

FIRST APPEARANCE MANUAL

SEMINOLE COUNTY



Updated 8/22/17

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INTRODUCTION

This manual for first appearances is to be used by judges, prosecutors, public defenders, private counsel, clerks and law enforcement personnel, including probation and community control officers, for the purpose of guiding procedures for first appearance hearings in Seminole County.

The manual is the result of serious study of the rules and statutes governing conduct of first appearance proceedings and the input of the state attorney, public defender and members of the bar who practice in the criminal courts of Seminole County. The manual is published online at the court's website under Local Practice Manuals at <http://www.flcourts18.org>. Comments, suggestions and criticisms are welcome and should be directed to the Administrative Judge of the Circuit Court Criminal Division or the Administrative Judge of the Seminole County Court.

This manual has been approved as the policy manual for use at first appearances in Seminole County. The manual is not legal authority, however, and should not be cited for purposes other than as an expression of policy.

The authors are much indebted to the Honorable Michael F. Andrews, Circuit Judge of the Sixth Judicial Circuit, whose paper entitled First Appearance Hearings, Probable Cause Determination, Pretrial Release Guidelines, Pretrial Detention and Arthur Hearings provided the basis for the judges in Seminole County to undertake this project. We are also grateful to our legal intern, Jessica Savidge, from Barry University, School of Law, who edited the numerous footnotes contained in this manual.

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February 10, 2010

I. FIRST APPEARANCE HEARINGS (RULE 3.130 - 3.133)

A. FIRST APPEARANCE HEARINGS--GENERAL INFORMATION

A first appearance is a hearing for defendants who have been taken into and remain in custody. First appearance hearings are scheduled every 24 hours. The purpose of first appearance hearings is to advise defendants who are in custody of their constitutional rights, inform them of the charges for which they have been arrested, appoint counsel for indigent defendants, determine if there is probable cause for the arrest, set conditions of release, and schedule an arraignment date. First appearance hearings also provide due process to defendants who have been taken into custody on out-of-county or out-of-state warrants and for defendants accused of violation of probation or community control.

Generally, every person who is in custody and subject to the Florida Rules of Criminal Procedure must be given a first appearance hearing within 24 hours after being taken into custody.¹ There are two exceptions to the rule: defendants who have been transported from another facility who have previously had a first appearance on pending charges and defendants who have been turned in by their surety are not entitled to a first appearance and shall not be brought to a first appearance hearing.²

It is the responsibility of the first appearance judge to complete the first appearance hearing whenever possible. Persons in custody who have had a correct and completed first appearance should not need any further court proceedings until arraignment. Failure to conduct a correct and complete first appearance usually results in unnecessary judicial labor for another judge.

B. TIME OF FIRST APPEARANCE HEARINGS

First Appearance Hearings in Seminole County shall be held at the John E. Polk Correctional Facility at 1:30 p.m. on weekdays and at 9:00 a.m. on weekends and holidays. Weekday first appearances may be by video if the defendant is an adult. These times may be changed only in emergencies, such as hurricanes or tornados, and with the approval of the Chief Judge or the Administrative Judge of the Circuit Court Criminal Division. First appearance schedules shall not be changed for the convenience of court personnel or law enforcement.

C. PERSONS ENTITLED TO FIRST APPEARANCE

1. Probable Cause Arrests.

¹FLA. R. CRIM. P. 3.130(a).

²Id.

Persons arrested on probable cause for misdemeanor or felony crimes are entitled to a first appearance. These persons make up the vast majority of the first appearance docket.

2. Persons taken into custody on a capias or an arrest warrant.
3. Violations of Probation/Community Control.

Persons arrested with or without a warrant for violation of probation or community control are entitled to a first appearance hearing.³

4. Juveniles Charged as an Adult.

Children in the custody of juvenile authorities who have been indicted or informed against as an adult shall have a first appearance hearing within 24 hours after the filing of the indictment or information.⁴

D. PERSONS NOT ENTITLED TO FIRST APPEARANCE

The following categories of jail inmates are not subject to the Florida Rules of Criminal Procedure and are not entitled to a first appearance hearing. They shall not be scheduled on the first appearance docket.

1. Military deserters.
2. Witnesses in protective custody.
3. State prisoners who are on early release from the Department of Corrections.
4. Prisoners who have been transported to Seminole County from another facility and who have no Seminole County charges.
5. Prisoners who have been turned in by their surety.
6. Parole violators.
7. Persons in custody on a writ of attachment.
8. Federal prisoners.
9. Defendants whose bond or pretrial release status has been revoked.

II. PROCEDURE AT FIRST APPEARANCE

A. CASES INVOLVING TRANSLATORS

Persons in custody who do not speak the English language are entitled to the same rights and procedures as those who do. In general, it is better to take cases involving translators first because the translator can collectively advise non-English-speaking persons of their constitutional

³Hill v. State, 739 So. 2d 634 (Fla. 4th DCA 1999); FLA STAT § 948.06(1)(a)-(b) (2009).

⁴FLA. R. CRIM. P. 3.130(a).

rights and then provide translator services during the first appearance hearings. The cost of the translator's services can be minimized by calling these cases first. Correctional officers are not qualified to provide interpreter services.

B. GENERAL FIRST APPEARANCE ADVICE

The first appearance judge must advise the defendants of their legal rights at the first appearance hearing. The advice may be given collectively to all of the defendants present for first appearance. The advice that must be given is as follows:

1. THE RIGHT TO REMAIN SILENT⁵

The defendants must be advised of the right to remain silent and that anything they say can be used against them in court.

2. THE RIGHT TO COUNSEL⁶

The first appearance judge must advise the defendant of the right to counsel of their choosing and, if the defendant is indigent, of the right to court-appointed counsel.

Note - There is no right to counsel if the defendant is charged with a misdemeanor and the judge files a certification of no jail at least 15 days prior to trial. In such cases, the defendant is entitled to reasonable conditions of release from custody. If such a certification is filed at or before first appearance, the first appearance judge must first determine if non-monetary conditions of release are appropriate. If not, bail must be set. If the defendant is unable to post bond, the public defender must be appointed even though a no jail certificate has been filed.⁷

3. THE RIGHT TO COMMUNICATE⁸

The defendants must be advised that they have the right to communicate with their lawyer, their family, and their friends and that reasonable means will be made available for them to do so.

C. JUDICIAL TASKS FOR INDIVIDUAL FIRST APPEARANCES

⁵FLA. R. CRIM.. P. 3.130(b)(1).

⁶FLA. R. CRIM. P. 3.130(b)(2); The Sixth Amendment right to counsel attaches at the earliest of: (1) formal charges; (2) first appearance; (3) preliminary hearing; (4) the filing of indictment or information; and (5) arraignment. FLA. CONST. Art. I, § 16; Smith v. State, 699 So.2d 629 (Fla. 1997).

⁷FLA. R. CRIM. P. 3.111; Hardy v. State, 776 So.2d 962 (Fla. 3d DCA 2000).

⁸FLA. R. CRIM. P. 3.130(b)(3).

The first appearance judge must accomplish the following six tasks, in order, for each individual defendant:

1. ASK THE DEFENDANT IF HE OR SHE UNDERSTANDS THE RIGHTS THAT HAVE JUST BEEN GIVEN.
2. ADVISE THE DEFENDANT OF THE CHARGES FOR WHICH HE OR SHE HAS BEEN ARRESTED AND ASK THE DEFENDANT IF A COPY OF THE COMPLAINT AND RELATED DOCUMENTS HAVE BEEN RECEIVED.
3. DETERMINE WHETHER THE DEFENDANT WILL HIRE COUNSEL OR IS QUALIFIED FOR COURT-APPOINTED COUNSEL. APPOINT COUNSEL FOR INDIGENT OR PARTIALLY INDIGENT DEFENDANTS.
4. ADDRESS THE ISSUE OF WHETHER THERE IS PROBABLE CAUSE FOR THE ARREST.
5. SET CONDITIONS OF RELEASE.
6. SET AN ARRAIGNMENT DATE.

D. DISCUSSION OF JUDICIAL TASKS AT FIRST APPEARANCE

1. UNDERSTANDING CONSTITUTIONAL RIGHTS

First appearance hearings are sometimes bewildering to defendants, especially those who are under the influence of drugs or alcohol or have mental problems. It is important to ask each defendant if he or she understood the constitutional rights that were explained to the entire group of defendants.

2. ADVISE OF PENDING CHARGES

The first appearance judge must advise the defendant of any pending charges and provide the defendant with a copy of the complaint/arrest affidavit, together with a copy of any other document the first appearance judge reviewed to determine probable cause or set conditions of release, including victim-impact statements and criminal history data.⁹ Rule 3.130(b) does not

contain an exception for furnishing a copy of the complaint in cases in which the defendant has been arrested on a warrant or a capias. If the complaint (or affidavit) is not attached to the warrant or capias, the first appearance hearing should be continued for 24 hours to allow the state attorney to obtain a copy. The rule does not contain an exception for an out of county warrant or capias.

⁹FLA. R. CRIM. P. 3.130(b).

3. DETERMINE ISSUE OF COUNSEL FOR THE DEFENDANT

Question the defendant to determine if the defendant intends to hire private counsel, apply for the appointment of counsel, or wishes to waive counsel.

If the defendant desires to hire counsel, a reasonable time must be allowed for the defendant to send for counsel. The first appearance hearing may be postponed for that purpose.¹⁰ The first appearance judge may require an officer to communicate a message to the counsel that the defendant names.¹¹ While it is generally inappropriate to appoint the public defender to represent

defendants who are not indigent, if the delay in obtaining counsel will last more than 24 hours, the court may, at the request of the defendant, appoint the public defender for the first appearance hearing.¹² Defendants who claim they will retain private counsel shall be scheduled for counsel review at first appearance in 7 days or the first business day after 7 days, if they remain in custody. Additionally, the public defender should be appointed if the defendant appears to be incapable of filling out an indigency affidavit, is mentally retarded, is mentally ill, or speaks only a foreign language.¹³ Defendants who are in custody in Seminole County on charges from another

county or state are entitled to counsel, and the public defender should be appointed to represent these defendants if they otherwise qualify.

If the defendant desires to apply for court-appointed counsel, an indigency affidavit must be filled out by the defendant. Defendants are entitled to court-appointed counsel if the affidavit establishes the defendant is indigent, or partially indigent. “Indigent” means a person who is unable to pay for the services of an attorney, including costs of investigation, without a substantial hardship to the person or the person’s family.¹⁴ “Partially indigent” means a person who is unable to pay more than a portion of the fee charged by an attorney, including costs of investigation, without substantial hardship to the person or the person’s family.¹⁵ Poverty guidelines and other guidelines are not binding for the finding of indigency or partial indigency by the first appearance judge. Any prior determination of indigency or non-indigency made by the clerk is a preliminary assessment only and is not binding upon the first appearance judge. The clerk does not consider partial indigency status when making the preliminary assessment.

If the first appearance judge determines that the public defender has a conflict and cannot represent the defendant, conflict counsel must be appointed.

Public defender defendants must be advised that an application fee must be paid to the clerk within seven days from the date of the application. If the fee is not paid, it will be

¹⁰FLA. R. CRIM. P. 3.130(c)(2).

¹¹Id.

¹²Id.

¹³Office of the Public Defender v. State, 714 So. 2d 1083 (Fla. 3d DCA 1998).

¹⁴FLA. R. CRIM. P. 3.111(4).¹⁵Id.

assessed at the end of the case and may be made a condition of probation or community control.¹⁶ Additionally, a separate fee may be assessed at the end of the case and may be made payable as a condition of probation or community control. The fee shall also become a lien against any property the defendant owns or later acquires.

If an indigent defendant desires to waive counsel, a full Faretta inquiry must be conducted and a waiver of counsel form must be executed by the defendant for filing in the court file.¹⁷

Appointment of counsel should not be delayed simply because first appearances are conducted by video. Defendants should fill out affidavits requesting the public defender to be appointed and the assistant public defender should be asked to examine the affidavit and accept the appointment based upon the information contained in it, or the affidavit should be faxed to the video studio for signature by the first appearance judge. Provisional appointments are discouraged.

4. PROBABLE CAUSE DETERMINATION

a. NON-ADVERSARIAL PROBABLE CAUSE DETERMINATION FOR DEFENDANTS IN CUSTODY

A non-adversarial probable cause determination must be made within 48 hours in all cases in which the defendant has been arrested without a warrant, or upon a capias issued upon an indictment or information. It is not necessary to make a probable cause determination when a probable cause determination has been made by a judge and an arrest warrant has been issued for the specific offense for which the defendant is charged. However, a probable cause determination is required if any additional offenses have been charged other than the offense(s) named in the warrant.¹⁸

The first appearance judge must allow the State attorney 48 hours to establish probable cause. The first appearance must be continued to the next first appearance hearing if probable cause cannot be established at the initial first appearance. The first appearance judge has only three choices at the second first appearance hearing: (1) find probable cause, (2) find no probable cause, or (3) if extraordinary circumstances exist, continue the probable cause hearing for one or two 24-hour periods to allow the state to supplement the facts to support a probable cause determination.¹⁹

¹⁶FLA STAT § 27.52(1)(b) (2009).

¹⁷A full Faretta inquiry dialog and the form for waiver of counsel are included in this manual.

¹⁸FLA. R. CRIM. P. 3.133(a)(1).

¹⁹Burnham v. State, 854 So. 2d 838 (Fla. 5th DCA 2003).

b. CONTINUANCES

A continuance of up to 24 hours beyond the initial 48 hours may be granted by the first appearance judge upon a showing that extraordinary circumstances exist. A second continuance of up to 24 hours may be granted if the extraordinary circumstances still exist after the first continuance.²⁰

Extraordinary circumstances do not include the following delays: (1) delay for the state to gather additional evidence, (2) delay motivated by ill will, (3) delay for delay's sake, (4) delay to consolidate pretrial proceedings, and (5) delay because of intervening weekends.²¹

c. DETERMINING PROBABLE CAUSE--RIGHT TO COUNSEL

While the defendant is entitled to counsel at the first appearance hearing, there is no right to counsel when the non-adversarial probable cause determination is made because the probable cause determination is not a critical stage of the proceedings.²² Accordingly, the first appearance judge may determine probable cause in chambers prior to commencing first appearances.

d. WHAT IS PROBABLE CAUSE?

1) Probable cause does not arise when conduct is equally consistent with activity that is not criminal.²³

2) Probable cause is most commonly defined as “circumstances to cause a person of reasonable caution to believe that an offense has been or is being committed by the person arrested.”²⁴

²⁰Id.

²¹County of Riverside v. McLaughlin, 500 U.S. 44 (1991).

²²A “critical stage” is a pretrial proceeding that impairs defense on the merits if the accused is required to proceed without counsel. Chavez v. State, 832 So. 2d 730, 752 (Fla. 2002), cert. denied., 593 U.S. 947, 123 S. Ct. 2617, 156 L. Ed. 2d 637 (2003); Gerstein v. Pugh, 420 U.S. 103, 95 S. Ct. 8, 43 L. Ed. 2d 54 (1975); Coleman v. Alabama, 399 U.S. 1, 90 S. Ct. 1999, 26 L. Ed. 2d 387 (1970); United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967).

²³Nickell v. State, 722 So. 2d 924 (Fla. 2d DCA 1998); E.T.R. v. State, 873 So. 2d 571 (Fla. 2d DCA 2004).

²⁴Dunaway v. New York, 442 U.S. 200 (1979); Hutton v. Strickland, 919 F. 2d 1531 (11th Cir. 1990).

3) Probable cause has been more simply defined as “the existence of reasonable grounds to believe the person arrested has committed the offense.”²⁵

4) To establish probable cause, a police officer may rely upon information provided from a responsible, reasonable person.²⁶

5) “Probable cause exists where the facts and circumstances, as analyzed from the officer’s knowledge, specialized training and practical experience . . . are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed.”²⁷

6) The “probable cause” standard is no more onerous for a defendant than the “in the conscience of the court” standard that has traditionally been used in revocation of probation proceedings.²⁸

7) The facts from which probable cause arises do not need to meet the standard for conclusiveness and probability required of facts on which a conviction is based.²⁹ Conflicting explanations combined with the totality of the circumstances can provide a sufficient basis for a finding of probable cause for an arrest.³⁰

e. PURPOSE OF PROBABLE CAUSE DETERMINATION

The purpose is to ensure the defendant is not detained without probable cause. The United States Supreme Court has held that the Fourth Amendment requires such a determination as a prerequisite to a detainee’s further restraint of liberty.³¹

The finding of probable cause can have unintended consequences. A finding of probable cause, when there is no probable cause, can result in a prisoner remaining in custody when he or she is entitled to release and additional unnecessary judicial labor.

²⁵Shriner v. State, 386 So. 2d 525 (Fla. 1980).

²⁶Weissman v. K-mart, 396 So. 2d 1164 (Fla. 3d DCA 1981).

²⁷Pickett v. State, 922 So. 2d 987 (Fla. 3d DCA 2005).

²⁸Parker v. State, 843 So. 2d 871 (Fla. 2003).

²⁹Nickell, 722 So. 2d 924 (Fla. 2d DCA 1998).

³⁰Pickett, 922 So. 2d 987.

³¹Gerstein, 420 U.S. 103.

f. STANDARD OF PROOF

The standard of proof is the same as that for arrest. In determining probable cause, the finding may be based upon the following criteria:

- 1) sworn complaint;
- 2) affidavit;
- 3) deposition under oath; or
- 4) testimony under oath properly recorded.³²

g. THE EXISTENCE OR NONEXISTENCE OF PROBABLE CAUSE SHALL BE FOUND AT THE FIRST APPEARANCE HEARING

Probable cause shall be determined if the necessary proof is available at the time of the first appearance.³³ The first appearance judge is not limited to finding probable cause for the particular offense listed by the arresting officer. The documents relied upon may establish probable cause for a lesser offense or for a different offense.

h. PROBABLE CAUSE ARRESTS FOR VIOLATIONS OF PROBATION OR COMMUNITY CONTROL

Probable cause arrest affidavits charging violation of probation or community control must contain sufficient information to establish (1) the defendant is actually on probation or community control; (2) identify the county in which the defendant was sentenced; 3. identify the crime for which the defendant is being supervised; and (4) whenever possible, the criminal case number. Bare assertions in an arrest affidavit that the CAFÉ system or other law enforcement data base shows the defendant to be on probation or community control is insufficient to establish probable cause. The clerk is not responsible to determine the defendant's supervisory status and should not be asked to do so.

I. FINDING MUST BE IN WRITING

A finding that probable cause does or does not exist must be in writing, signed by the first appearance judge, and filed, together with the evidence upon which the finding was based, with the clerk of the court.³⁴

j. FINDING OF NO PROBABLE CAUSE

The defendant is entitled to release on his or her recognizance if the arrest affidavit does not state probable cause and the state does not establish probable cause for up

³²FLA. R. CRIM. P. 3.133(a)(3).

³³FLA. R. CRIM. P. 3.133 (a)(1); Chavez, 832 So. 2d at 752.

³⁴FLA. R. CRIM. P. 3.133 (a)(4).

to two 24-hour continuances.³⁵ The first appearance judge may not dismiss the charge(s) for failure of the state to establish probable cause within 48 hours.³⁶ The filing of an information before probable cause is established does not alter the defendant's entitlement to release. In either event, the only condition of release that may be imposed is to appear at all court proceedings.³⁷ A court date must be given to persons released from custody as a result of a finding of no probable cause.

Alternatively, the defendant may be released in misdemeanor cases under a summons to appear. The finding of probable cause must be announced in open court.

k. RELEASE OF DEFENDANT FOR FAILURE OF STATE TO COMPLY WITH TIME REQUIREMENTS

Any release occasioned by a failure to comply with the specified time periods shall be by order of the judge either (1) on written application filed by the defendant with notice to the state, or (2) by a judge without written application but with notice to the state.³⁸ The notice requirements under the rule shall be satisfied when the state attorney receives a copy of the first appearance docket, provided the release is ordered at the daily first appearance hearings.

5. DETERMINE CONDITIONS OF PRETRIAL RELEASE³⁹

a. STATUTORY CONDITIONS OF PRETRIAL RELEASE

The first appearance judge must consider conditions of pretrial release after finding probable cause unless one of the following circumstances has occurred:

- 1) The state has filed a motion for pretrial detention;
- 2) The defendant is subject to the Jessica Lunsford Act or the Anti-Murder Act; or
- 3) The defendant is charged with a capital or life felony and the proof is evident and the presumption is great.⁴⁰

³⁵See § II.(C)(3).

³⁶State v. Hollie, 736 So. 2d 96 (Fla. 4th DCA 1999); State v. Umbrecht, 371 So. 2d 1109 (Fla. 4th DCA 1979); State v. Antel, 333 So. 2d 76 (Fla. 4th DCA 1976).

³⁷Burnham, 854 So. 2d at 838.

³⁸Id.

³⁹FLA. R. CRIM. P. 3.130(d), 3.131.

⁴⁰FLA. R. CRIM. P. 3.131(a), (b).

If no conditions of pretrial release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.⁴¹

There are three standard, statutory conditions of pretrial release:⁴²

- 1) The defendant must refrain from criminal activity of any kind.
- 2) The defendant must refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure.
- 3) All information provided by the defendant must be truthful.⁴³

These statutory conditions are not automatic. They must be imposed in order to become a valid condition of release. For instance, service of a summons is not the equivalent of pretrial release and a defendant who receives a summons is not on notice of these conditions.⁴⁴ Rule 3.131 does not mention this statute. Certain cases, such as cases involving

domestic violence, often involve unavoidable contact between the victim and the defendant. The parties may need to have contact with each other if they have children, or if the victim and the defendant are still residing under the same roof. The “no contact” provision may be modified by motion, properly noticed for hearing, upon a showing of good cause. The victim must be given an opportunity to be heard at the hearing on the motion.⁴⁵

b. OTHER CONDITIONS OF PRETRIAL RELEASE

If the defendant is entitled to pretrial release, there is a presumption the defendant is entitled to release on non-monetary conditions. The first appearance judge shall impose the first of the following conditions of pretrial release that will reasonably protect the community from risk of physical harm to persons and assure the presence of the defendant at trial or ensure the integrity of the judicial process. If no single condition of release gives that assurance, any combination of conditions may be imposed.

- 1) Personal recognizance of the defendant.
- 2) Execution of an unsecured appearance bond in an amount specified by the first appearance judge.
- 3) Placement of restrictions on the travel, association, or place of abode of the defendant during the period of release.
- 4) Placement of the defendant in the custody of a designated person or organization agreeing to supervise the defendant.

⁴¹FLA. CONST. art. I, § 14.

⁴²FLA STAT § 903.47 (2009).

⁴³FLA. R. CRIM. P. 3.131(b)(4); FLA STAT § 903.035 (2009). (Fla. 5th DCA 2004).

⁴⁴Sheppard v. State, 974 So. 2d 529 (Fla. 5th DCA 2008); Pilorge v. State, 876 So. 2d 591

⁴⁵FLA. R. CRIM. P. 3.131(a).

5) Execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof, provided that the defendant may satisfy any monetary component by providing an appearance bond. If a monetary bond is required, a separate and specific amount must be set for each offense charged for which probable cause is found.⁴⁶

6) G.P.S. tracking or electronic monitoring.

7) Any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

c. PURPOSE OF BAIL

The purpose of a bail determination in a criminal proceeding is twofold: (1) to ensure the appearance of the defendant at subsequent proceedings, and (2) to protect the community against unreasonable danger from the criminal defendant.⁴⁷

The primary function of bail is to compel the defendant to appear at pretrial and trial proceedings by imposing a monetary penalty for failure to do so.⁴⁸

Another, equally important, consideration in setting an amount of bail is the defendant's prior criminal record. This is especially true where the trial court finds, based upon a significant record of prior convictions and juvenile history, that a particular defendant presents an unreasonable risk of danger if released into the community.⁴⁹

d. FACTORS TO BE CONSIDERED IN DETERMINING CONDITIONS OF RELEASE⁵⁰

- 1) The nature and circumstances of the offense charged.
- 2) The penalty provided by law.
- 3) The weight of the evidence against the defendant.
- 4) The defendant's family ties and length of residence in the community.
- 5) Employment history.
- 6) Financial resources.
- 7) Past and present conduct, including prior convictions.
- 8) Previous flight to avoid prosecution or failure to appear.

⁴⁶FLA. R. CRIM. P. 3.131(b)(2).

⁴⁷FLA STAT §903.046(1) (2009); Hernandez v. Roth, 890 So. 2d 1173 (Fla. 3d DCA 2004).

⁴⁸Henley v. Jenne, 796 So. 2d 1273 (Fla. 4th DCA 2001); Nicholas v. Cochran, 673 So. 2d 882 (Fla. 4th DCA 1996).

⁴⁹Id.

⁵⁰FLA. R. CRIM. P. 3.131(b)(3); FLA STAT §§ 903.046, 907.041 (2009).

- 9) Nature and probability of danger the defendant's release poses to the community.
- 10) The source of funds used to post bail.
- 11) Whether the defendant is already on release for another pending charge.
- 12) Whether the defendant is on probation or community control.
- 13) Whether the identity of the defendant is in question.
- 14) Any other relevant factors in the record.

e. BOND SCHEDULES AND BAIL SET ON WARRANTS

The purpose of the bond schedule is to allow defendants to post bond prior to first appearance if they choose to do so. Strict adherence to a bond schedule at first appearance is an abuse of discretion.⁵¹ Each defendant at first appearance is entitled to an

individualized review of his bail based upon the facts and circumstances of his or her situation and the alleged offense.⁵²

Bail set on warrants must be reviewed at first appearance for individualized conditions of release.⁵³

The first appearance judge has the authority to adjust conditions of release on violation of probation or community control warrants, except for Jessica Lunsford Act and Anti-Murder Act cases. However, the first appearance judge should keep in mind that the judge who issued the warrant had the benefit of reviewing the Violation of Probation/Community Control Report and the conditions of release, if any, were set based upon information not available to the first appearance judge. The judge who placed the defendant on probation or community control has the authority to remand the defendant to custody after first appearance.⁵⁴ First appearance judges should consider contacting the judge who issued the warrant before changing conditions of release unless an issue of identity or jurisdiction is presented.

Bail set on a *capias* by a judge cannot be modified at first appearance without the consent of the judge.⁵⁵ However, in current practice, the clerk issues a *capias* and

endorses bond on it according to the bond schedule. First appearance judges are authorized to modify bail in these cases.

⁵¹Rawls v. State, 540 So. 2d 946 (Fla. 5th DCA 1989).

⁵²Id.; Kelsey v. McMillan, 560 So. 2d 1343 (Fla. 1st DCA 1990).

⁵³FLA. R. CRIM. P. 3.121(a)(7); State v. Norris, 768 So. 2d 1070 (Fla. 2000).

⁵⁴Peraza v. Bradshaw, 966 So. 2d 504 (Fla. 4th DCA 2007).

⁵⁵FLA. R. CRIM. P. 3.131(j); Norris, 768 So. 2d at 1072.

f. PRETRIAL RELEASE SERVICE - MONETARY BOND.

Rule 3.131(b)(4) prohibits release of a person into a pretrial release service on non-monetary conditions if the person is charged with a dangerous crime, as defined by F. S. 907.041(4)(a), unless the service certifies to the court that it has investigated or otherwise verified:

- 1) The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;
- 2) The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings; and
- 3) Other facts necessary to assist the court in its determination of the indigency of the accused and whether she or he should be released under the supervision of the service.

A "dangerous crime" is defined under F. S. 907.041(4)(a) to include:

- 1) arson;
- 2) aggravated assault;
- 3) aggravated battery;
- 4) illegal use of explosives;
- 5) child abuse or aggravated child abuse;
- 6) abuse or aggravated abuse of an elderly person or disabled adult;
- 7) aircraft piracy;
- 8) kidnapping;
- 9) homicide;
- 10) manslaughter;
- 11) sexual battery;
- 12) robbery;
- 13) carjacking;
- 14) lewd, lascivious, or indecent assault upon or in the presence of a child under the age of sixteen years;
- 15) sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of a person in familial or custodial authority;
- 16) burglary of a dwelling;
- 17) stalking and aggravated stalking;
- 18) act of domestic violence as defined in F. S. 741.28;
- 19) home invasion robbery;
- 20) act of terrorism as defined in F. S. 775.30;
- 21) manufacturing any substances in violation of chapter 893; and
- 22) attempting or conspiring to commit any such crime.

g. SEMINOLE COUNTY ELECTRONIC MONITORING PROGRAM

- 1) Seminole County Administrative Order 14-07-S creates the electronic monitoring program for domestic violence cases. The first appearance pretrial release officers will identify defendants who should be released into this program. Defendants who are

released into this program must post a monetary bond in an amount determined to be reasonable in addition to the conditions of release required by the program.

2) Persons Eligible for the DV Electronic Monitoring Pretrial Release Program.

a) The defendant must have a residence, or make arrangements to have a residence, in Seminole County with an operational telephone line if the electronic monitor requires a telephone line.

b) Defendants with a serious medical condition that requires frequent care, or who are identified as psychotic, severely mentally retarded, currently suicidal, or unable to cope with the structure of electronic monitoring shall not be placed on an electronic monitor.

c) Defendants who are released to participate in the electronic monitoring program shall be responsible for any damage or loss to equipment issued and shall pay a per diem cost to Seminole County.

d) The following categories of defendants shall be placed in the electronic monitoring program as a condition of pretrial release in the discretion of the sheriff considering the availability of the electronic monitoring equipment and the risk the defendant presents to the victim or the community:

i) Defendants with a pending violation of probation or community control on a case involving domestic violence when the violation involves violence, unauthorized contact with the victim, or coming on the property forbidden by the order of probation or community control through the Department of Corrections..

ii) Defendants who have been taken into custody for violation of an injunction for protection against domestic violence or repeat violence.

iii) Defendants who have been taken into custody for any domestic violence related offense, including dating violence.

iv) Defendants who have been charged with aggravated stalking.

3) Violations of Conditions of Release - Electronic Monitoring
Any defendant who fails to comply with a condition of release while on electronic monitoring in domestic violence cases shall be taken into custody by any law enforcement officer on probable cause and held until first appearance. F. S. 901.15. Violations include, but are not limited to:

a) Equipment tampers or removals.
b) Willful exclusion zone violations.
c) Failure to comply with any condition of release set by the court.

d) Failure to comply with any of the program requirements set forth by the Seminole County Probation Department.

e) Engaging in criminal conduct of any kind.
f) Having unauthorized contact with the victim.
g) Providing untruthful information to the court, the sheriff, or any supervising agency.

h. JESSICA LUNSFORD ACT--VIOLATIONS OF PROBATION OR COMMUNITY CONTROL

If a person is arrested for violation of probation or community control and meets one or more of the following criteria, the person is to be held without bond pending a "danger to public" hearing regardless of the bond amount set forth in the violation of probation or community control warrant:

- 1) A registered sexual predator, or
- 2) A registered sexual offender, or
- 3) Under supervision for any criminal offense prescribed in Chapter 794 (Sexual Battery); Section 800.04(4) (Lewd or Lascivious Battery); Section 800.04(5) (Lewd or Lascivious Molestation); Section 800.04(6) (Lewd or Lascivious Conduct); Section 827.071 (Sexual Performance by a Child), or Section 847.0145 (Selling or Buying of Minors), or
- 4) Under supervision for a criminal offense for which he/she would meet the registration criteria in Section 775.21, Section 943.0435, or Section 944.607 but for the effective date of those sections.

I. ANTI-MURDER ACT⁵⁶

Any offender who is on probation or community control for a qualifying offense and has been taken into custody for violation of probation or community control is a "Violent Felony Offender of Special Concern" (VFOSC) and cannot be released from custody until the violation has been resolved.

A VFOSC is defined as an offender:

- 1) On felony probation or community control for a qualifying offense committed on or after March 12, 2007; or
- 2) On felony probation or community control for any offense committed on or after March 12, 2007, and who has a prior qualifying offense; or
- 3) On felony probation or community control for any offense committed on or after March 12, 2007, and who violates by committing a qualifying offense; or
- 4) On felony probation or community control for any offense that was committed at any time with a previous designation of habitual violent felony offender and commits a qualifying offense on or after March 12, 2007; or
- 5) On felony probation or community control for an offense that was committed at any time with previous designation of three-time violent felony offender and commits a qualifying offense on or after March 12, 2007; or

⁵⁶FLA. STAT. §§ 903.0351, 948.06 (2009).

6) On felony probation or community control for an offense that was committed at any time with previous designation of sexual predator and commits a qualifying offense on or after March 12, 2007.

A schedule of “qualifying offenses” is included in this manual.

j. REVOCATION OF CONDITIONS OF RELEASE

Florida Statutes allow the first appearance judge to revoke conditions of release and remand the defendant to custody on the first charge if the defendant is arrested on a subsequent charge and probable cause is found.⁵⁷ The revocation may be on motion by the state or

on the court’s own motion. First appearance judges should use care in revoking conditions of release unless the state attorney makes a showing there is an active criminal case pending for which the defendant has previously been arrested, and the offense before the court at first appearance is a new offense that is serious enough to justify revocation of conditions of pretrial release. Normally, the state attorney should file a motion to revoke conditions of release before the presiding judge. New misdemeanor charges do not necessarily justify revoking conditions of pretrial release.

k. PRETRIAL DETENTION⁵⁸

The state attorney may file a written motion requesting pretrial detention. The motion must set forth the grounds upon which it is based (commission of a “dangerous crime”) and state the essential facts that justify pretrial detention with particularity. The motion must certify the state attorney has received testimony under oath supporting the matters contained in the motion. If the motion is facially sufficient, a probable cause determination must be made as to whether the defendant has committed the offense for which the first appearance is scheduled. If probable cause is found, the defendant may be detained pending a final hearing. The final hearing must be scheduled before the assigned trial judge within five days from the filing of the motion. If no motion is filed or, if the motion is insufficient, the court shall proceed to determine the conditions of release as in any other case.

Additionally, pretrial detention may be ordered if any of the following circumstances exist:⁵⁹

1) The defendant has previously violated conditions of release and no further conditions of release are reasonably likely to assure the defendant’s appearance at subsequent proceedings. A willful failure to appear at arraignment will justify detention.⁶⁰

2) The defendant, with intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has

⁵⁷FLA. STAT. § 903.0471 (2009); *Parker v. State*, 843 So. 2d 871 (Fla. 2003).

⁵⁸Pretrial detention is authorized by FLA. STAT. § 907.041 (2009), and is implemented by FLA. R. CRIM. P. 3.132.

⁵⁹FLA. STAT. § 907.041(4)(c) (2009).

⁶⁰*Bradshaw v. Jenne*, 754 So. 2d 109 (Fla. 4th DCA 2000).

attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process.

3) The defendant is charged with trafficking in controlled substances as defined by §893.135, there is a substantial probability the defendant has committed the offense, and no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings.

4) The defendant is charged with DUI manslaughter, there is a substantial probability the defendant committed the crime, and the defendant poses a threat to the community. Conditions that will support detention under this section are as follows:

a) The defendant has previously been convicted of any crime under §316.193, or a substantially similar crime in another state.

b) The defendant was driving with a suspended license when the charged crime was committed.

c) The defendant has previously been found guilty of, or has had adjudication withheld for driving while license suspended or revoked in violation of §322.34.

1. CAPITAL AND LIFE FELONIES

The defendant is not entitled to pretrial release if accused of a capital or life felony and the proof is evident and the presumption is great. Motions for bail in these cases should be scheduled before the assigned judge.

m. CONSIDER TAKING PLEAS TO MISDEMEANORS

The first appearance judge has the authority to take a plea to any misdemeanor charge from the docket entry.⁶¹

A plea to a misdemeanor should not be taken at first appearance without the agreement of the state attorney if one or more of the following conditions exist:

- 1) The defendant is on probation or community control.
- 2) The defendant is charged with a violent crime.
- 3) There are possible double jeopardy problems.
- 4) The charge can be enhanced to a felony due to prior record.
- 5) The defendant is not a citizen and is potentially subject to deportation.
- 6) Restitution may become an issue.
- 7) The defendant is charged with an offense in which the "victim" has not been notified.
- 8) The defendant is not represented by an attorney.

⁶¹FLA. R. CRIM. P. 3.170(a), 3.140.

6. SET AN ARRAIGNMENT DATE

An arraignment date must be set by the first appearance judge for each defendant at first appearance. Persons arrested without a warrant for violations of probation or community control must be set on the presiding judge’s next available violation of probation docket.

7. EXTRADITION: FUGITIVES FROM OTHER STATES--FUGITIVE WARRANTS--GOVERNOR’S WARRANTS⁶²

Persons arrested in this state and charged with a crime in another state are entitled to a modified first appearance pending extradition to the “demanding state.” Extradition procedures are governed by statute under the Uniform Interstate Extradition Act.⁶³ The Rules of Criminal Procedure do not apply in extradition cases because persons awaiting extradition are not subject to the rules.⁶⁴

There are three types of arrests involving extradition.

a. GOVERNOR’S WARRANT:

A Governor’s warrant is issued by the governor of Florida after the demanding state files a demand in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and thereafter the accused fled from the demanding state. The written demand must be accompanied by an authenticated copy of an indictment or information supported by an affidavit or by a copy of a warrant supported by an affidavit made before a committing magistrate of the demanding state.

1) FIRST APPEARANCE

a) Advise of Rights and Appointment of Counsel

The first appearance judge must inform persons arrested

on a Governor’s warrant as follows:⁶⁵

i) The name of the demanding state and the crime for which the prisoner is charged in that state.

ii) The right to counsel as in other first appearances.

⁶²The term “fugitive warrant” includes a Governor’s warrant as well as a warrant for the arrest of an accused issued by a Florida judge pending the receipt of a Governor’s Warrant. *Sikes v. State*, 530 So. 2d 458 (Fla. 5th DCA 1988); *Silvers v. Coleman*, 504 So. 2d 20 (Fla. 2d DCA 1987); *Carter v. Coleman*, 443 So. 2d 491 (Fla. 2d DCA 1984).

⁶³FLA STAT §. 941 (2009).

⁶⁴FLA. R. CRIM. P. 3.010; *Payne v. Askew*, 350 So. 2d 831 (Fla. 1977).

⁶⁵FLA STAT § 941.10 (2009).

- iii) The right to test the legality of the arrest through habeas corpus. If the prisoner or counsel desire to test the legality of arrest, a reasonable time must be fixed in which to file the petition in the circuit court.
- b) Persons in custody on a Governor's warrant must be given a copy of the warrant and the demand from the demanding state.
- c) Persons in custody on a Governor's warrant are not entitled to release except through habeas corpus.⁶⁶
- d) Indigent persons in custody on a Governor's warrant are entitled to appointment of counsel as in other cases.⁶⁷

b. ARREST PRIOR TO REQUISITION--ARREST WITHOUT A WARRANT

A person may be arrested without a warrant by any peace officer, or a private person, without a warrant, upon reasonable information that the accused is charged in another state with a crime punishable by imprisonment for a term exceeding one year.⁶⁸

The person must be taken to first appearance and a complaint under oath must be provided setting forth the ground for the arrest; thereafter, the case shall proceed as if the accused had been arrested on a warrant.⁶⁹

c. ARREST PRIOR TO REQUISITION--WARRANT

Persons may be arrested in Florida on a warrant issued by a Florida judge based upon the affidavit of any credible person charging any of the following:⁷⁰

- 1) The commission of a crime in any other state.
- 2) The person named in the warrant has fled from justice.
- 3) The person named in the warrant has been convicted in another state and has escaped from confinement, or broken the terms of bail, probation, or parole.
- 4) The person named in the warrant has been charged in another state with the commission of a crime and has fled from justice, or the person has been convicted of a crime in that state and has escaped from confinement, or has broken the terms of bail, probation, or parole and is believed to be in Florida.

⁶⁶FLA STAT § 941.10(2) (2009).

⁶⁷Bentzel v. State, 585 So. 2d 1118 (Fla. 1st DCA 1991).

⁶⁸FLA STAT § 941.14 (2009).

⁶⁹Id.

⁷⁰FLA STAT § 941.13 (2009).

d. FIRST APPEARANCE--ARREST PRIOR TO REQUISITION

Advise of rights and appointment of counsel

Persons arrested on a warrant prior to requisition by the demanding state must be brought before the first appearance judge and given a copy of the complaint or affidavit on which the warrant was issued and a copy of the warrant.⁷¹ In addition, the person arrested on the warrant must be provided with the following information:

- 1) The name of the demanding state and the crime for which the prisoner is charged in that state.
- 2) The right to counsel as in other first appearances.
- 3) The right to test the legality of the arrest through habeas corpus. If the prisoner or counsel desire to test the legality of arrest, a reasonable time must be fixed in which to file the petition in the circuit court.

e. COMMITMENT TO AWAIT REQUISITION OR BAIL

The first appearance judge may commit the person arrested on the warrant to the custody of the county jail for up to 30 days to await the arrest on a Governor's warrant if the first appearance judge finds the person held is the person charged with having committed the crime alleged, or the person has fled from justice. Alternatively, the first appearance judge may set bail pending arrest on the Governor's warrant. Bail may not be set on charges punishable by death or life imprisonment.⁷²

The first appearance judge may extend the time for holding the accused in custody for a further period not to exceed 60 days or set bail.⁷³

There is no provision in the statute for release on conditions other than bail.

The first appearance judge shall advise the accused of the right to counsel and appoint counsel if the accused is indigent and wants counsel.

f. WAIVER OF EXTRADITION

A person charged with having committed a crime in another state or who is alleged to have escaped from confinement, or broken the terms of bail, probation or parole, may waive the procedures set forth above. The waiver must be in writing, executed before the first appearance judge or any other judge. The waiver must state the person consents to return to the demanding state. The judge must advise the accused of the right to the issue of a Governor's warrant and the right to test the proceedings by habeas corpus before executing the waiver.⁷⁴ The accused should be encouraged to speak to counsel before executing an extradition waiver.

⁷¹Id.

⁷²FLA STAT § 941.15 (2009).

⁷³FLA STAT § 941.17 (2009).

⁷⁴FLA STAT § 941.26 (2009).

A hearing is unnecessary if the accused is currently on probation, parole, or other release in the demanding state and has signed a prior waiver as a condition of the current probation, parole, or other release.⁷⁵

III. DUTY OF ARRESTING OFFICERS, BOOKING OFFICERS AND FIRST APPEARANCE CORRECTIONAL OFFICERS

A. APPLICABILITY

An “arresting officer” is any sworn law enforcement officer possessing power of arrest in Seminole County, including any parole, probation, or community control supervisor.

B. ARREST AFFIDAVITS

The arresting officer shall complete a complaint or arrest affidavit at the time the person arrested is booked into the John E. Polk Correctional Facility. The affidavit shall be made part of the arrest file delivered to the first appearance clerk prior to the next scheduled first appearance. The arrest affidavit must set forth facts, under oath, that are sufficient to establish probable cause for the arrest. The arrest affidavit must state the name of the court and county in which the defendant is being supervised, if the arrest is for violation of probation or community control.

Parole, probation, or community control supervisors who make probable cause arrests shall complete an arrest affidavit at the time the person is booked into the jail or, if a law enforcement agency is requested to transport the person to jail, before the person is turned over to the law enforcement officer. The arrest affidavit must state the name of the court and county in which the defendant is being supervised.

Failure to prepare an adequate arrest affidavit is not an “extraordinary circumstance” that will authorize the first appearance judge to continue the first appearance hearing longer than 48 hours from the time of arrest.

C. BAIL PRIOR TO FIRST APPEARANCE

Arresting officers shall consult the Seminole County Bond schedule at the time of booking the arrested person and shall set bail in accordance with the schedule on each offense charged in the arrest affidavit.⁷⁶ The arresting officer shall set bail on the highest offense for which

the defendant has been arrested and shall set bail in the amount of \$100.00 for each additional felony offense and \$50.00 for each additional misdemeanor offense. No bail shall be set on offenses on the schedule that require the defendant to be held without bail.

⁷⁵FLA STAT § 941.26(3)(a) (2009).

⁷⁶FLA STAT § 903.02(4) (2009).

D. BOOKING OFFICERS

Booking officers shall process arrested persons into custody and shall collect the arrest report and related documents from the arresting officer. The booking officer shall deliver the arrest report and related documents to the first appearance clerk who prepares the first appearance docket. Arrested persons who have completed the booking process shall be given the opportunity to promptly communicate with an attorney, family members, and a bonding company.

Booking officers shall immediately advise arrested persons of their right to counsel. Any arrested person who is, or claims to be, indigent, shall immediately and effectively be placed in communication with the public defender.⁷⁷

Booking officers shall make three copies of the arrest report and related documents. One copy shall be delivered to the arrested person at first appearance. The other two copies shall be delivered to the first appearance clerk.

E. RELEASE OF PRISONERS WITH CHARGES FROM OTHER COUNTIES

Any defendant who is in custody in Seminole County, but who has charges from other counties, shall be rescheduled for custody review by the first appearance judge on the fifth business day following first appearance, if the defendant is still in custody in Seminole County. On review, the first appearance judge shall consider modifying previously set conditions of release after giving both parties an opportunity to be heard.

F. PRETRIAL RELEASE OFFICERS

Pretrial release officers shall make every effort to interview defendants scheduled for first appearance and complete pretrial release forms, appointment of counsel affidavits, and related documents for review by the first appearance judge. Appointment of counsel affidavits shall be provided to all defendants who request them, including defendants in custody on charges from another county or state. Pretrial release forms, appointment of counsel affidavits, and related documents shall be delivered to the first appearance clerk who prepares the first appearance docket.

G. FIRST APPEARANCE CORRECTIONAL OFFICERS

First appearance correctional officers shall identify non-English-speaking arrestees and place them on the first row of the courtroom so the first appearance judge can call these cases first and minimize the cost of translators.

It is the responsibility of the first appearance correctional officers to distribute a copy of the complaint and related documents as well as a copy of the clerk's minutes setting the next court date to each defendant who is scheduled at first appearance.

⁷⁷FLA. R. CRIM. P. 3.111(c).

IV. DUTY OF THE CLERK OF THE COURT

A. PREPARATION OF THE FIRST APPEARANCE FILE

The first appearance clerk shall obtain the arrest reports and related documents for persons arrested in the last 24 hours from the booking officer prior to first appearance and shall organize them in the court file in such a manner that the first appearance judge can easily locate the arrest affidavit. During the normal work week, the cut-off time for a person to be added to the first appearance docket shall be 7:00 a.m. On weekends and holidays, the cutoff time for adding any person to the first appearance docket shall be 2:00 a.m. Any person booked into the jail after that time shall be placed on the first appearance docket for the next day.

The court file shall contain the following documents:

1. The complaint or arrest report, including attachments.
2. The pretrial release interview sheet.
3. The application/affidavit for court appointed counsel.
4. Criminal history print-outs.

All other papers, such as victim statements suggesting conditions of pretrial release, shall not be filed in the court file but shall be delivered to the prosecuting attorney at first appearance.

B. DELIVERY OF COPIES OF THE COMPLAINT AND RELATED DOCUMENTS

The first appearance clerk shall supply copies of the complaint or arrest report, along with any documents used by the first appearance judge to set bail, to the state attorney and the public defender (or private counsel who are present) prior to first appearance.

C. PREPARATION OF THE FIRST APPEARANCE DOCKET

The first appearance clerk shall prepare a first appearance docket prior to each daily first appearance session. The first appearance docket shall contain the name of each person who is arrested on a criminal charge, the charges contained on the arrest report, or other reason for the arrest, the bail set by the arresting officer, and the future court date.

The following categories of persons shall not appear on the first appearance dockets:

1. Military deserters.
2. Witnesses in protective custody.
3. State prisoners who are on early release from the Department of Corrections.
4. Prisoners who have been transported to Seminole County from another facility and who have no Seminole County charges.
5. Prisoners who have been turned in by their surety.
6. Parole violators.
7. Persons in custody on a writ of attachment. (The first appearance clerk shall schedule these individuals for a hearing before the General Master.)
8. Federal prisoners.

9. Persons whose bond or pretrial release status has been revoked.

Persons who have been transported from another facility who have previously had a first appearance on pending charges shall be included on the first appearance docket for the sole purpose of confirming a future court date has been set. These persons shall not be brought to first appearance hearings.⁷⁸

D. ATTENDANCE AT FIRST APPEARANCE

One or more first appearance clerks shall attend first appearance hearings and perform all statutory duties, including preparation of minutes of the proceedings and administering oaths to witnesses. The first appearance clerk shall deliver the arrest reports and related documents to the person in the clerk's office who is responsible for the preparation of the permanent file.

The first appearance clerk shall immediately deliver a copy of the first appearance minutes to the booking officer. Defendants who claim to be able to hire private counsel, or do not qualify for the services of the public defender, must be scheduled for counsel review before the assigned judge. The counsel review hearing must be scheduled with the appropriate judicial assistant.

V. DUTY OF THE STATE ATTORNEY

A. DUTIES PRIOR TO FIRST APPEARANCE HEARINGS

1. The state attorney shall review the arrest affidavits before first appearances to determine if the affidavits meet the requirement of stating probable cause. The state attorney has the responsibility to contact the arresting officer and have the officer supplement the affidavit prior to first appearance if the affidavit is insufficient.

2. The state attorney shall identify cases in which the defendant has been arrested without a warrant for violation of probation or community control in Seminole County and shall verify the fact the defendant is on probation or community control.

3. The state attorney shall determine the prior records of persons appearing on the first appearance docket and be prepared to disclose such record at the first appearance hearing. The state attorney shall be prepared to identify cases that are subject to the Jessica Lunsford Act [F. S. 948.06(4)] or the Anti-Murder Act [F. S. 903.0351].

4. In cases of violation of probation or community control in which the offender is not under supervision in Seminole County, the state attorney shall contact the county in which the offender is being supervised and obtain a copy of the affidavit of violation of probation or community control, or competent evidence showing the defendant is on probation or community control, such as a facsimile copy of the judgment.

5. The state attorney is responsible for preparing two copies of any document used by the state to determine pretrial release for each defendant on the first appearance docket, including multi-defendant cases. A criminal history report is an example of this type of document.

⁷⁸FLA. R. CRIM. P. 3.130(a).

These documents shall be delivered to the first appearance clerk for delivery to the first appearance judge and the defendant or defense counsel.

6. If the defendant has been arrested on an out of county warrant or capias, and the underlying complaint or affidavit is not attached to the warrant or capias, the state attorney is responsible to obtain a copy on 24 hours notice.

7. If the defendant has been arrested on an out-of-state warrant, the state attorney shall contact the appropriate officer in the demanding state and obtain a copy of the warrant, if the warrant is not part of the booking papers. The local supervising officer in Seminole County shall be contacted if the Department of Corrections is supervising the defendant from another state.

8. In domestic violence cases, perform a thorough F. S. 741.2901(3) investigation of the defendant's history, including, but not limited to: prior arrests for domestic violence, prior arrests for non-domestic violence charges, prior injunctions for protection against domestic and repeat violence filed listing the defendant as respondent and noting history of other victims, and prior walk-in complaints filed against the defendant. Additionally, the state attorney shall obtain information about the relationship of the parties and, if the parties reside together, determine who has the right to possession of the residence. The state attorney shall also advise the court of the seriousness of any injuries suffered and obtain suggested conditions of release from the victim.

B. DUTIES AT FIRST APPEARANCE

The state attorney, or one or more assistant state attorneys, shall be present to represent the state at all first appearance hearings and shall be prepared to accomplish the following tasks:

1. The state attorney shall review the docket and present plea offers to the first appearance public defender for any prisoners in custody on misdemeanor charges, except for the following exclusions:

- a. The defendant is on probation or community control.
- b. The defendant is charged with a violent crime.
- c. There are possible double jeopardy problems.
- d. The charge can be enhanced to a felony due to prior record.
- e. The defendant is not a citizen and is potentially subject to deportation.
- f. Restitution may become an issue.
- g. The defendant is charged with an offense in which the alleged victim has not been notified.

2. The state attorney shall make a showing at the first appearance hearing to establish the basis for holding any defendant without bond who is subject to the Jessica Lunsford Act [F. S. 948.06(4)] or the Anti-Murder Act [F. S. 903.0351]. The showing does not have to meet the requirements of an evidentiary hearing but must be sufficient to convince the first appearance judge the defendant is subject to one of these acts.

The first appearance judge will not accept the suggestion that a defendant "may" or "might" be subject to detention without evidence to support the suggestion.

VI. DUTY OF THE PUBLIC DEFENDER

A. IN GENERAL

The constitutionally protected right to counsel applies to all “critical” stages of the proceedings against anyone accused of a crime.⁷⁹ A “critical” stage is defined as “any stage of the prosecution, formal or informal, in court or out of court, where counsel’s absence might derogate from the accused’s right to a fair trial.”⁸⁰ The right attaches immediately at or after the time that judicial proceedings have been initiated against an accused. Under Florida’s Rules of Criminal Procedure, the right to counsel attaches when a “person is formally charged with an offense, or as soon as feasible after custodial restraint, or at first appearance before a committing magistrate, whichever occurs earliest.”⁸¹ Counsel must be “provided to indigent persons in all prosecutions for offenses punishable by incarceration.”⁸² Indigent persons are entitled to counsel, in adversary proceedings, regardless of the designation of the court in which they occur.⁸³ The rule is broad enough to cover all incarcerated persons who are, or claim to be, indigent.

Rule 3.111(c) requires the booking officer to immediately put an arrestee in contact with a lawyer from the Office of the Public Defender upon the request of the arrestee. The rule also requires the public defender to affirmatively and effectively provide legal advice to all arrestees who are, or claim to be, indigent and who are in custody and awaiting first appearance.

The public defender must review the intake data daily to make sure there are no arrestees in custody who are indigent and without counsel. For instance, arrestees who have been turned in by their bonding company already have a court date and are not placed on the first appearance docket. These persons may have been released from custody prior to first appearance and may not have been appointed counsel. The public defender is responsible to provide each of them an application for appointment of counsel, assist them to complete it, and deliver the affidavit to the Clerk of the Court without delay.⁸⁴

B. PRIOR TO FIRST APPEARANCE

Prior to first appearances the public defender shall:⁷⁹Michigan v. Jackson, 475 U.S. 625, 106 S. Ct. 1404, 89 L. Ed. 2d 359 (1981); Arsenault v. Com. of Mass., 393 U.S. 5, 89 S. Ct. 35, 21 L. Ed. 2d 5 (1968); Owen v. State, 596 So. 2d 985 (Fla. 1992); Traylor v. State, 596 So. 2d 957 (Fla. 1992).

⁸⁰Estelle v. Smith, 451 U.S. 454, 101 S. Ct. 1866, 68 L. Ed. 2d 359 (1981); United States, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967); Anderson v. State, 420 So. 2d 574 (Fla. 1982).

⁸¹FLA. R. CRIM. P. 3.111(a).

⁸²FLA. R. CRIM. P. 3.111(b)(1).

⁸³FLA. R. CRIM. P. 3.111(b)(2). ⁸⁰FLA STAT § 27.52(1)(e)(2) (2009).

1. Comply with the provisions of Rule 3.111(c), and interview any defendant who is on the first appearance docket who is, or claims to be, indigent.

2. Review the arrest reports and related documents prior to first appearances and interview persons in custody. All persons in custody shall be advised of the danger of discussing the facts of their cases with anyone except their lawyer.

3. Identify any defendant who may wish to hire private counsel, advise that defendant of the dangers of waiving counsel at the first appearance hearing, and either represent the defendant at the first appearance hearing or advise the first appearance judge of the availability of private counsel.

4. Identify any defendants who appear to be indigent and be prepared to represent these defendants at the first appearance hearing.

5. Be prepared to present any objections to the finding of probable cause at the first appearance hearing.

6. Advise persons in custody on out-of-county or out-of-state warrants of their right to counsel and to habeas corpus.

7. Advise persons in custody on out-of-county or out-of-state warrants of their right to counsel.

8. Follow up out-of-county arrests by monitoring the transfer of out-of-county

or out-of-state defendants and bringing the cases to the attention of the first appearance judge if no action has been taken to transfer these defendants.

9. Notify the first appearance judge if there is a conflict that would require the appointment of conflict counsel.

10. Prepare motions for the release of prisoners who have been in custody for 33 days.

C. DUTIES AT FIRST APPEARANCE

The public defender, or one or more assistant public defenders, shall be present at all first appearance hearings and shall be prepared to accomplish the following tasks:

1. Present any objections to the finding of probable cause to the attention of the first appearance judge.

2. Present argument or evidence on conditions of release.

3. Be prepared to address the legality of pretrial detention if the state attorney attempts to show the defendant qualifies for pretrial detention under the Jessica Lunsford Act or the Anti-Murder Act.

4. Otherwise represent defendants who have been appointed the public defender.

D. DUTIES AFTER FIRST APPEARANCE AND BEFORE ARRAIGNMENT

The public defender has a continuing obligation to assist incarcerated persons to complete indigency affidavits and deliver them to the clerk of the court without delay. Additionally, the public defender shall represent indigent defendants if the state attorney files a motion for pretrial detention and shall monitor each case for the purpose of filing a motion for release from custody on the 30th day if the state has not filed an indictment or information, and schedule a hearing before the first appearance judge or the presiding judge.

VII. CONCLUSION

First appearances are a critical stage of criminal proceedings and must be the subject of careful preparation on the part of the state attorney, the public defender, and private counsel. The first appearance judge has six specific tasks to perform at each first appearance and, with rare exceptions, these tasks must be accomplished at the time of the first appearance hearing.

Suggestions on how to improve this manual are welcome.

APPENDIX A

BAIL SCHEDULE

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR SEMINOLE COUNTY,
FLORIDA

ADMINISTRATIVE ORDER NO.:

15-42-S

SUPERSEDES 14-32-S

IN RE: CRIMINAL BAIL SCHEDULE FOR SEMINOLE COUNTY

Bail is an essential part of the criminal justice system, and a bail schedule is hereby promulgated so that law enforcement officers and booking officers can set bonds on arrests prior to first appearance. This schedule is not binding upon first appearance judges, who have the responsibility to review arrests at first appearance and set conditions of release pursuant to Rule 3.131 of the Florida Rules of Criminal Procedure and section 903.046 Florida Statutes.

Within this bail schedule, special provisions setting bail for specific offenses control over general provisions that may also be applicable to the specific offense.

Under the provisions of Florida Statute 903.02(4), a separate and specific bail amount must be set for each offense charged.

Bail will have a condition in every case that the defendant will have no direct or indirect contact with the alleged victim, if there is one in the case; and that the defendant shall remain from criminal activity of any kind.

IT IS ADJUDGED:

I. OFFENSES FOR WHICH NO BAIL SHALL BE SET UNTIL THE INITIAL APPEARANCE PROCEEDING BEFORE A JUDGE

1. Capital Felony
2. Life Felony
3. First Degree Felony Punishable by Life
4. First Degree Felony (Violent)
5. Second Degree Felony (Violent-with at least one prior violent felony conviction)
6. Attempt/Solicitation/Conspiracy to Commit First Degree Murder
7. Persons who are arrested for a felony while released on bail for a separate felony
8. Armed Robbery (Firearm or Dangerous Weapon)
9. Armed Burglary (Firearm or Dangerous Weapon)

10. Carjacking
11. Armed Home Invasion (Firearm or Dangerous Weapon)
12. Kidnapping
13. Drug Trafficking and Conspiracy to traffic in drugs
14. Sale or Delivery of a Controlled Substance (3rd Offense or more)
15. Manufacture of Methamphetamine
16. RICO Act Violations (F.S. 895.03)
17. Escape from DOC or Rehabilitation Reentry Program or other correctional facility
18. Attempt/Solicitation/Conspiracy to Commit Second Degree Murder
19. Aggravated Stalking
20. Domestic Violence (Any Felony or misdemeanor offense defined in F.S. 741.28(1))
21. Violations of Domestic Violence Injunctions, Repeat Violence Injunctions, Dating Violence Injunctions or Sexual Violence Injunctions, regardless of the nature of the alleged violation.
22. Violation of any Condition of Release where the underlying offense is one of Domestic Violence
23. Burglary with an Assault or Battery
24. Violations of Felony Probation or Community Control unless
 - a. There is a violation of probation warrant, which, on its face, provides that the probationer does not meet the qualifications for a “danger to public” hearing as defined in Florida Statute 948.06(4) (as amended by the “Jessica Lundsford Act”), and
 - b. Such violation of probation warrant sets a bond amount.
25. Any criminal offense if the defendant is currently on felony probation or community control
26. Persons who are arrested for a felony who, because of their prior criminal record, qualify for sentencing on the arrested felony as a “Habitual Violent Felony Offender”; “Three-time Violent Felony Offender”; “Violent Career Criminal” or “Prison Release Reoffender”.
27. Persons who are arrested for Possession of a Firearm by a Convicted Felon;
28. Any felony involving the use of threatened use of a firearm.
29. DUI Manslaughter
30. DUI 4th Offense or More.

NOTE TO INITIAL APPEARANCE JUDGES: “Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.” Fla. R. Crim. P.

II. ARRESTEES SUBJECT TO THE JESSICA LUNSFORD ACT

1. The Jessica Lundsford Act requires a judge to make a finding that a probationer or an offender on community control who is arrested for violating his/her probation or community control is not a “danger to public” prior to his/her release with or without bail where the probationer or offender in community control is:
 - a. A registered sexual predator, or
 - b. A registered sexual offender, or
 - c. Under supervision for any criminal offense prescribed in Chapter 794 (Sexual Battery); Section 800.04(4) (Lewd or Lascivious Battery); Section 800.04(5) (Lewd or Lascivious Molestation); Section 800.04(6)

- (Lewd or Lascivious Conduct); Section 827.01 (Sexual Performance by a Child), or Section 847.0145 (Selling or Buying of Minors), or
- d. Under supervision for a criminal offense for which he/she would meet the registration criteria in Section 775.21, Section 943.0435, or Section 944.607 but for the effective date of those sections.
2. A probationer who is subject to the provisions of the “Jessica Lunsford Act” shall not be released on bail unless there is a judicial finding that he or she is not a danger to the public. If there is no such finding on the face of the warrant, the offender shall be held without bail, even if the warrant provides a specific bail amount.
 3. If the judge who issued the warrant expressly states that the offender is not a danger to the public, bail shall be set in the amount provided for in the warrant.
 4. If the warrant issuing judge does not include a finding that the offender is not a danger to the public and the offender is thereby held without bail, the First Appearance Judge may, in their discretion, hold the hearing and make findings as provided in Fla. Stat. §948.06(4). If the First Appearance Judge does not hold this hearing, the court shall set the case for a status hearing in the assigned criminal division within 72 hours of the First Appearance hearing.

III. SPECIFIC OFFENSES

OFFENSE	RESIDENCY			
	LOCAL	FLORIDA	OUT-OF-STATE	OUT-OF-COUNTRY
1. Third Degree Murder	\$15,000	\$20,000	\$25,000	\$35,000
2. Manslaughter	\$15,000	\$20,000	\$25,000	\$35,000
3. Vehicular Homicide	\$15,000	\$20,000	\$25,000	\$35,000
4. Leaving Scene of Accident Involving Death/Personal Injury	\$15,000	\$20,000	\$25,000	\$35,000
5. Burglary of an Occupied Dwelling	\$15,000	\$20,000	\$25,000	\$35,000
6. All other non-armed Burglaries	\$5,000	\$8,000	\$10,000	\$15,000
7. Sexual Offenses – First Degree Felony	\$35,000	\$40,000	\$50,000	\$60,000
8. Sexual Offenses – Second Degree Felony	\$15,000	\$20,000	\$25,000	\$35,000
9. Sexual Offenses – Third Degree Felony	\$5,000	\$8,000	\$10,000	\$15,000
10. DUI Involving Personal Injury	\$15,000	\$20,000	\$25,000	\$35,000
11. DUI – Third Offense	\$5,000	\$8,000	\$10,000	\$15,000
12. Aggravated Fleeing or Attempting to Elude	\$15,000	\$20,000	\$25,000	\$35,000
13. Fleeing or Attempting to Elude	\$5,000	\$8,000	\$10,000	\$15,000
14. Sale or Delivery of a Controlled Substance (Second Offense)	\$35,000	\$40,000	\$50,000	\$60,000
15. Sale or Delivery of a Controlled Substance (First Offense)	\$15,000	\$20,000	\$25,000	\$35,000
16. Possession of a Listed Chemical	\$25,000	\$30,000	\$35,000	\$40,000
17. Computer Crimes Involving Child Pornography or Soliciting Sexual Conduct by a Child	\$35,000	\$40,000	\$50,000	\$60,000
18. Failure to Register as a Sex Offender	\$15,000	\$20,000	\$25,000	\$35,000

IV. NON-SPECIFICALLY ENUMERATED FELONIES

OFFENSE	RESIDENCY			
	LOCAL	FLORIDA	OUT-OF-STATE	OUT-OF-COUNTRY
1. First Degree Felony (Non-Violent)	\$15,000	\$20,000	\$25,000	\$35,000
2. Second Degree Felony (Violent)	\$15,000	\$20,000	\$25,000	\$35,000
3. Second Degree Felony (Non-Violent)	\$5,000	\$8,000	\$10,000	\$15,000
4. Third Degree Felony (Violent—with at least one prior violent felony conviction)	\$15,000	\$20,000	\$25,000	\$35,000
5. Third Degree Felony (Violent)	\$5,000	\$8,000	\$10,000	\$15,000
6. Third Degree Felony (Non-Violent)	\$2,000	\$3,000	\$5,000	\$8,000

V. WARRANTS

Bond for persons arrested on a violation of felony probation shall be set as provided for in the warrant itself, if and only if, the warrant provides that the probationer does not meet the qualifications of a “danger to public” hearing as defined in Florida Statute 948.06(4) (as amended by the “Jessica Lundsford Act”); otherwise, such person shall be held without bond pending the initial appearance before a judge.

Bond for persons arrested on a violation of misdemeanor probation warrant, a failure to appear warrant, or an arrest warrant shall be set as provided for in the warrant itself. If the warrant is silent as to a bond amount, the bail shall be set as otherwise provided in this Administrative Order.

VI. MISDEMEANORS

Rule 3.125(b) provides:

1. “If a person is arrested for an offense declared to be a misdemeanor of the first or second degree or for violation of a municipal or county ordinance triable in the county, and demand to be taken before a magistrate is not made, notice to appear may be issued by the arresting officer unless:
 - a. The accused fails or refuses to sufficiently identify himself or herself or supply the required information;
 - b. The accused refuses to sign the notice to appear;
 - c. The officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others;
 - d. The accused has no ties with the jurisdiction reasonably sufficient to assure the accused’s appearance or there is substantial risk that the accused will refuse to respond to the notice;
 - e. The officer has any suspicion that the accused may be wanted in any jurisdiction; or
 - f. It appears that the accused has previously failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.
2. If a defendant is not released on a “Notice to Appear”, pursuant to Rule 3.125, bond shall be set, pending first appearance, as follows:

OFFENSE	BAIL
DUI (First Offense)	\$500
DUI (Second Offense)	\$1,000
Criminal Traffic Offenses	\$500

First Degree Misdemeanors	\$500
Second Degree Misdemeanor	\$250
Violations of conditions of release where the underlying offense is not one of Domestic Violence	\$1,000

3. As to all individuals arrested for the offense of DUI, any release must also comply with the criteria set forth in Fla. Stat. §316.193(9).

VII. DEFINITIONS

The following definitions apply to this bail schedule:

1. Local Resident – A person qualifies as a local resident if his/her principal place of domicile is located in Seminole County, Florida and has been so for a period of three (3) months.
2. Florida Resident – A person qualifies as a Florida resident if his/her principal place of domicile is located in the State of Florida and has been so for a period of three (3) months.
3. Out of State Resident – A person qualifies as an out of state resident if his/her principal place of domicile is located outside the State of Florida but in another state within the United States and he/she is a United States citizen or he/she is a foreign national and his/her principal place of domicile is in another state within the United States and has been so for a period of six (6) months and he/she is in possession of such documents as permit a current domicile within the United States or such permit is otherwise corroborated.
4. Out of County Resident – A person qualifies as an out of country resident if he/she is not domiciled in the United States or is not a United States citizen and his/her principal place of domicile is in the United States but has been so for less than six (6) months whether permitted or not.
5. Violent Offense – An offense qualifies a violent offense if it involves physical harm or bodily injury or threat of same.
6. Non-Violent Offense – An offense qualifies as a non – violent offense if it involves no physical harm or bodily injury or threat of same.

VIII. SPECIAL CONDITIONS OF RELEASE – DUTY OF RELEASE OFFICER

1. General Conditions for Pretrial Release Applicable to All Cases
 - a. The defendant shall refrain from criminal activity of any kind.
 - b. The defendant shall refrain from any contact of any type with the victim(s), except through pretrial discovery pursuant to Florida Rules of Criminal Procedure. F.S. 903.47
 - c. The defendant shall comply with all other conditions of pretrial release.
2. Persons Arrested for Domestic Violence, Repeat, Sexual, and Dating Violence: Order of No Contact
Any person who is arrested in Seminole County for an offense of domestic violence, repeat violence, sexual violence or dating violence shall be furnished an Order of No Contact (Attachment 1) stating the conditions of pretrial release. Persons arrested for any of the above noted offenses shall not be released until they have been instructed on the special conditions set forth in the Order of No Contact and have signed a court approved written notice acknowledging instruction on the special conditions of pretrial release.
3. Persons Arrested for Sexual Offenses or Child Abuse
Any person who is arrested for a sexual offense or for child abuse shall, as an additional condition of release, be prohibited from having direct or indirect contact with victim(s), victim(s)' family, or residence(s) of the victim(s). Persons arrested who have committed a sexual offense or child abuse shall not be released until they have been instructed of these special conditions by the pretrial release

officer and have signed a written notice approved by the court.

4. Persons on Probation- Department of Corrections:

Any person who is arrested in Seminole County and who is on probation with supervision by the Department of Corrections, Probation and Parole Services, shall, as an additional condition of release, report to their Probation Officer with the Department of Corrections, Probation and Parole services before 4:00 p.m. on the first business day following release. An offender is considered to be on probation if he is on parole or under any other type of supervision status by the Department of Corrections.

5. Persons on Probation – Seminole County Probation Department

Any person who is arrested in Seminole County and who is on probation with supervision by the Seminole County Probation Department, shall, as an additional condition of release, report to Seminole County Probation Department, Sanford, Florida, before 4:00 p.m. on the first business day following release.

IX. EFFECT OF FILING NOTICE OF NO INFORMATION OR NOLLE PROSEQUI

If a person arrested for any offense(s) occurring within Seminole County is admitted to bail and the State Attorney files a notice of No Information or Nolle Prosequi with respect to all charges arising out of a single arrest, the Sheriff shall without further order of the Court, release the person from custody as to the charges named. As to the named charges and person, all bail undertaking, not defaulted, shall be canceled, all sureties shall be exonerated, and all release on recognizance obligations shall be discharged without further order of the Court. A bench warrant or capias which may be outstanding and is yet unserved upon a named individual for a specified charge shall also be canceled upon the filing of a No Information or Nolle Prosequi without further order of the Court.

X. COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

Upon receipt of the person arrested the booking officer shall review the arrest form to ensure that the arresting officer has properly set the initial bond according to this administrative order. The booking officer is authorized to make changes to the bond amount reflected on the arrest form to properly comply with this order but in considering changes the booking officer shall consider any information in the arrest form that the arresting officer believed called for a higher bond and shall defer to that judgment. However, any bond set shall not exceed the amount of bail set forth in the bond schedule.

DONE AND ORDERED this 12th day of October, 2015.

JOHN D. GALLUZZO
JOHN D. GALLUZZO
CHIEF JUDGE

Distribution to:

Circuit and County Court Judges (Seminole County)
Clerk of the Court (Seminole County)
Court Administration (Seminole and Brevard Counties)
State Attorney (Seminole County)
Public Defender (Seminole County)
Sheriff (Seminole County)
Bar Association (Seminole County)
Law Library (Seminole County)
Seminole County Jail Administrator
Seminole County Pretrial Release Officer
Seminole County Police Departments

ATTACHMENT 1

**ORDER OF NO CONTACT IN CASES OF DOMESTIC VIOLENCE,
REPEAT VIOLENCE, SEXUAL VIOLENCE, AND DATING VIOLENCE**

Pursuant to Florida Statute 903.047, all persons arrested for domestic violence, repeat violence, sexual violence, or dating violence shall as conditions of pretrial release abide by the following conditions:

- (a) Refrain from criminal activity of any kind.
- (b) Refrain from any contact of any type with the victim except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure.
The term “no contact” prohibits all oral or written communication either in person, telephonically, electronically, or by any other means either directly or indirectly through a third party with the victim or any other person named in the order.
- (c) Refrain from having any physical or violent contact with the victim or other named person or his or her property.
- (d) Refrain from being within 500 feet of the victim’s or other named person’s residence even if the victim or other named person shared the residence with the arrestee at the time of arrest.
- (e) Refrain from being within 500 feet of the victim’s or other named person’s vehicle, place of employment, or other specified location frequented regularly by such person.

THIS ORDER OF NO CONTACT IS EFFECTIVE IMMEDIATELY AND IS ENFORCEABLE FOR THE DURATION OF PRETRIAL RELEASE OR UNTIL MODIFIED BY THE COURT.

The undersigned release officer acknowledges instructing the arrestee on the above conditions and furnishing the arrestee with a copy of the Order of No Contact.

The undersigned arrestee acknowledges being instructed on the conditions of pretrial release contained in the Order of No Contact and being furnished with a copy of the Order of No Contact. This Order of No Contact applies to the following named persons and addresses:

Release Officer

Defendant/Arrestee

Date

Date

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR SEMINOLE COUNTY,
FLORIDA

ADMINISTRATIVE ORDER NO.:
15-13-S
SUPERSEDES 14-07 S

**IN RE: CRIMINAL - EMPACT-ELECTRONIC MONITORING OF DEFENDANTS AS A
CONDITION OF PRE-TRIAL RELEASE – GENERAL GUIDELINES AND SPECIFICALLY
IN DOMESTIC VIOLENCE MATTERS**

Whereas, most criminal defendants are entitled to be released from custody pending disposition of the charges for which they were arrested; and

Whereas, the Seminole County Sheriff, and the Seminole County Probation Division, under the Florida Rule of Criminal Procedure 3.131(b)(1)(d), have the capability to electronically monitor defendants who are released from custody by non-intrusive means through a program known as Electronic Monitoring Protection and Crime Tracking (EMPACT); and Whereas, electronic monitoring can provide timely information to law enforcement regarding the activities of a defendant as they relate to compliance with conditions of release, including abstinence from criminal activity; and

Whereas, the Seminole County Sheriff and the State Attorney have requested authority to require defendants who meet specified criteria to be electronically monitored as a condition of pretrial release, in addition to reasonable or reduced bond, but not in lieu of bond, without compliance with the investigation and recommendation required by F.S. 907.041(3)(b); and

Whereas, F.S. 903.046 and Florida Rule of Criminal Procedure 3.131(b) permit the imposition of reasonable conditions of pretrial release that will protect the community from risk of physical harm to persons, assure the presence of the accused at trial or assure the integrity of the judicial process; and

Whereas, it is estimated that more than 1.3 million women are victims of physical assault by an intimate partner each year; and in 2006, in the State of Florida, there were 115,170 reported cases of domestic violence, 164 of which were domestic-related homicides; and from January, 2007, to July 2008, there were over 3,000 domestic violence incidents in Seminole County, of which 2,768 resulted in an arrest or criminal charges filed against the defendant; and since 2006, 13 Seminole County residents have fallen victim to domestic-related homicides and 7 domestic-related attempted homicides; and

Whereas, domestic violence is pervasive throughout our society and the use of electronic monitoring devices provides a non-intrusive method of monitoring an individual and has been proven to modify the behavior of certain defendants; and

Whereas, the Seminole County Sheriff's Office implemented such a program in 2003 known as EMPACT (Electronic Monitoring Protection and Crime Tracking), as a pretrial release condition for certain qualified defendants; and since that time the program has expanded to include a domestic violence and dating violence program, or DV EMPACT, which introduces an additional level of security by offering the ability to immediately notify the victim, law enforcement, and others of certain specified violations perpetrated by a

defendant; and although this initiative should not be considered a failsafe assurance on behalf of the victim, it does provide a near to real time accounting of the defendant's whereabouts and activities, thereby enhancing both the security of the victim and the responsibility of the defendant to answer for violations of conditions of pretrial release;

Now, therefore, after due consideration,

IT IS ADJUDGED;

The following procedures and criteria shall be followed when defendants are released from custody by the Court upon the condition that they submit to electronic monitoring under the EMPACT program or other monitoring program and more specifically, shall be followed when defendants are released from custody by the Court upon the condition that they submit to electronic monitoring under the DV EMPACT program or similar electronic monitoring program approved by the Seminole County Sheriff:

1. The defendant must have a residence. The residence must have an operational telephone line if the electronic monitor requires a telephone line.
2. The defendant must be a resident of Seminole County, Florida, or have made arrangements to live in the contiguous counties of Lake, Orange, Brevard, Osceola, Polk or Volusia upon Court approval with verification that the electronic monitor program covers the defendant's new residence.
3. Defendants who have a serious medical condition that requires frequent care, or who are identified as psychotic, severely mentally retarded, currently suicidal, mentally incapable or unable to cope with the structure of electronic monitoring shall not be placed on an electronic monitor. Any Defendant that the Sheriff, any Police Agency in Seminole County, or the Seminole County Probation Division, determines is not mentally capable to cope with the structure of electronic monitoring shall notify the court immediately. The Defendant shall not be released until a further determination is made by the Court as to the Defendant's release conditions.
4. Defendants who have a condition of release to participate in the EMPACT or another electronic monitoring program shall be responsible for any damage or loss to equipment issued and shall pay a per diem cost to Seminole County.
5. The Seminole County Sheriff's Office and Seminole County Probation Division shall be responsible for collection of any fees related to the EMPACT program. In the event of non-payment for electronic monitoring services the Seminole County Sheriff's Office or Seminole County Probation Division may notify the Court of the Defendant's non-indigent status and recommend review by the Court.
6. The following categories of defendants may be placed upon electronic monitoring as a condition of pretrial release only after considering the availability of electronic monitoring equipment and the risk the defendant presents to the victim or the community:
 - A. Defendants with a pending violation of probation on a case involving domestic violence when the violation involves violence, unauthorized contact with the victim, or coming onto property forbidden by the probation order.
 - B. Defendants who have been taken into custody for violation of an injunction for protection against domestic violence, repeat violence, or dating violence.

- C. Defendants who have been taken into custody for any domestic violence related offense.
 - D. Defendants who have been charged with stalking/aggravated stalking, with notice to the victim.
 - E. Any Defendant where the Court finds that the facts and circumstances warrant such monitoring.
7. Any defendant who breaches a condition of release while on electronic monitoring in a domestic violence case shall be taken into custody by any law enforcement officer upon probable cause and held until first appearance as provided by F. S. 901.15(13), F.S. 903.0471, and Seminole County Administrative Order Bail Schedule. In the event of a suspected breach of a condition of electronic monitoring, the Seminole County Sheriff's Office or Seminole County Probation Division shall notify the Court in writing so that the violation may be brought before the Court for review. Defendants shall have been informed in their Court minutes/order placing them on EMPACT that violations include, but not be limited to:
- A. Equipment tampers or removals.
 - B. Willful exclusion zone violations.
 - C. Failure to comply with any conditions of release set by the Court.
 - D. Failure to comply with any of the program requirements set forth by the GPS Electronic Monitoring Program.
 - E. The defendant must refrain from criminal conduct of any kind.
 - F. The defendant must not have unauthorized contact with the victim.
 - G. All information provided to the Court, the Sheriff and any supervising agency, must be truthful.
 - H. Payment of per diem costs to Seminole County Sheriff's Office.
8. This Order supersedes and repeals all prior Administrative Orders on this subject of pre-trial release monitoring.

Done and Ordered this 14th day of January, 2015.

JOHN M. HARRIS
 JOHN M. HARRIS
 CHIEF JUDGE

Distribution:

- All Circuit and County Judges (Seminole County)
- Court Administration (Brevard and Seminole Counties)
- Clerk of Court (Seminole County)
- State Attorney (Seminole County)
- Public Defender (Seminole County)
- Sheriff (Seminole County)
- Bar Association (Seminole County)
- Law Library (Seminole County)
- Work Release Manager (Seminole County)

SCHEDULE OF “QUALIFYING OFFENSES” - ANTI-MURDER ACT

Kidnapping	787.01(1)(A)1, 2, 3, or 4; 787.01(B); 787.01(3)(A)1, 2, 3, 4. or 5; 787.025(B)
False Imprisonment	787.02(1)(A)1, 2, 3, 4, or 5
Lure Child into Bldg etc.	787.025(2)(B)
First Degree Murder	782.04(A)1, 2, or 3
Second Degree Murder	782. 04(2) or (3)
Third degree murder (other than arson)	782.04(4)
Attempted Felony Murder	782. 051(1) or (2)
Manslaughter	782.07(1), (2), (3), or (4)
Aggravated Battery	784.045(1)(A)(1) or (2); 784.045(B)
Sexual Battery	794.011(2), (3), (4)(A), (B), (C), (D), (E), (F), (G); 794.011(8)(A), (B); 794.011(8)(B) or (C)
Lewd and Lascivious Conduct	800.04(4)(A), (B); 800.04(5) (B), (C)2; 800.04(6)(B); 800.04(7)(C)
Robbery	812.13(A), (B), and (C)
Carjacking	812.133(2)(A) and (B)
Home Invasion Robbery	812.135(2)(A), (B), and (C)
Lewd Act on Elder or Disabled	825.1025(2), (3), and (4)
Abuse of Child - Sexual Performance	827.071(2), (3), (4), and (5)
Computer to Solicit Sex from Minor	847.0135(2)(A) - (D)
Use of Internet to Lure Child	847.0135(3)
Send Child Pornography	847.0137(2) and (3)
Visual Depiction of Minor Sex	847.0145(1)
Purchase Custody of Minor - Sex	847.0145(2)
Poison Food or Water	859.01
Abuse of Human Corpse	872.06
Burglary	810.02(A), (B), and (C); 810.02(3)(A), (B) and (D); 810.02(3)(C)
Arson	806.01(1)
Aggravated Assault	784.02(1)(A) and (B)
Aggravated Stalking	784.048(3), (4), (5) and (7)
Aircraft Piracy	860.16
Disruption of Govt. Operation	790.161(2)
Discharge of Destructive Device	790.161(2), (3), and (4)
Treason	876.32

FARETTA INQUIRY -TRIAL STAGE

Right to Counsel Section:

1. Do you understand that you have a right to a lawyer? If you cannot afford to hire your own lawyer, and if you qualify for a court-appointed lawyer, one will be appointed for you.
2. The State of Florida will pay for a lawyer to advise you in these Court proceedings.
3. Shall I appoint a lawyer to represent you in this case?

(Continue to the next section only if defendant says he or she does NOT want a lawyer.)

Advantages Section:

4. I would like to explain to you some of the ways that having a lawyer to represent you can be to your advantage:

A. Pretrial: (Read only if applicable to current posture of case.).

-A lawyer's legal knowledge and experience may favorably affect bail or pre-trial release possibilities; may result in obtaining information about the case through skillful use of discovery devices; may uncover potential violations of constitutional rights and take effective measures to address them; may ensure compliance with speedy trial and statute of limitations provisions; and may identify and secure favorable evidence to be introduced later at trial on your behalf.

B. At trial:

-A lawyer has the experience and knowledge of the entire process. He [or she] will argue for your side during the whole trial and present the best legal argument for your defense.

-Since jury qualification and selection are governed by numerous legal procedures, a lawyer's knowledge and experience may enhance the selection process on your behalf.

-A lawyer can call witnesses for you, question witnesses against you, and present evidence on your behalf.

-A lawyer can advise you on whether you should testify, the consequences of that decision, and what you have a right not to say.

-A lawyer has studied the rules of evidence and knows what evidence can or cannot come into your trial.

-A lawyer may provide assistance in ensuring that the jury is given complete and accurate jury instructions by the court, may make effective closing arguments on your behalf, and may prevent improper argument by the prosecutor.

-A lawyer may ensure that any errors committed during trial are properly preserved for appellate review later by a higher court.

Post-trial:

-If you are convicted, a lawyer's assistance may be useful in preparing for sentencing, ensuring that favorable facts are brought to the attention of the court; ensuring that the court is advised of all legally available favorable dispositions; and in ensuring that the sentence is lawfully imposed.

-An attorney's legal knowledge and experience may be useful in filing an appeal and in seeking release on bail pending the appeal.

Dangers and Disadvantages Section:

5. As it is almost always unwise to represent yourself in Court, let me tell you a few of the disadvantages of representing yourself in Court:

-Do you understand that you will not get any special treatment from the Court just because you are representing yourself?

-Do you understand that you will not be entitled to a continuance simply because you wish to represent yourself?

-(Read if defendant is in custody): You will also be limited to the legal resources that are available to you while you are in custody. You will not be entitled to any additional library privileges just because you are representing yourself. A lawyer has fewer restrictions in researching your defense. Do you understand that?

-You are not required to possess the legal knowledge or skills of an attorney in order to represent yourself. However, you will be required to abide by the rules of criminal law and the rules of courtroom procedure. These laws took lawyers years to learn and abide by. If you demonstrate an unwillingness to abide by these rules, I may terminate your self-representation. Do you understand that?

-Do you understand that if you are disruptive in the courtroom that the Court can terminate your self-representation and remove you from the courtroom, in which case the trial would continue without your presence?

-Do you understand that your access to the State Attorney who is prosecuting you will be severely reduced as compared to a lawyer who could easily contact the State Attorney?

-In addition, the State will not go easier on you or give you any special treatment because you are representing yourself. The State will present its case against you as an experienced lawyer.

-(Read only if a stay-away order is in effect): Because a "stay-away" order is in effect against you, you will be prohibited from contacting the victim or any other witnesses who are a part of the "stay-away order." But if you are represented by an attorney,

your attorney is allowed to speak to these people and question them regarding their testimony.

-And finally, if you are convicted, you cannot claim on appeal that your own lack of legal knowledge or skill constitutes a basis for a new trial. In other words, you cannot claim that you received ineffective assistance of counsel.

Do you understand these dangers and disadvantages of representing yourself?

Do you have any questions about these dangers and disadvantages?

Charges and Consequences Section:

6. Have you received and read a copy of the charges against you?

7. Do you understand all the charges against you?

8. During the time that you were represented by counsel in this case, did you discuss this case with him [or her]?

9. Let me advise you of the possible penalties if you are found guilty of all the charges.

10. (Read only if applicable): Do you understand that if you are convicted you may receive an enhanced sentence because (the state is seeking to sentence you as an habitual offender)(it is alleged that you used a firearm in the commission of the offense)(it is alleged you wore a mask during the commission of the offense)?

11. If you are found guilty by (the jury)(the court), the maximum jail or prison sentence you could receive is _____, and the minimum jail or prison sentence is _____.

12. You may be required to report to a probation or community control officer for (length of time).

13. You may be required to pay a fine or restitution.

14. You may have a permanent criminal record.

15. Do you understand that if you are not a citizen of the United States, and if you are found guilty you could be deported from this country, excluded from entering this country in the future, and denied the opportunity to become a naturalized citizen?

16. Do you have any questions about the charges or the possible consequences and penalties if you are found guilty as I have explained them to you?

Competency to Waive Counsel Section:

17. I need to ask you a few questions about yourself to determine if you are competent to make a knowing and intelligent waiver of counsel:

- How old are you?
- Can you read? Can you write? Do you have any difficulty understanding English?
- How many years of school have you completed?
- Are you currently under the influence of any drugs or alcohol?
- Have you ever been diagnosed and treated for a mental illness?
- Do you have any physical problem which would hinder your self-representation in this case, such as a hearing problem, speech impediment, or poor eyesight?
- Has anyone told you not to use a lawyer?
- Has anyone threatened you if you hire a lawyer or accept a lawyer appointed by the court?
- Do you understand that a lawyer appointed by the court will represent you for free?
- Have you ever represented yourself in a trial? What was the outcome of that case?
- Do you have any questions about having a lawyer appointed to defend you?
- [Omitted question about understanding dangers/disadvantages, because that is covered in the disadvantages section supra.]

18. Having been advised of your right to counsel, the advantages of having counsel, the disadvantages and dangers of proceeding without counsel, the nature of the charges and the possible consequences in the event of a conviction, are you certain that you do not want me to appoint a lawyer to defend you?

(Proceed on only if defendant still does NOT want counsel):

19. If I allow you to represent yourself and if you request it, I could have the Assistant Public defender act as standby counsel. He or she would be available to you if you have any questions in the course of these proceedings. Would you like standby counsel?

(Proceed on only if defendant WANTS standby counsel):

20. I will appoint standby counsel to assist you. However, you will still be responsible for the organization and content of presenting your case. You still have the entire responsibility for your own defense. Do you understand that?

(Make findings on the record as to whether defendant is competent to waive counsel, and whether his or her waiver of counsel is knowing and intelligent.)

(Renew offer of counsel at each subsequent stage of the proceedings.)

FARETTA INQUIRY - PLEA STAGE

Right to Counsel Section:

1. Do you understand that you have the right to a lawyer?

-The State of Florida and the United States Constitution guarantee you the right to a lawyer.

-If you cannot afford to hire your own lawyer, and if you qualify for a court-appointed lawyer, I will appoint a lawyer for you right now.

-The State of Florida will even pay for this lawyer to help you with this decision as to whether or not to enter a plea.

2. Shall I appoint a lawyer to represent you?

(Continue on only if the defendant says he does not want a lawyer)

Advantages and Disadvantages Section:

3. Let me tell you a few ways a lawyer might help you:

-A lawyer can advise you as to whether entering a plea is in your best interests.

-A lawyer has the experience to help you work with the State and even bargain for different terms.

-A lawyer can tell you the advantages and disadvantages of what you might say to the Court during your plea hearing and the sentencing hearing that will follow.

-Do you understand that you will not get any special consideration from the Court just because you are representing yourself?

4. Do you understand how necessary a lawyer is and how he or she could help you?

Consequences of the Plea Section:

5. You are currently charged with (go over offenses and their degrees).

-Have you received a copy of these charges and had a chance to review them?

-Do you understand the serious nature of the charges against you?

6. If you decide to enter a plea, you will (go over terms of plea).

-The maximum sentence that can be imposed against you is _____.

-You may be forced to report to a probation or community control officer for (length of time).

- You may be required to pay a fine or restitution.
- You may have a permanent criminal record.
- If you are not a citizen of the United States, you could be deported from this country, excluded from entering this country in the future, and denied the opportunity to become a naturalized citizen.
- Do you understand these consequences of entering a plea?
- Do you have any questions about these consequences?

7. If you do not fulfill the conditions of your plea, the State can ask to revoke your probation or community control and you could be arrested and brought back to Court for a revocation hearing.

8. Do you understand the consequences of any violation or probation or community control?

Competency to Waive Counsel Section:

9. I need to ask you a few questions about yourself to determine if you are competent to make a knowing and intelligent waiver of counsel:

- How old are you?
- Can you read? Can you write? Do you have any difficulty understanding English?
- How many years of school have you completed?
- Are you currently under the influence of any drugs or alcohol?
- Have you ever been diagnosed and treated for a mental illness?
- Has anyone told you not to use a lawyer?
- Has anyone threatened you if you either hire a lawyer or accept one appointed by the court?
- Do you understand that a lawyer appointed by the court will represent you for free?
- Do you have any questions about having a lawyer appointed to defend you?
- (Omitted question about understanding dangers, disadvantages, because that is covered in the disadvantages section supra.)

10. Having been advised of your right to an attorney, the advantages of having an attorney, the disadvantages of proceeding without an attorney, the nature of the charges against you, and the consequences of entering a plea, are you sure you do not want me to appoint a lawyer to represent you at this plea hearing?

(Continue only if defendant insists he or she does NOT want an attorney.)

11. If I allow you to represent yourself and if you request it, I could have the Assistant Public defender act as standby counsel. He or she would be available to you if you have any questions in the course of these proceedings.

-Would you like me to appoint standby counsel to assist you?

(Continue only if defendant ACCEPTS standby counsel).

12. I will appoint standby counsel to assist you. However, you will still bear the entire responsibility for your case at the plea hearing. Do you understand that?

(Make findings on the record as to whether defendant is competent to waive counsel, and whether his or her waiver of counsel is knowing and intelligent.)

(After taking the plea, renew offer of counsel prior to imposing sentence.)