

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

**IN RE: MONETARY BAIL SCHEDULES AND
PROHIBITIONS AGAINST RELEASE
PRIOR TO APPEARANCE BEFORE
JUDGE (JESSICA LUNSFORD AND
ANTI-MURDER ACTS)**

**ADMINISTRATIVE ORDER
NO: 3.23
- Amended -**

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WHEREAS, Fla. R. Crim. P. 3.130 requires that, except when previously released in a lawful manner, every arrested person shall be taken before a judicial officer within twenty-four hours after arrest (referred to herein as the “First Appearance Hearing”); and

WHEREAS, Fla. R. Crim. P. 3.131 generally provides that conditions of pretrial release, including the amount of any monetary condition of pretrial release, shall be considered at the First Appearance Hearing; and

WHEREAS, the Twentieth Judicial Circuit desires to formalize the use of monetary bail schedules as a means to ensure the timely and efficient processing of court cases, to fix the standard amount of bail for each of the offenses listed on a monetary bail schedule, and to grant to the county sheriffs within the Twentieth Judicial Circuit the authority to release in advance of the First Appearance Hearing any person who has been arrested and jailed for an offense that is listed on the court-approved monetary bail schedule for the sheriff’s respective county; and

WHEREAS, the Twentieth Judicial Circuit further desires to ensure compliance with the provisions and requirements of Chapter 2005-28, Laws of Florida, relating to high-risk sex offenders, otherwise known as the “Jessica Lunsford Act;” and

WHEREAS, the Twentieth Judicial Circuit further desires to ensure compliance with the provisions and requirements of Chapter 2007-2, Laws of Florida, relating to violent felony

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offenders, otherwise known as the "Anti-Murder Act;"

NOW, THEREFORE, pursuant to the authority prescribed by Fla. R. Jud. Admin. 2.215 (formerly Fla. R. Jud. Admin. 2.050) and for the purpose of promoting the efficient administration of justice within the Twentieth Judicial Circuit, it is **ORDERED** as follows:

I. ESTABLISHMENT AND USE OF MONETARY BAIL SCHEDULES

A. The administrative judge for each of the five counties within the Twentieth Judicial Circuit is hereby authorized to create a proposed monetary bail schedule listing those offenses for which monetary bail may be pre-set and prescribing the specific bail amount for each offense listed on the schedule. After consulting with the circuit and county judges who are assigned criminal cases within each respective county, the administrative judge shall submit any proposed monetary bail schedule to the chief judge of the Twentieth Judicial Circuit for approval and adoption. Once approved by the chief judge, the signed original of the monetary bail schedule shall be filed with the respective Office of the Clerk of Courts. A copy shall be forwarded to the court administrator and to the law enforcement agencies within the applicable county.

B. Once a monetary bail schedule has been approved and adopted, changes or amendments may be recommended by the administrative judge after consulting with the circuit and county judges who are assigned criminal cases within each respective county. Such recommendations shall be submitted to the chief judge of the Twentieth Judicial Circuit for approval and adoption. Once the chief judge approves and adopts any amendments, the signed original of the amended monetary bail schedule shall be filed in the respective Office of the Clerk of Courts, and a copy shall be forwarded to the court administrator and to the law enforcement agencies within the applicable county.

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C. In making determinations as to reasonable conditions of pretrial release at the time of the First Appearance Hearing, or at any time thereafter, the judges are not bound by the bail amount for any particular offense listed on the monetary bail schedule, but, rather, may use their judicial discretion to determine any reasonable conditions of pretrial release, including any monetary conditions, based upon the facts and circumstances of each individual case.

D. The sheriff of each county is hereby authorized to release prior to the First Appearance Hearing persons who are arrested and jailed within their respective counties for the offenses or violations listed on the monetary bail schedule for their county, however, the person shall first post the applicable bail or bail bond. This provision does not preclude the sheriff or arresting officer from issuing a "notice to appear," in accordance with Fla. R. Crim. P. 3.125, in the case of a misdemeanor of the first or second degree or for a violation of a municipal or county ordinance. Specific procedures for use of the notice to appear must conform to section (l) of Fla. R. Crim. P. 3.125 and to the rules and regulations of procedure governing the exercise of authority to issue notices to appear as may be established by the chief judge pursuant to section (j) of Fla. R. Crim. P. 3.125.

E. In counties where the Administrative Office of the Courts (AOC) has an established pretrial services division, the sheriff shall honor all written requests from a pretrial services officer, as an officer of the court, to hold a person pending the First Appearance Hearing.

F. In counties where the AOC has an established pretrial services division that operates from the county jail twenty-four hours a day, seven days a week, the sheriff shall not release any arrested person prior to that person having been brought before a pretrial officer for screening.

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II. COMPLIANCE WITH THE JESSICA LUNSFORD ACT

A. Before releasing any person pursuant to the monetary bail schedule, or any other conditions of release, the sheriff shall run a FCIC/NCIC records report and certify to the court that the person does not qualify as a high-risk sex offender and does not qualify for a hearing to determine whether the person is a danger to the public under the Jessica Lunsford Act, Chapter 2005-28, Laws of Florida. The certification shall comply substantively with the format of "Attachment A." Both the FCIC/NCIC records report and the certification to the court shall also comply with the requirements of local Administrative Order 3.9.

B. The sheriff shall not release prior to the First Appearance Hearing any person who qualifies as a high-risk sex offender and who qualifies for a hearing to determine whether that person is a danger to the public. Such person shall be brought before the First Appearance judge, either in person or by court-approved electronic means. Persons who qualify as high-risk sex offenders and who qualify for a hearing to determine whether they are dangers to the public shall not be released unless or until a determination is made by the court, on the record and in writing, that the person is not a danger to the public, and unless or until the court sets bail or other conditions of release.

C. In accordance with Fla. Stat. §948.06(4), a person who qualifies as a high-risk sex offender and requires a hearing to determine whether that person is a danger to the public is defined as any felony probationer or offender in community control arrested for violating his or her probation or community control in a material respect, and who:

- (1) is under supervision for any criminal offense proscribed in chapter 794, s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145; or

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(2) is a registered sexual predator or a registered sexual offender; or

(3) is under supervision for a criminal offense for which he or she would meet the registration criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the effective date of those sections.

III. COMPLIANCE WITH THE ANTI-MURDER ACT

A. Before releasing any person prior to a First Appearance Hearing pursuant to the monetary bail schedule, or any other conditions of release, the sheriff shall certify to the court that the person does not qualify for detention under the Anti-Murder Act, Fla. Laws, Ch. 2007-2. The certification shall comply substantively with the format of "Attachment A."

B. The sheriff shall not release prior to the First Appearance Hearing any person who qualifies as a violent felony offender and who qualifies for detention pending a probation-violation or community-control-violation hearing, pursuant to the Anti-Murder Act. Such person shall be brought before the First Appearance judge, either in person or by court-approved electronic means. Persons who qualify as violent felony offenders and who qualify for detention pending a probation-violation or community-control-violation hearing shall under no circumstances be released from custody prior to a recorded violation hearing at which both the State and the offender are represented.

C. In accordance with Fla. Stat. §903.0351 and Fla. Stat. §948.06, a person who qualifies for detention pending a probation-violation or community-control-violation hearing is defined as a felony probationer or offender in community control who has been alleged to have committed any violation of felony probation or community control other than a failure to pay costs or fines or make restitution payment if that person is:

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- (1) A “violent felony offender of special concern,” meaning a person who is on:
- (a) felony probation or community control related to the commission of a qualifying offense committed on or after March 12, 2007; or
 - (b) felony probation or community control for any offense committed on or after March 12, 2007, and has previously been convicted of a qualifying offense; or
 - (c) felony probation or community control for any offense committed on or after March 12, 2007, and is found to have violated that probation or community control by committing a qualifying offense; or
 - (d) felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in §775.084(1)(b) and has committed a qualifying offense on or after March 12, 2007; or
 - (e) felony probation or community control and has previously been found by a court to be a three-time violent felony offender as defined in §775.084(1)(c) and has committed a qualifying offense on or after March 12, 2007; or
 - (f) felony probation or community control and has previously been found by a court to be a sexual predator under §775.21 and has committed a qualifying offense on or after March 12, 2007.
- (2) a person who is on felony probation or community control for any offense committed on or after March 12, 2007 and who is arrested for a qualifying offense; or
- (3) a person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in §775.084(1)(b), a three-time violent felony offender as defined in §775.084(1)(c), or a sexual predator under §775.21, and who is arrested for committing a qualifying offense on or after March 12, 2007.

D. The list of “qualifying offenses” under the Anti-Murder Act are expressly set forth in Fla. Stat. §948.06(8)(c).

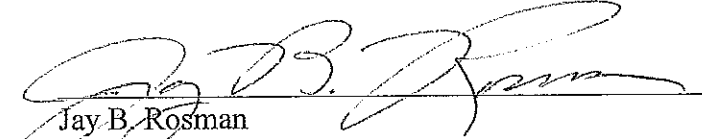
IV. GENERAL PROVISIONS

A. This Administrative Order shall not be construed either to mandate that monetary bail schedules be adopted or to mandate that the sheriffs within the Twentieth Judicial Circuit release

persons pursuant to the approved and adopted monetary bail schedules.

B. To the extent that any provision of this Administrative Order may be construed as being in conflict with any law, statute, or rule, the law, statute, or rule shall prevail.

DONE AND ORDERED in chambers in Fort Myers, Lee County, Florida, this 30 day of March, 2012.

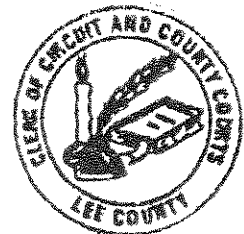

Jay B. Rosman
Chief Judge

History. — Administrative Order 3.23 (September 29, 2006); Administrative Order 3.23 (November 7, 2007).

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STATE OF FLORIDA, COUNTY OF LEE
FILED FOR RECORD
This 2 Day of April 2012 Recorded In CIRCUIT
Book 56 Page 18-26 and Record Verified.
CHARLIE GREEN By [Signature]
Clerk Circuit Court Deputy Clerk

I certify this document to be a true and correct copy of the record on file in my office, Charlie Green, Clerk Circuit/County Court, Lee County, FL
Dated 4-27-12
By [Signature]
Deputy Clerk



Attachment "A"

CERTIFICATE OF COMPLIANCE
FCIC/NCIC REQUIREMENT
(Jessica Lunsford Act and Anti-Murder Act)

(This form is for use within all counties of the Twentieth Judicial Circuit in and for the State of Florida)

Under penalty of perjury, I, the undersigned, hereby certify that on the ____ day of _____, 20____, an FCIC/NCIC Criminal History Report was run on the following person:

Based upon a review of the FCIC/NCIC Criminal History Report, I further certify that the above-named person:

(Please check applicable boxes)

DOES DOES NOT qualify for a "Danger to the Community" hearing under the Jessica Lunsford Act.¹

- AND -

DOES DOES NOT qualify for detention under the Anti-Murder Act.²

SHERIFF OF _____ COUNTY	
By: _____	_____
Employee of the Sheriff	Date

- OR -

ADMINISTRATIVE OFFICE OF THE COURTS TWENTIETH JUDICIAL CIRCUIT	
_____ Pretrial Services Officer*, as an agent of the Sheriff	_____
Approved by:	
_____ Sheriff's Representative/Sgt. on Duty	_____

Date	
*The Pretrial Officer's signature is valid only if the Sheriff and AOC have entered into an interlocal agreement authorizing the Pretrial Officer to act as the Sheriff's agent.	

ORIGINAL: _____ Clerk of Courts
COPIES TO: _____ Booking Clerk/Jail
 _____ Pretrial Services

*This form is to be maintained as confidential in accordance with FDLE/FBI rules and policies, as it contains derived state and national criminal history information.

¹ See Fla. Stat. §948.06(4) for the definition of persons who qualify for a "Danger to the Community" hearing under the Jessica Lunsford Act. See also local Administrative Orders 3.9 and 3.23 for further guidance.

² See Fla. Stat. §§903.0351(1) and 948.06(4) for the definition of persons who qualify for detention under the Anti-Murder Act. See also local Administrative Orders 3.9 and 3.23 for further guidance.

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