sentence" under the Code, the failure of defense counsel to challenge certain assumptions (not documented) regarding a presumptive score, are all issues which may be seen by the sentencing court at a later time in a Rule 3.850 motion based on ineffective assistance of counsel.

VIII. Amendments:

None.