



Legal Advisor

Volume 18, Issue 5

May 2004



Jerry Hill

State Attorney

Important Bartow Phone #s:

- Switchboard 534-4800
- Misdemeanor Intake 534-4928
- Misdemeanor 534-4926
- Victim Assistance 534-4989
- Felony Intake 534-4987
- Felony 534-4964
- Investigations 534-4804
- Violation of Probation 534-4803
- Child Abuse/Neglect 534-4857
- Homicide Division 534-4959
- On Call Pager 819-1526
- Worthless Checks 534-4874
- Juvenile Division 534-4905
- Fax 534-4945
- Witness Management:**
- Misdemeanor/Traffic 534-4021
- Felony 534-4020

FIRST APPEARANCE HEARINGS AND THE NEW BOND SCHEDULE

by Joseph Williams, Felony Intake

The purpose of this article is to make certain that law enforcement has been made aware of the judiciary's new uniform bond schedule, and those defendants who are not subject to bail until after First Appearance hearings. Our courts recognize the fundamental legal concept that most alleged criminal offenders are entitled to bail. Therefore a uniform schedule has been introduced to attempt to ensure uniform treatment of individuals charged with a crime, unless ordered differently by a judge.

The presumptive bond schedule pursuant to Administrative Order No. 2-49 (effective 01/09/2004) is:

	BOND AMOUNT	MAXIMUM PENALTY (Cash or Surety)
2 nd Degree Misdemeanor	\$250	60 days jail and/or \$500 fine
County Ordinance	\$250	60 days jail and/or \$500 fine
Municipal Ordinance	\$250	60 days jail and/or \$500 fine
1 st Degree Misdemeanor	\$500	1 year jail and/or \$1,000 fine
3 rd Degree Felony	\$1,000	5 yrs prison and/or \$5,000 fine
2 nd Degree Felony	\$5,000	15 yrs prison and/or \$10,000 fine
1 st Degree Felony	\$15,000	30 yrs prison and/or \$10,000 fine
Life Felony	None	Not less than 30 yrs and/or \$15,000 fine
Capital Felony	None	Death

Dangerous Crimes enumerated in F.S. 907.041(4)(a): **NO BOND** until first appearance hearing.

INSIDE THIS ISSUE:	PAGE:
First Appearance Hearings & the New Bond Schedule ...continued from page 1	2
Employee Birthdays	2
First Appearance Hearings & the New Bond Schedule ...continued from page 2	3
LEO News	3
From the Courts	3
TOP COPS	4

FIRST APPEARANCE HEARINGS AND THE NEW BOND SCHEDULE

The Court interpretation of F.S. 907.041(4)(b) is that every person charged with offenses known as "dangerous crimes" will be held until his/her First Appearance hearing. Pursuant to the Rule of Criminal Procedure 3.131, every arrested person who has not bonded out of jail shall be taken before a judge, either in person or by audio-visual device, within 24 hours of the arrest.

The dangerous crimes are:

1. Arson
2. Aggravated Assault
3. Aggravated Battery
4. Illegal Use of Explosives
5. Child Abuse or Aggravated Child Abuse
6. Abuse of an Elderly Person/Disabled Person, or Aggravated Battery of an Elderly Person/Disabled Person
7. Aircraft Piracy
8. Kidnaping
9. Homicide
10. Manslaughter
11. Sexual Battery
12. Robbery
13. Carjacking
14. Lewd, Lascivious, or Indecent Assault or Act or in Presence of a Child Under the Age of 16 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 Person in Familial or Custodial Authority
16. Burglary of a Dwelling
17. Stalking & Aggravated Stalking
18. Act of Domestic Violence (Defined by F.S. 741.28)
19. Home Invasion Robbery
20. Act of Terrorism (Defined by F.S. 775.30)
21. Trafficking in Controlled Substances (by Court Order)

22. DUI Manslaughter (by Court Order)

It should be noted that anyone charged with stalking, assault, battery, sexual assault, sexual battery, or any criminal episode resulting in physical injury or death of a family or household member by anyone residing in the same abode, shall after his first appearance hearing, have a presumptive bond of \$5,000 cash or surety. It should also be noted that the Bond Schedule was revised effective 02/25/2004, to include:

- 1) Persons charged with a second or subsequent DUI will be held without bail until first appearance hearing.
- 2) Persons on probation or community control, not yet violated but arrested on new charges will be held without bond before and after their first appearance hearing. Also, when they are arrested for the VOP, they will be held without bail on that charge, too.

Assistant state attorneys, who are responsible for representing the state, are provided a copy of the arrest affidavit at First Appearance hearings. This allows them to review the affidavit and puts them in a better position to recommend bond amounts and/or any special conditions upon the defendant's release. This would also apply to Pre-Trial Service releases. The state attorney has instructed that all of his assistants be very aggressive and kept updated. Conditions of release to be considered are numerous, many are standard conditions in other areas of the law, and common sense should also be employed. The following is a list of conditions which may aid us both in informing the judge of a problem:

- 1) No contact with victim (s).
- 2) No contact with witnesses .
- 3) No contact with victim' or witnesses' family members/relatives.
- 4) No contact with co-defendants .
- 5) Stay Away Order: e.g.: victims' or witnesses' property, business, schools, homes, etc. .
- 6) That defendant secure his personal property with 48 hours of release, and only in presence of a law enforcement officer .



Joe Williams is an Assistant State Attorney in the Felony Intake Division. Joe has been with the State Attorney's Office since January 1985.

EMPLOYEE BIRTHDAYS

JUNE 2004

June 1

Alison Poncy, Felony-4

June 5

Maggie Avalos, Hardee
County SAO

June 8

Shannon Smith, OPS

June 10

Brittany Stafford, C. S. E.
Rey Ojeda, Special
Prosecution

June 11

Gidget Wilson, C. S. E.

June 13

Wayne Durden, Felony

June 21

Francisco Rivera,
Misdemeanor Intake

June 26

Ryan Fasso, Felony - 4

Happy Birthday!

FIRST APPEARANCE HEARINGS AND THE NEW BOND SCHEDULE

LEO

NEWS...

- 7) No alcohol beverages and no visiting bars.
- 8) No drugs or frequent places where drugs are sold .
- 9) No driving.
- 10) No weapons.
- 11) No firearms.
- 12) Possible curfew.
- 13) Compliance with treatment programs.
- 14) Defendant must reside at an address certain and/or with certain people, e.g.: parents.
- 15) Maintain employment.
- 16) Passport must be surrendered.
- 17) Any other relevant condition.

It must be emphasized that the above list is only for guidance and it is a non-exclusive list of conditions that may be employed on a case by case basis.

If a judge should find at a First Appearance hearing that the arrest affidavit fails to support probable cause, then our attorney will request 72 hours to amend the document. The law enforcement officer who prepared the probable cause affidavit may be given 24 hours to complete the amended affidavit, via re-writing and correcting the deficiency or error, and submitting an amended affidavit to the clerk or our attorney handling the hearing.

If a law enforcement officer would like to seek a higher bond, then he

may add language to the arrest affidavit's probable cause section setting forth the justification for seeking higher than the standard bond allows for an offense. It is best to include this information at the end of your probable cause statement. You may contact the duty judge to request the higher bond. If you obtain a higher bond, please let our attorney know about the higher bond. Please recall that weekend First Appearance hearings are handled on a rotation basis of assistant state attorneys, whereas, during the week the Misdemeanor Intake Division is responsible for those hearings. Nevertheless, all the Assistant State Attorneys have been made aware of their new duties and responsibilities in this area.

We have emphasized in many previous articles the importance of communication between our agencies. We must be kept informed if we are going to be able to follow the procedures implementing this law so that ... "persons committing serious criminal offenses, posing a threat to the safety of the community or the integrity of the judicial process, or failing to appear at trial be detained upon arrest," (F.S. 907.041(1) Legislative Intent). In other words, no person who has been charged with a dangerous crime will be granted a non-monetary pretrial release at a First Appearance hearing, unless ordered differently by a judge. That is one of the reasons that information supplied in your arrest affidavit may become essential in arguing that a bond and/or condition be set and upheld, in order to ensure the protection of the victim and the community at large..

...FROM THE COURTS...

The defendant was charged with escape and burglary. The evidence at his trial established that while he was being taken from jail to court, he got away from corrections officers and ran several blocks before breaking into a building and locking himself in. Shortly thereafter, he was apprehended. He was convicted as charged.

On appeal, the Third District reversed the burglary, holding that the defendant did not break into the building with the intent to commit a crime therein because the crime of escape was already complete. *Gaskin v. State*, 29 FLW D780 (Fla.3d DCA Mar. 31, 2004).

Polk County Sheriff's Office:

Deputy John Maney of the Polk County Sheriff's Office retired in April 2004. He leaves after having served more than 20 years in law enforcement. Deputy Maney is currently enjoying his retirement by serving as a Reserve II Deputy Sheriff Volunteer. That's what we call dedicated!

Deputy Ted Miller also of the Polk County Sheriff's Office retired in May 2004. He leaves after having served more than 25 years in law enforcement.

Winter Haven Police Dept.:

Detective William "Bill" McNally retired from the Winter Haven Police Department June 1, 2004. He leaves after having served more than 30 years in law enforcement. Detective McNally joined WHPD in May 1983 and prior to that he worked for the Polk County Sheriff's Office.

Lakeland Police Department:

Detective Denny Phillips of Lakeland Police Department retired June 1, 2004. He leaves after having served more than 25 years in law enforcement. Denny is currently working for the PBA in Tampa.

We wish all of you well on your retirement and thank you for your many years of service to the citizens of the Tenth Judicial Circuit.



We will be closed on Monday, July 5th in observance of Independence Day.



Hardee County

124 South 9th Avenue
Wauchula, FL 33873
Phone: (863) 773-6613
Fax: (863) 773-0115

Highlands County

411 South Eucalyptus
Sebring, FL 33870
Phone: (863) 402-6549
Fax: (863) 402-6563

Polk County

P.O. Box 9000, Drawer SA
Bartow, FL 33831-9000
Phone: (863) 534-4800
Fax: (863) 534-4945

Child Support Enforcement

215 N. Floral Avenue
Bartow, FL 33830
Phone: (863) 519-4749
Fax: (863) 519-4759

Lakeland Branch Office

930 E. Parker Street, Suite 238
Lakeland, FL 33801
Phone: (863) 499-2596
Fax: (863) 499-2650

Winter Haven Branch Office

Gill Jones Plaza
3425 Lake Alfred Rd. 9
Winter Haven, FL 33881
Phone: (863) 401-2477
Fax: (863) 401-2483

Legal Advisor Staff

Jerry Hill, Publisher
jhill@sao10.com
Chip Thullbery, Managing Editor
cthullbery@sao10.com
Michael Cusick, Content Editor
mcusick@sao10.com
Lorena Diaz, Graphic Design
ldiaz@sao10.com

For comments or suggestions, contact us at the above e-mail addresses. The "Legal Advisor" is published by:
Office of the State Attorney
Tenth Judicial Circuit

TOP COPS

I would like to recognize **Officer Michael Baine** from the Bartow Police Department for his willingness to meet all the new K-9 requirements outlined

in the Matheson decision. I had a case in which Officer Baine's K-9, "Herc," alerted to the presence of drugs in a vehicle. The defense attorney filed a motion to suppress on the basis that Matheson would prevail and questioned the K-9's (as well as the handler's) training, history, and record keeping. Before the motion, a deposition was held. Officer Baine brought in all of Herc's certificates and training outlines, as well as information on each and every search that Herc had participated in. Based on these extremely well-kept records, the defense attorney could not go through with her motion to suppress. Officer Baine was very well prepared and because of his diligent efforts in keeping up to date on recent case law, the drugs could not be suppressed. I want to thank Officer Baine for making our jobs that much easier!

-ASA Leslie Lasseigne, Special Prosecution

On a recent case set for jury trial (Defendant Greg Mincy) **LKPD Detective Stephen Richburg** went out of his way to help me prepare. First and foremost, Detective Richburg personally served three victims of Sexual Abuse with subpoenas, after the process server could not locate them. The trial was to begin on a Monday and I called Detective Richburg the prior Thursday. By Friday morning, he had contacted all three victims and personally served them with subpoenas. Secondly, he came in and met with me to go over his reports and testimony before the trial was to begin as well as taking the time to re-copy tapes that were going to have to be redacted for content. Fortunately, the case ended up resolving itself on the day of trial and the children did not have to testify. Detective Richburg assisted me not only in preparation for the case, but even through the final stages of a plea to help with the victims. Without Detective Richburg's willingness to assist me at a moments notice for whatever I needed, I would not have been able to get the case resolved.

-ASA Leslie Lasseigne, Special Prosecution

I would like to commend **Officer Charles Dallas, K-9 Unit and Officer Eric Harper** of the Lakeland Police Department. They were scheduled to testify at a Motion to Suppress hearing in May after having worked a midnight shift. The defendant did not show up and the hearing was rescheduled. For unknown reasons, the officers did not receive the proper subpoenas and were not notified about the rescheduled hearing. After a phone call from me, they came with no complaints or hesitancy, once again, after having worked the midnight shift. In spite of the subpoena mix-up and the fact that Harper has a child on the way, both were willing to come in and give their testimony. The hearing lasted almost two hours and they never once complained.

-Legal Intern Karen Steverson, Dom. Violence

Detective Paul Dunn of PCSO. Once more PCSO's Bureau of Special Investigation steps up. Paul and I had two cases set for this week. One involved a repeat offender who chose the path of lesser resistance and took a 30-month prison sentence. The other continued at the last minute, after the defense lawyer suddenly realized that Paul and his team had covered every base in a cocaine sale within 1000 feet of a church. Requests made by me for additional information and investigation in the weeks prior to the trial cycle were handled quickly and properly, enabling me to be prepared when I needed to be.

-ASA Torie Avalon, Felony 5

Delia Sanchez and Brannon Sheely from Haines City Police Department. They responded on short notice to get a DNA sample from Lance Sheffield, a potentially disruptive suspect, and in short order. **Also, Sgt. Mike Green, Chief Morris West, and Lynn in the Detective Division, Officer Pete Kreticos of the Winter Haven Police Department, and Paula Maney of the Polk County Sheriff's Office** for their assistance to date in trial preparation with this case.

-ASA Torie Avalon, Felony 5