

**AMENDED ORDER GOVERNING FIRST APPEARANCE PROCEEDINGS,
ORANGE COUNTY**

The purpose of this Administrative Order is to provide for the efficient and effective processing of first appearances and related matters.

By the power vested in the chief judge under Article V, section 2(d) of the Florida Constitution, section 43.26, Florida Statutes, and rule 2.215 of the Florida Rules of General Practice and Judicial Administration, **effective immediately**, to continue until further order and superseding any provisions in prior Administrative Orders which may be inconsistent, it is **ORDERED** that the following procedures, which originally became effective October 7, 2003, are amended as follows:

I. FIRST APPEARANCE JUDGE:

- A.** County court judges assigned to criminal divisions shall perform First Appearances on any day that is not a weekend or holiday pursuant to a schedule published by the Administrative Judge of the County Court of Orange County or his/her designee. While the judge is serving as first appearance judge, the judge is temporarily assigned to Division 51 for paperwork processing and review of electronic court records.
- B.** The first appearance judge shall conduct initial appearances, Florida Rules of Civil Procedure 3.134 hearings, status hearings, arraignments, out of county warrants, and exercise any further jurisdiction as appropriate in the judge's discretion including taking a no contest or guilty plea on a misdemeanor, traffic, or municipal case.
- C.** In the exercise of discretion, the first appearance judge shall take into consideration the recommendations of Corrections, Clerk of Court, Pre-Trial Release, mental health professionals and other institutional stakeholders.
- D.** To reduce waste and comply with the Florida Supreme Court's paperless court record initiatives, court records related to First Appearance shall be electronic to the maximum extent possible.

II. ADA:

Orange County Jail personnel shall immediately contact the Court Administration 24 hour help line at (407) 836-0522 upon the booking of an individual who appears to need a sign language interpreter or other ADA accommodation. Court Administration will make arrangements to provide the services of a sign language interpreter for initial appearance.

III. MENTAL HEALTH:

The Orange County Mental Health Pretrial Release Program shall proceed in accordance with Administrative Order 2021-02, Order Governing Orange County Post-Booking Mental Health Jail Diversion Program.

IV. PRETRIAL MATTERS:

A. When charges have been filed:

If a charge (i.e., notice to appear, uniform traffic citation, information, or indictment) has been filed against a defendant, all pre-trial matters shall be determined by the judge assigned to preside over the defendant's criminal trial, unless some other order or agreement between judges provides otherwise.

B. When no charges have been filed:

Any motions related to bond after First Appearance must be heard by the assigned judge where the case is assigned.

C. Capacity of the Judge:

All judges determining pre-charge motions are acting as circuit judges, and appeals shall be to the Fifth District Court of Appeal.

D. Hearing of Motion to Set or Modify Bail by Alternate Judge or Chief Judge:

1. In accordance with law, applications to set or modify bail are to be heard "promptly." This Order contemplates a hearing will be held as soon as possible, but with due regard for the notice provisions of the Florida Rules of Criminal Procedure and any other factor properly considered to allow the parties to have a fair opportunity to present their case at the hearing. If a judge is not able to hold a hearing on a motion to set or modify bail within three (3) business days, the movant may seek a hearing before that judge's alternate or the chief judge. The three-day period does not commence until filing of the motion and actual notice has been provided.
2. In those cases where the Information or Amended Information is filed between the time the bond hearing is noticed and the hearing or on the date of the hearing, the bond hearing shall proceed as previously scheduled at the discretion of the judge.
3. In order for a bond hearing to be properly noticed, the defendant and/or defendant's counsel must contact the assigned judge for any specific procedures, but at a minimum provide a copy of the notice and motion for the bond hearing to the State Attorney, the Office of Statewide Prosecutor, and to the court.

V. ESTABLISHMENT AND AVAILABILITY OF PRETRIAL RELEASE:

Orange County Pretrial Release Program shall proceed as set forth in Administrative Order No. 2022-01-01. Nothing in this Administrative Order prohibits the first appearance judge from denying Pretrial Release.

VI. ESTABLISHING BOND:

- A.** No person arrested for a capital crime, a felony punishable by life, a first degree felony punishable by up to life, domestic violence, violation of domestic injunction, any lewd or lascivious exhibition, lewd or lascivious molestation, lewd or lascivious battery, or other sexual act involving a minor, or for any failure of a person deemed to be a sexual predator to follow registration, reporting, and/or employment restrictions, pursuant to chapters 775 and 943 of the Florida Statutes, or for burglary of a structure or dwelling during a natural disaster/act of God, acts of terrorism, or war (i.e., looting during a state of emergency) shall be eligible for release under this section. These persons are to be held until First Appearance, at which time the first appearance judge will decide conditions of release, if any.
- B.** 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 or a violation of a municipal or county ordinance 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, pursuant to section 907.041, Florida Statutes. Among other items, section 903.046, Florida Statutes, provides that the purpose of bail determinations in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant.
- C.** Bond amounts prior to First Appearance are not intended to and do not bind the judge at First Appearance or at any subsequent bond hearing. Judges presiding over bond hearings shall consider the criteria for bond set forth in the applicable statute and rule and may not rely on the attached schedules.
- D.** Any motion for bail or bond for a defendant arrested for or charged with any of the offenses listed in A above, except burglary of a structure or dwelling during a natural disaster/act of God, acts of terrorism, or war (i.e., looting during a state of emergency), shall include the following information: the charging affidavit and any other supporting documents; addresses and phone numbers of defendant; address and phone numbers of defendant's employers; and any aliases of defendant. A copy of such motion shall be forwarded to the Department of Corrections at their designated office.

VII. EXTRADITION AND OUT-OF-COUNTY WARRANTS:

- A.** When an inmate of the Orange County Jail has had all local charges cleared and is detained solely and exclusively on a warrant from another jurisdiction, the Corrections staff shall immediately teletype to the other agency that the inmate must be picked up by a date and time certain or he/she will be released from jail on ROR or bond, unless the agency requests an extension for good cause shown. The same procedure shall be followed by the Sheriff's Extradition Deputy for out-of-state fugitives where the inmate has waived extradition or has been ordered surrendered after habeas corpus proceedings have been completed and notice of appeal was not filed or the appeal was dismissed or affirmed.
- B.** The time periods shall not include Saturdays, Sundays, and holidays, and shall be as follows:
 - 1. Inmates held for contiguous Florida counties, e.g.: Osceola, Seminole, Polk, Lake, and Brevard - 24 hours from Initial Appearance; with no local charges;
 - 2. Inmates held for all other Florida counties - 72 hours from Initial Appearance with no local charges; and,
 - 3. Inmates held for other states - 30 days from date of notification.
- C.** The telephone contact and teletype message from the Correctional Release Specialist or the Sheriff's Extradition Deputy shall provide a date and time certain for pickup.
- D.** If the time deadline passes without the pickup agency requesting an extension for good cause, the Corrections staff or the Sheriff's Extradition Deputy, as the case may be, will notify the Clerk of Court within 24 hours from the next business day and the Clerk shall place the inmate on the next First Appearance docket. The first appearance judge shall set bond or make such other release determination. If the inmate is held on a Florida warrant, the ROR order shall direct that he/she report to the proper court on a date and to be scheduled by the jurisdiction issuing the warrant; if the bond is set or reduced, the order shall direct that the inmate report to the court on a date and to be scheduled by the jurisdiction issuing the warrant. If the inmate is held on an out-of-state charge, the order for ROR or setting bond shall direct that the inmate appear before the judge conducting fugitive hearings when notified. The Corrections staff or the Sheriff's Extradition Deputy shall immediately notify the pickup agency contact person by teletype that this action was taken, and shall mail a copy of the order to the contact person.

VIII. STATE ATTORNEY RELEASE/ERRONEOUS BOOKING:

- A.** The State Attorney or his/her designee has the authority to release pre-trial detainees without the approval of the court. Such authority shall extend only to those prisoners whom the State Attorney has determined shall not be prosecuted for the instant charged offense. The State Attorney's office may initiate such an order of release by notifying the Orange County Department of Corrections by telephone, and immediately thereafter filing a No Information Notice or a Nolle Prosequi to effectuate the release of the defendant.

- B. After an accused person has been booked into the Orange County Department of Corrections and the arresting agency determines that an error occurred and the accused should be released, then Orange County Department of Corrections will release the accused provided as follows: (1) that the accused person has been properly identified; (2) the accused person does not have any outstanding warrants or writs which would hold the accused on another matter; (3) the arresting agency files with Orange County Department of Corrections an affidavit requesting release which includes an explanation of the alleged error.
- C. Nothing contained herein shall abrogate pretrial release, reduction of bond or other procedures established by Florida Law or Rule.

IX. VIOLENT FELONY OFFENDERS OF SPECIAL CONCERN:

Persons arrested for new law violations who have been identified as a violent felony offender of special concern pursuant to the Anti-Murder Act, sections 903.0351, 948.06, and 948.064, Florida Statutes, but have not yet been arrested for a violation of probation, shall be placed on a five (5) day administrative hold. Orange County Corrections shall immediately notify the Department of Corrections of the new arrest so that the Department of Corrections can take the appropriate action.

X. ESTABLISHMENT OF PERSONS TO BE PRESENTED FOR FIRST APPEARANCE HEARINGS AND PROCEDURES FOR FIRST APPEARANCE HEARINGS:

A. Persons to be Presented for First Appearance Hearings:

Florida Rule of Criminal Procedure 3.130(a) requires that every person arrested on a criminal charge who is still in custody 24 hours after arrest must be taken before a judge for a First Appearance hearing unless such person was previously arrested and released from custody on that same charge. Persons who fall into the following categories, and only those persons, will be presented for First Appearance hearings in Orange County.

1. Arrest without warrant;
2. Arrest under an “at large” capias;
3. Initial arrest under an “at large” arrest warrant;
4. Arrest under a Failure to Appear (FTA) warrant where the person was never arrested but served with a summons and failed to appear for arraignment;
5. Persons arrested via a charging affidavit for violating the special condition of probation requiring that the defendant not return to the “prostitution mapping zone” must appear at the Initial Appearance proceedings and at such proceedings the judge may set a bond of the defendant’s release;
6. Persons arrested via a charging affidavit for on view violation of probation conditions by officer;
7. Persons arrested on violation of probation or violation of community control warrants;

8. Persons arrested who have not been released on monetary conditions and are certified eligible, pursuant to section 907.041(3)(b), Florida Statutes, to be released into the Orange County Pretrial Release Program;
9. Persons turned in by bail bond agent (TIBB) prior to arraignment;
10. Persons with a hold preventing release, including errors in identifying additional cases the person is currently out on bond or other release status as more fully set forth in E below;
11. Persons set forth in Section VII.D.

B. Persons Not to be Presented at First Appearance Hearings are:

1. Persons arrested on civil writs;
2. Persons turned in by bail bond agent (TIBB) after arraignment;
3. Persons who prison control release (PCR) or ROR release was revoked (unless an error prevented the first appearance judge from identifying the case during the original First Appearance);
4. Persons arrested on a contempt of court warrant;
5. Persons with a summons issued that has never been served (person may be seen for the charge arrested, but not the non-served charge until the State perfects service).

C. If there is any doubt as to whether an arrested person should be presented for a First Appearance hearing, that doubt should be resolved in favor of the defendant appearing at the First Appearance.

D. Operational Procedures for First Appearances Held in Orange County:

1. There are two sessions for First Appearance hearings in Orange County, Florida, Monday through Friday, except on holidays and weekends. The time frames outlined in the following sections are subject to change with as much notice as is possible under the circumstances. However, no case where a victim is required to be notified shall be moved up without the victim's knowledge. Additionally, any move-ups must be coordinated with Corrections, PTR, Clerk of Court, State Attorney and Public Defender to ensure it can be accomplished.
2. Session One accommodates all inmates arrested/processed into the Booking and Release Center (BRC) by 0400 hours, who require First Appearance proceedings:
 - a. Cut-off time for morning session is 0400 hours;
 - b. Inmate Records provides morning court list by 0430 hours;
 - c. Booking & Release Officers and Pre-Trial Staff complete necessary paperwork and deliver to the Clerk assigned to the jail by 0430 hours;
 - d. Booking & Release Officers will show all inmates the Rights videotape and ensure that all inmates complete an Advice to Defendant and First Appearance Form. These forms, when completed, will be delivered to

the Clerk assigned to the jail as soon as practically possible on weekdays;

- e. Indigency Affidavits will be obtained from all inmates being presented for First Appearance. These forms, when completed, will be delivered to the Clerk assigned to the jail as soon as practically possible on weekdays;
- f. The Clerk shall assign appropriate divisions, case numbers, attach Advice To Defendant, First Appearance Form, Indigency Affidavits, obtain State of Florida Department of Highway Safety and Motor Vehicles driving records for the misdemeanor traffic and felony traffic cases and distribute original and copies to the judge, the prosecuting authority and Public Defender assigned to the jail by 0800 hours;
- g. The prosecuting authority and Public Defender should review the inmates' paperwork for legal issues, i.e. probable cause and criminal history, and discuss plea negotiations before Court Session One at 0900 hours;
- h. The judge assigned to the jail should arrive in sufficient time to complete their review and be ready to commence proceedings by 0900 hours;
- i. The schedule for Session One, First Appearances, shall be in the following order: initial appearance on felony domestic violence, misdemeanor domestic violence, out of county warrants, violation of probation or community control, motion under Florida Rule of Criminal Procedure 3.134 (only on regular business days – no holiday or weekend), and resets;
- j. No felony arraignments shall be held at First Appearance hearings;
- k. The presiding judge may arraign and sentence defendants charged with misdemeanors and ordinance violations at First Appearance hearings. The judge shall make the Public Defender available for defendants who are sentenced and/or arraigned at First Appearance;
- l. In appropriate cases if the defendant is determined to be indigent and therefore unable to obtain an attorney at the time of First Appearance, a Public Defender may be appointed for all purposes. Whenever possible, the indigency determination should be made at First Appearance, however, the first appearance judge may take testimony. An Insolvency Screening/Affidavit shall be completed by any defendant requesting the appointment of the Public Defender. The judge will verify with the defendant the information contained in the screening/affidavit. If a determination is made that the appointment of the Public Defender is appropriate, any fees for application as provided by Florida Statutes will be imposed;
- m. The prosecuting authority and Public Defender should arrive in sufficient time to complete their review and perform any other required tasks to assist in the early resolution of cases;
- n. Prior to any subject being considered for a First Appearance Plea Agreement, and subsequent release from jail as a result of a Plea Agreement, Orange County Corrections will confirm that the local law enforcement identification process has been completed and the individual's identity verified;

- o. No plea to an enhanceable offense will be accepted at First Appearance over the objection of the State Attorney or the City Prosecutor;
 - p. When Session One is completed, the trial clerk will scan copies of the Orders of Commitment signed by the First Appearance Judge to the Judicial Processing Team workflow labeled “FA-BRC Courts” or such other procedures adopted by the Clerk of Court.
3. **Session Two** accommodates all inmates arrested/processed into the Booking and Release Center (BRC) by 0400 hours, who require First Appearance proceedings and will accommodate all individuals held only on writs from collection court:
- a. Cut-off time for afternoon session is 0400 hours;
 - b. Inmate Records provides afternoon court list by 0830 hours;
 - c. Booking & Release Officers and Pre-Trial Staff complete necessary paperwork and deliver to the clerk assigned to the jail by 0430 hours;
 - d. Booking & Release Officers will show all inmates the rights videotape and ensure that all inmates complete an Advice to Defendant and First Appearance Form. These forms, when completed, will be delivered to the clerk assigned to the jail as soon as practically possible on weekdays;
 - e. Indigency Affidavits will be obtained from all inmates being presented for First Appearance. These forms, when completed, will be delivered to the clerk assigned to the jail as soon as practically possible on weekdays;
 - f. The clerk shall assign appropriate divisions, case numbers, attach Advice to Defendant, First Appearance Form, Indigency Affidavits, obtain State of Florida Department of Highway Safety and Motor Vehicles driving records for the misdemeanor traffic and felony traffic cases, and distribute original and copies to the judge, the prosecuting authority and Public Defender assigned to the jail by 0800 hours;
 - g. The prosecuting authority and Public Defender should review the inmate’s paperwork for legal issues, i.e. probable cause and criminal history, and discuss plea negotiations before Court Session Two begins at 1300 hours or such other time as the court directs;
 - h. The judge assigned to the jail should arrive in sufficient time to complete their review and be ready to commence proceedings by 1300 hours or such other time the court directs;
 - i. The schedule for Session Two, First Appearances, shall be in the following order: pleable and non-pleable misdemeanor, traffic cases, city and county ordinance violations, felonies, and in-jail misdemeanor arraignments (only on regular business days – no holiday or weekend).
 - j. Counsel may email the judicial assistant at 51Orange@ocnjcc.org to confirm start time.
 - k. No felony arraignments shall be held at First Appearance hearings;
 - l. The presiding judge may arraign and sentence defendants charged with misdemeanors and ordinance violations at First Appearance hearings.

The judge shall make the Public Defender available for defendants who are sentenced and/or arraigned at First Appearance;

- m. In appropriate cases if the defendant is determined to be indigent and therefore unable to obtain an attorney at the time of First Appearance, a Public Defender may be appointed for some or all purposes. Whenever possible the indigency determination should be made at First Appearance however, the first appearance judge may take testimony. An Insolvency Screening/Affidavit shall be completed by any defendant requesting the appointment of the Public Defender. The judge will verify with the defendant the information contained in the screening/affidavit. If a determination is made that the appointment of the Public Defender is appropriate, any fees for application as provided by Florida Statutes will be imposed;
- n. The prosecuting authority and Public Defender should arrive in sufficient time to complete their review and perform any other required tasks to assist in the early resolution of cases;
- o. Prior to any subject being considered for a First Appearance Plea Agreement, and subsequent release from jail as a result of a Plea Agreement, Orange County Corrections will confirm that the local law enforcement identification process has been completed and the individual's identity verified;
- p. No plea to an enhanceable offense will be accepted at First Appearance over the objection of the State Attorney or the City Prosecutor;
- q. When Session One is completed, the trial clerk will scan copies of the Orders of Commitment signed by the first appearance judge to the Judicial Processing Team workflow labeled "FA-BRC Courts" or such other procedures adopted by the Clerk of Court.

E. First Appearance Detainer:

Corrections staff may place a first appearance detainer on defendants under the following circumstances and those individuals will be presented for first appearance at the next session so that the first appearance judge may properly consider all factors in setting release conditions:

1. Defendant currently on release arrested for a new violation that occurred after the offense for which the defendant is on release.
2. Defendant previously appeared at first appearance and upon processing for release, Corrections staff determines the first appearance judge was not provided information about all of the cases the defendant is currently out on bond or other release condition.
3. There shall be no first appearance detainer for an unserved summons or for notices to appear, or in cases where defendant was found incompetent to proceed.
4. There shall be no first appearance detainer where a defendant is arrested for a failure to appear warrant/capias. The mere fact that defendant has other cases is not sufficient for a first appearance detainer.

XI. Returnable Dates and Locations:

A. Felonies: Persons arrested for felony offenses and released from jail prior to arraignment are to report to the Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida, for arraignment when notified by the Clerk of the Court.

B. Misdemeanors:

1. Misdemeanors returnable to the downtown courthouse (Orlando Division):

Persons arrested for misdemeanor offenses which will be heard in the Orange County Courthouse in Orlando and who were released prior to arraignment, will be ordered to report before a judge of the appropriate division of County Court of Orange County, to the courthouse upon dates and at locations set from time to time by the Administrative Judge of the County Court of Orange County or his/her designee.

2. Misdemeanors returnable to any branch courthouse:

Persons arrested for misdemeanor offenses which will be heard in one of the branch courthouses, and who were released prior to arraignment, will be ordered to report before a judge of the appropriate division of County Court of Orange County, to a branch courthouse upon dates and locations set from time to time by the Administrative Judge of the County Court of Orange County or his/her designee.

C. Traffic Offenses:

1. Traffic offenders returnable to the downtown courthouse:

Persons arrested for traffic offenses which will be heard in the Orange County Courthouse in Orlando and who were released prior to arraignment, will be ordered to report before a judge of the appropriate division of County Court of Orange County, to the courthouse upon dates and at locations set from time to time by the Administrative Judge of the County Court of Orange County or his/her designee.

2. Traffic offenders returnable to any branch courthouse:

Persons arrested for traffic offenses which will be heard in one of the branch courthouses, and who were released prior to arraignment, will be ordered to report before a judge of the appropriate division of County Court of Orange County, to a branch courthouse upon dates and locations set from time to time by the Administrative Judge of the County Court of Orange County or his/her designee.

D. Persons released from custody after having appeared for arraignment in any court shall report on whatever date was scheduled at arraignment.

XII. MOTIONS FOR RELEASE PURSUANT TO RULE 3.134:

- A. Defense counsel and self-represented defendants shall file with the Clerk's Office Motions for Release and Notices of Hearings addressing violation of Florida Rules of Criminal Procedure 3.134 by 12:00 p.m. on the business day before the scheduled hearing and shall simultaneously forward via the most expeditious means possible, including e-mail, copies of the Motions and Notices to all interested persons, including the judicial assistant for the judge who is to preside over the hearing, the persons with the State Attorney's Office and the Orange County Sheriff's Office.
- B. Immediately upon receipt of the Notice of Hearing and if possible by 12:00 p.m. on the business day before the scheduled hearing, the judicial assistant for the judge who is to preside over the hearing shall forward via the most expeditious means possible, including e-mail, copies of the Notices to the persons with the State Attorney's Office and the persons with the Clerk of Court's Office.
- C. Should defense counsel or self-represented defendants file on a Friday or day prior to a holiday, the matter will be scheduled on the next following business day.

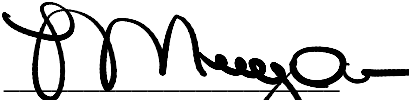
XIII. VIRTUAL APPEARANCES:

- A. Orange County Booking and Release center defense attorneys may appear at First Appearances virtually – you must contact judicial assistant for the presiding judge before appearing virtually at 51Orange@ocnjcc.org.
- B. GOOGLE Chrome browser or CISCO WEBEX Application is required to use the below link:
<https://join.ocnjcc.net/invited.sf?secret=SUC5bVUVkqnju7ehOyT6pw&id=433566877>

XIV. VACATING/INCORPORATION OF RELATED ADMINISTRATIVE ORDERS:

Administrative Orders 2003-39-26, 2013-04, and 2006-07-01 are vacated and set aside except to the extent that each has been incorporated and/or amended herein. Vacating an Administrative Order that vacates a prior Order does not revive the prior Order.

DONE AND ORDERED at Orlando, Florida, this 20th day of September, 2022.



Lisa T. Munyon
Chief Judge

Copies provided to:

Clerk of Court, Orange County
Clerk of Court, Osceola County
General E-Mail Distribution List
<http://www.ninthcircuit.org>