

CHAPTER 1
FIRST APPEARANCE
AND BONDS

Chapter 1 First Appearance and Bonds

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FIRST APPEARANCE

1.01 KEY POINTS

- Held within 24 hours of arrest, in person, or by electronic audio visual device
- Defendant must be advised of:
 - Charge (and provide copy to defendant)
 - Right to remain silent
 - Right to counsel, private or appointed
 - Right to communicate with counsel, family, or friends
- Appoint counsel if appropriate:
 - Counsel may be appointed for limited purpose of representing defendant only at first appearance.
 - Defendant may waive counsel at first appearance; waiver shall be in writing, signed and dated by defendant (statement that waiver only for first appearance). Waiver shall contain statement explaining right to counsel.
- If private counsel, must give defendant reasonable opportunity to confer. Court may postpone first appearance if necessary.
- Determine probable cause (for defendant in custody)
 - Must be made within 48 hours.
 - If extraordinary circumstances exist, can be continued for up to two additional 24 hour periods to allow State to supplement probable cause affidavit.
 - If no probable cause established, defendant must be released on recognizance (ROR).
 - Information offered during pre-trial release proceedings need not strictly conform with the rules of evidence.
- Set bond and arraignment date
- A defendant is entitled to an independent bail determination, in front of the first appearance judge, after a consideration of all relevant factors.
- The case should be set for arraignment; however, the Court may accept pleas of guilty or no

contest to misdemeanor charges and resolve the cases at first appearance without the necessity of further formal charges being filed.

1.011 Pretrial Release

- Defendant entitled to pretrial release on reasonable conditions
 - Except capital or life felonies where proof of guilt is evident and presumption of guilt is great; or
 - Unless no conditions will reasonably protect the community from risk of physical harm, assure the presence of the accused at trial, or assure integrity of judicial process.
 - Presumption in favor of non-monetary conditions and least restrictive conditions which will serve purpose (assure presence, protect community and integrity of judicial process).
 - Non-monetary release presumption does not apply to violent offenses including domestic violence cases, however, court must set conditions of pretrial release in domestic violence cases, which may include monetary bond.
 - A defendant arrested on warrant or capias is entitled to independent review of bond and first appearance judge has discretion to modify conditions of pretrial release.
- Release conditions can include:
 - Personal recognizance
 - Unsecured appearance bond
 - Restrictions on travel, association, or residence
 - Placement in custody of person or organization agreeing to supervise the defendant
 - Cash or surety bond
 - Any other condition reasonably necessary to assure appearance including return to custody after specified hours.
- Factors to consider:
 - Nature and circumstances of the offense charged
 - Penalty
 - Weight of evidence against the defendant

- Family ties
- Length of residence in the community
- Employment history
- Financial resources
- Mental condition
- Defendant's criminal history (including escape charges and failures to appear)
- Nature and probability of danger to community posed by release
- Source of funds used to post bail
- Whether defendant has other pending criminal cases or is on probation or parole
- Nature and probability of intimidation of, or danger to, the victim
- Value of drugs (if sale case)
- Mandatory release conditions include:
 - No criminal activity
 - No contact with victim except through discovery. This may be modified only upon a showing of good cause and after the victim has been given notice and an opportunity to be heard

Pretrial Detention

- State must show:
 - Defendant's previous violations and that no additional conditions will work
 - Defendant threatened, intimidated, or injured (or attempted or conspired to do so) a victim, witness, juror, or judicial officer, and no further conditions will prevent such conduct in the future
 - Defendant is charged with trafficking and there is a substantial probability defendant committed the offense, and no conditions will assure presence
 - Defendant poses threat of harm to community and is charged with a dangerous crime (listed in Section 907.041(4)(a), *Florida Statutes*), and there is a substantial probability that the defendant committed the crime, circumstances indicate disregard

of community safety, and no conditions are reasonably sufficient to protect the community, and one of the following exists:

- Defendant previously convicted of capital or life felony
 - Defendant convicted of dangerous crime within ten years of arrest
 - Defendant on probation, parole, or pretrial release for dangerous crime at time of arrest
- If the court finds probable cause exists that the defendant has committed another crime while already on pretrial release, the court may revoke pretrial release in the initial case and order pretrial detention in that case. Section 903.0471, *Florida Statutes*.
 - Subsequent application for setting or modifying bail:
 - Only by chief judge, judge assigned to preside over criminal trial, judge that imposed the conditions, or first appearance judge
 - Must be heard *promptly*, but with at least three hours notice
 - Burden is heavier for state to modify than for the defendant, as state must show good cause
 - Grounds for revocation include:
 - Failure to appear
 - Violation of release conditions
 - New information previously unavailable, which convinces the judge to increase security
 - If bail revoked for failure to appear, no ROR. If FTA and defendant does not turn self in, bail must be the greater of \$2,000 or twice the amount of original bond.

AUTHORITIES

Florida Rules of Criminal Procedure:

3.130 - First Appearance

3.131- Pretrial Release

3.133 - Pretrial Probable Cause Determination

3.132 - Pretrial Detention

Florida Statutes:

Section 907.041, 903.0471 - Pretrial Detention

Section 903.047 - Mandatory Conditions

Section 903.046(2) - Bail Determination

TIPS / NOTES

- Defendants can be advised as a group, either in person or by video, of the purpose of the hearing (to determine probable cause, to determine the conditions of release, and to appoint counsel if appropriate), of right to remain silent, and the right to communicate with family and friends.
- Most jurisdictions have a pretrial release office or other staff who can assist the judge by doing a pretrial interview, obtaining personal and employment information from the defendant, and running a criminal history check.

CHECKLISTS/FORMS

1.041 First Appearance Checklist

- Defendant should be advised of:
 - _____ Charge(s); copy of complaint available
 - _____ Right to remain silent and that anything said may be used against him/her
 - _____ Right to have counsel or to a continuance so that counsel can be consulted
 - _____ Right to an opportunity to communicate with family and friends

- Judge must:
 - _____ Appoint counsel if appropriate
 - _____ Obtain written waiver of counsel where appropriate
 - _____ Determine probable cause
 - _____ Determine, announce, and explain conditions of pretrial release

1.042 Sample Advisory for First Appearance

- Swear entire group of defendants at one time

- **Purpose of Hearing**

- You are here for a first appearance hearing. Each person who is arrested is entitled to see a judge within 24 hours. There are three (3) purposes for this hearing:

Probable Cause:

- First, it is for the purpose of determining whether there is probable cause for your arrest. That means whether there are reasonable grounds to believe that a crime may have been committed and that you are the person who committed that crime.

- If I find there is no probable cause for your arrest, one of two (2) things may happen. I may give the state up to 24 hours to produce additional facts to show probable cause, or I may direct that you be released. If you are released for lack of probable cause that does not mean the case is over. It only means that you will be released from custody. If the State wants to proceed against you on these charges, it has the right to do so.

Public Defender

- The second purpose of this proceeding is to determine whether you should have a lawyer appointed to represent you. If you have your own attorney and you want him/her present, you should advise me, and I will direct the bailiff to attempt to reach him/her. If we cannot reach him/her, this proceeding will have to be delayed.
- If you want to have a lawyer appointed to represent you, i.e., a public defender, please advise me. I will appoint a public defender to represent you if you qualify for the services of the Public Defender. I will ask you some questions regarding your financial situation, and based upon your answers, and the financial affidavit that you have filed, I will determine if you meet the statutory criteria for having a public defender appointed to represent you.
- If you eventually enter a plea of guilty or no contest, or if you are eventually found guilty of the offense with which you are charged, then a judgment may be entered against you for the reasonable value of the public defender's services. The judgment will become a lien upon any property that you may now have or hereafter acquire.

Bond

- The third purpose of the first appearance proceeding is to determine whether your bond should be changed. In some cases, the bond that was set when you went through booking may be too high and in other cases it may be too low.

Fifth Amendment Rights

- Each of you has the right to remain silent under the Fifth Amendment to the United States Constitution. Anything you say can and will be used against you. So please do not say anything about the crime itself. I will be asking you questions that have nothing to do with the facts of the crime. The purpose of my questions is to determine whether a public defender should be appointed to represent you, and whether your bond should be changed. You may refuse to answer these questions.
- You have the right to communicate by telephone with your family and friends.

Questions - Determination of Bail and Eligibility for a Public Defender

- Do you have an attorney?
- If you do not have an attorney, do you wish to have the public defender represent you?
- How long have you lived in Florida?
- How long have you lived in _____ County?
- What is your address?
- Do you have a job? Where do you work? How long have you had that job?
- How much salary do you bring home a week/month/year?
- Do you have family members in this county? If so, who?
- Are you married? Do you have any children?
- Are you on probation at the present time?
- Have you ever been arrested before?
- Have you ever been convicted of any prior crimes? If so, what?
- Have you ever failed to appear in court when directed to do so? If so, why?
- Do you own any property in this community? If so, describe the property?
- Do you own any real estate? If so, how much equity do you have in this property?
- Do you own a car, truck, a motorcycle, or a boat? If so, describe the property: year, make, model. When did you buy it? How much did you pay for it? Are there any outstanding liens on the property? What is the fair market value of the property?
- Do you own any stocks, bonds, money markets, savings accounts, certificates of deposit or any other negotiable instruments or investments?
- Do you own anything of value such as jewelry, television, etc?
- Is anyone holding any money for you?
- **Make a decision regarding bail and appointing the public defender.**

Chapter 1 – First Appearance and Bonds

Denial of Bail and Pretrial Detention

When defendant violates bond conditions with a new offense, the court must follow the procedure and rules in § 907.041(b) before denying bond.

(See this case for extensive discussion of when the court can deny bond following a finding of violating the terms of release.)

•**S. v. Paul, 783 So. 2d 1042 (Fla. 2001), 26 F.L.W. S185 (3/29/2001)**

Court errs in holding defendant without bail as a result of appearing late for trial. Before the court can deny bail, the provisions of §907.041(c) must be complied with.

Roby v. S., 795 So. 2d 189 (3d DCA 2001), 26 F.L.W. D2355 (9/25/2001)

Court errs in refusing to set bond based on the court's finding that no condition of release would reasonably protect the public from the risk of harm, and where the state does not prove the pretrial detention criteria.

Surdovel v. Jenne, 706 So. 2d 115 (4th DCA 1998), 23 F.L.W. D630 (2/25/98)

To order pretrial detention under §907.041, the defendant must be charged with a “dangerous crime” as defined in §907.041(4)(a)16, and defendant must meet at least one of the criteria in §907.041(4)(b)4. Where none of the three criteria are met, pretrial detention is improper.

Prior juvenile adjudications do not qualify as “conviction for a dangerous crime” under the statute (but see dissent).

Moody v. Campbell, 713 So. 2d 1032 (1st DCA 1998), 23 F.L.W. D1423 (6/5/98)

Under the 2000 amendments to §903.046 and §907.041, a person who commits a new crime while on bond, or who violates a pretrial release condition, can have his bail revoked and be held without bail.

(See this case for extensive discussion of the 2000 amendments to the pretrial release and pretrial detention statutes.)

•**Barns v. S., 768 So. 2d 529 (4th DCA 2000), 25 F.L.W. D2320 (9/27/2000)**

Under section 903.0471 (2000), when there is probable cause to believe that defendant committed a new crime while on bail, the court can hold defendant without bail. The statute is constitutional and does not violate article I, section 14 of the constitution.

(See this case for extensive discussion of § 903.0471 and the law concerning revoking pretrial release upon committing a new crime.)

Parker v. S., 780 So. 2d 210 (4th DCA 2001), 26 F.L.W. D396 (2/7/2001)

At first appearance, the court found that the arrest affidavit did not provide probable cause for burglary with an assault, and reduced the charge to battery and set bail accordingly. The state then filed burglary with an assault, and the court revoked bail without taking further testimony. Held: Under rule 3.133(a)(1)(4), the information cannot provide probable cause, and that in the absence of probable cause supported by sworn testimony, there can be no restraint on liberty other than appearing for trial. The court errs in revoking bond.

Blount v. Spears, 758 So. 2d 1287 (3d DCA 2000), 25 F.L.W. D1421 (6/14/2000)

First Appearance Bond Review

Under rule 3.131(b)(2), the first appearance judge must be allowed to consider bail for a defendant arrested pursuant to a warrant. Thus, an administrative rule that prohibits the first appearance judge from modifying a bond amount set by the judge who issues the arrest warrant is invalid.

However, under rule 3.131(j), when a *capias* is issued following the issuance of an information or indictment, the issuing judge is required to set the amount of bail, and the discretion of the first appearance judge can be limited by the issuing judge.

S. v. Norris, 768 So. 2d 1070 (Fla. 2000), 25 F.L.W. S714 (9/28/2000)

Trial court may not refuse to consider pretrial release for VOPs as a matter of policy.

Chambers v. S., 491 So. 2d 309 (4th DCA 1986)

Any policy of denying bail to domestic violence simple battery arrestees is unconstitutional unless the state can show that pretrial detention under §907.041 is appropriate.

Swanson v. Allison, 617 So. 2d 1100 (5th DCA 1993), 18 F.L.W. D1120 (4/26/93)

Entitlement to Release

Defendant left in jail more than 40 days without an information being filed is not entitled to release when the state files an information immediately upon receipt of defendant's motion for release (pre-1991 amendments to rule 3.133(b)(6), now rule 3.134).

Bowens v. Tyson, 578 So. 2d 696 (Fla. 1991)

Under rule 3.134, when no information is filed for more than 40 days following arrest, a defendant is not automatically entitled to release. The court or defense must give notice to the state and the state must be given an opportunity to file before ROR is required.

Where the defense does not file a motion seeking ROR until day 49, and the state has filed by the time of the hearing, the defendant is not entitled to an ROR.

Ford v. Campbell, 697 So. 2d 1301 (1st DCA 1997), 22 F.L.W. D2004 (8/19/97)

Defendant was charged with sexual activity with a child, and moved to dismiss based on statute of limitation. The court granted the motion, and the state appealed. State sought to continue defendant on bond. Defendant sought release on recognizance. Held: Section 924.071(2), relating to state appeals, does not apply since the section only applies when the state appeals from pretrial orders suppressing evidence. Rule 9.140(e)(2) does not apply, as that rule only applies when defendant is charged with a bailable offense, and defendant was charged with no offense when the state appealed. Rule 3.190(e) applies, and since no new information was filed, defendant is entitled to ROR.

•Fontana v. Rice, 644 So. 2d 502 (Fla. 1994), 19 F.L.W. S544 (10/27/94)

Amount of Bail

Surety bond amount may not differ from cash bond amount. Where cash bond of \$350 is called for under the bond schedule, the court cannot require a surety bond of \$3503.

Harrell v. McMillan, 614 So. 2d 1185 (1st DCA 1993), 18 F.L.W. D576 (2/19/93)

Bail set at \$200,000 for a first time offender with substantial local ties charged with fraud and theft crimes is excessive.

Winer v. Spears, 771 So. 2d 621 (3d DCA 2000), 25 F.L.W. D2825 (11/22/2000)

Setting bail at \$50,000 for DUI and a failure to appear for a disabled man living on social security is excessive. Excessive bail is tantamount to no bail, and habeas is granted.

Quinn v. Crowder, 625 So. 2d 1247 (4th DCA 1993), 18 F.L.W. D1965 (9/7/93)

Setting bail at \$65,000 for attorney charged with fraud and grand theft is not unreasonable where defendant has significant ties, but no permanent home and possibly has much money with which to make a getaway.

Nassetta v. Kaplan, 557 So. 2d 919 (4th DCA 1990)

Order setting bail at \$1,000,000 for six counts of BUI resulting in 6 deaths is not reasonable where the court does not consider all of the circumstances in §903.046.

Cameron v. McCampbell, 704 So. 2d 721 (4th DCA 1998), 23 F.L.W. D220 (1/8/98)

Where defendant is charged with a crime punishable by life, but the state does not seek to show proof evident or presumption great, and defendant is indigent and has ties to the community, a \$200,000 bond is tantamount to no bond and habeas is granted to obtain release.

Mesidor v. Neumann, 721 So. 2d 810 (4th DCA 1998), 24 F.L.W. D3 (12/16/98)

Where defendant is charged with non-capital crimes, has no criminal record, has strong ties to the community, and is no flight risk, the court errs in setting bond at \$100,000 based solely on the nature of the crime and without considering the other factors under the statute.

Patterson v. Nueman, 707 So. 2d 946 (4th DCA 1998), 23 F.L.W. D802 (3/19/98)

Bail Criterion

Purposes of bail are to relieve defendant of incarceration, relieve state of burden of imprisoning defendant, and to place the accused as much under power of the court as if he were in custody of officers.

Bail bond is a three-party contract between the state, defendant, and surety, whereby surety guarantees appearance of defendant.

Pinellas Co. v. Robertson, 490 So. 2d 1041 (2d DCA 1986)

The purpose of bail is both to assure defendant's appearance and to protect the community from unreasonable danger. In fixing the amount of bail, the court should consider the financial resources of the defendant and the defendant's access to friends and family who are willing to be responsible for producing him.

Defendant's criminal record is an important consideration in setting bail amount. (See this case for extensive discussion of the factors the court should consider in determining the amount of bail.)

Henley v. Jenne, 796 So. 2d 1273 (4th DCA 2001), 26 F.L.W. D2505 (10/17/2001)

A court's ruling on bail is entitled to a presumption of correctness. An appellate court will grant relief from an order setting bond when the petitioner demonstrates that the amount of bail is unreasonable under the circumstances.

Excessive bond depending on the petitioner's financial resources is tantamount to no bond at all. Defendant's financial resources, in addition to his record of appearing in court and ties to the community, must be considered in setting bail.

Martin v. Jenne, 745 So. 2d 412 (4th DCA 1999), 24 F.L.W. D2447 (10/27/99)

Conditions of Release

Court errs in increasing defendant's release requirements from pretrial services to electronic monitoring without any change in circumstances of additional evidence.

Burton v. Felton, 625 So. 2d 1334 (3d DCA 1993), 18 F.L.W. D2429 (11/10/93)

While amount of bail is a matter of discretion, the discretion is not unbridled. Appellate court will grant relief on a habeas corpus petition if the bail set is unreasonable. Where bail was set at arraignment for defendant charged with purchase of marijuana, and the state does not show that the transaction resulted in defendant obtaining money that could be used for bail and the state does not show that he had made previous buys, the provisions of §903.046(2)(h) are not met and the court errs in raising defendant's bail.

Sikes v. McMillian, 564 So. 2d 1206 (1st DCA 1990)

Court errs in imposing as a condition of release in an extradition bail case that defendant turn himself in to official in the requesting state. The purpose of bail in an extradition case is to ensure that defendant turn himself in to Florida authorities upon receipt of the governor's warrant.

Burkhart v. Jenne, 814 So. 2d 1064 (4th DCA 2001), 26 F.L.W. D2369 (9/28/2001)