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DOMESTIC VIOLENCE TRAINING MANUAL

2018 Edition

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CONTENTS

INTRODUCTION TO DOMESTIC VIOLENCE 3

DOMESTIC VIOLENCE 4

MISDEMEANOR DOMESTIC VIOLENCE UNIT POLICIES 5

MISDEMEANOR DOMESTIC VIOLENCE UNIT POLICIES 6
INVESTIGATIVE POLICIES AND PROCEDURES 12
PLEA GUIDELINES 26

CALENDAR PREPARATION AND PROCEDURES 39

THE LIFE OF A MISDEMEANOR DOMESTIC VIOLENCE CASE 40
BOND HEARING CALENDAR 41
ARRAIGNMENT CALENDAR 69
SOUNDING CALENDAR 116
TRIAL CALENDAR 130
MENTAL HEALTH CALENDAR 147
PROBATION VIOLATION HEARING CALENDAR 151
PROBATION VIOLATION HEARING PREDICATES 167
JUDICIAL REVIEW CALENDAR AND DOMESTIC VIOLENCE DRUG COURT 187

EXCITED UTTERANCES 191

EXCITED UTTERANCES (A HEARSAY EXCEPTION) 192
INTRODUCING 911 TAPES 197
EXCITED UTTERANCE ARGUMENT 204

VOIR DIRE 206

GENERAL VOIR DIRE 207
TIME MANAGEMENT 209
DOMESTIC VIOLENCE VOIR DIRE QUESTIONS 214

VIOLATIONS OF CIVIL INJUNCTIONS 217

VIOLATIONS OF CIVIL INJUNCTIONS IN GENERAL 218
PREDICATES FOR QUESTIONING SERVICE OFFICER 220
PREDICATES FOR QUESTIONING VICTIM 222
JURY INSTRUCTIONS 223

CASE LAW GUIDE 225

ABBREVIATIONS 239

COMMONLY USED FORMS 243

Introduction to Domestic Violence

Misdemeanor Domestic Violence Unit
Office of the State Attorney, Eleventh Judicial Circuit of Florida

DOMESTIC VIOLENCE

The Office of the State Attorney has a "No Drop" policy on domestic violence cases. What this means is that we prosecute the case even if the victim fails to appear and/or no longer wishes to press charges, as long as sufficient independent evidence exists to proceed in good faith. Why do we have such a pro-prosecution stance? The answer is because this prosecutorial approach is mandated by Florida Statutes.

FS § 741.2901 **Domestic Violence cases; prosecutors; legislative intent —**

(2) "It is the intent of the Legislature that domestic violence be treated as a criminal act rather than a private matter. …The State Attorney in each circuit shall adopt a pro-prosecution policy for acts of domestic violence. …The filing, non-filing or diversion of criminal charges and the prosecution of violations of injunctions for protection against domestic violence by the State Attorney shall be determined by these specialized prosecutors over the objection of the victim, if necessary."

DOMESTIC VIOLENCE DEFINED

FS § 741.28 —

(2) "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

(3) "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

BATTERERS' INTERVENTION PROGRAM REQUIREMENT

FS § 741.281 —

COURT TO ORDER BATTERERS' INTERVENTION PROGRAM ATTENDANCE. - If a person is found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence, as defined in s. 741.28, that person **shall** be ordered by the court to a minimum term of 1 year's probation and the court **shall** order that the defendant attend a batterers' intervention program as a condition of probation. The court **must** impose the condition of the batterers' intervention program for a defendant under this section, but the court, in its discretion, may determine not to impose the condition if it states on the record why a batterers' intervention program might be inappropriate. The court **must** impose the condition of batterers' intervention program for a defendant placed on probation unless the court determines that the person does not qualify for batterers' intervention program pursuant to § 741.325. The imposition of probation under this section shall not preclude the court from imposing any sentence of imprisonment authorized by § 775.082.

Misdemeanor Domestic Violence Unit Policies

Misdemeanor Domestic Violence Unit
Office of the State Attorney, Eleventh Judicial Circuit of Florida

MISDEMEANOR DOMESTIC VIOLENCE UNIT POLICIES

The following represents the policies and procedures of the Misdemeanor Domestic Violence Unit. Any questions regarding the following policies and procedures should be addressed immediately to a division County Training Attorney (CTA), the Assistant Chief and/or the Division Chief, as applicable.

COURTROOM DEMEANOR

Our office represents the "People of the State of Florida." Accordingly, an Assistant State Attorney's courtroom demeanor should reflect this reality. One should be professionally dressed and always prepared. It is the "People's" courthouse and, as their representatives, Assistant State Attorneys (ASAs) must ensure their interests are zealously advocated. Once the Judge calls a case, the Assistant State Attorney should be prepared to inform the Court as to why the case is appearing on the calendar and what action is to be taken. ASAs should not sit while addressing the Court, and should always address the Court, not opposing counsel. ASAs should use the appropriate, "Your Honor" when addressing Judges. ASAs should never have food or drink in the courtroom. However, during trials the Court may provide water, and ASAs should ask the bailiff for assistance if necessary. Appropriate professional business attire shall be worn at all times. See Employee Handbook, pages 34-35, for "Dress Code Guidelines."

OFFICE DEMEANOR

Attorneys shall conduct themselves in a professional manner at all times. This conduct shall include appropriate use of language and interaction with others. Appropriate professional business attire shall be worn at all times. See Employee Handbook, pages 34-35, for "Dress Code Guidelines." Audio devices, 911 tapes, and conversations shall be played and/or held at a reasonable level, even when an individual's office door is closed. Portable audio devices (e.g., iPods) shall not be used outside offices during working hours. If you are not in your office, please turn off all electrical devices. All office decorations must be appropriate for maintaining a professional environment.

Remember that victims, witnesses, officers, and other visitors are moving through the office every day. ASAs should always be cognizant of this reality. Victims should not have a concern about our ability to represent their interests or the interests of the People of the State of Florida due to the behavior/demeanor of an Assistant State Attorney.

HOURS

All division attorneys shall be in the office thirty minutes before any Pre-file conference **(*except those scheduled for 8:00am)*** or calendar assignment, or by 9:00 a.m. at the latest, whichever is earlier. The "Thirty-minute Rule" allows for the attorney to check e-mail, phone messages, written messages, and to respond or plan accordingly before court. Attorneys should never arrive directly to the courtroom without coming into the office first.

ASAs are to arrive in the Courtroom no less than **30 minutes before calendar begins, *depending on the calendar. Certain calendars require ASAs to be in court earlier than others, due to preparation issues*.**

Attorneys shall not leave work before 5 p.m. without submitting a leave request directly to the Division Chief and receiving approval for it. All leave slips shall be submitted within a reasonable period of time prior to the requested absence date(s). If the Weekly Assignment Calendar has already gone out for the period the attorney is to be absent, then the attorney shall attach a coverage memo to the leave request form. Remember to discuss your leave plans with your division mates in advance, especially during the holiday season, to work out scheduling conflicts and coverage issues.

Prior to departing the office at the end of the working day all attorneys shall check their Outlook Scheduler to determine what work obligations have been scheduled for the following day, in order to plan accordingly.

LEAVE / VACATION

Please speak with the Division Chief before planning vacations. If vacation leave is approved, Attorneys shall submit a Coverage Memo along with their leave slips. The Coverage Memo should contain the following information:

1. Date(s) of leave
2. Emergency contact information
3. A designation of which ASA(s) will review/cover the following:
    a) Daily mail and telephone messages (and respond to them)
    b) Previously scheduled PFCs/PTCs (list date, time, case #)
    c) Emergency issues on your assigned cases and walk-in victims
    d) Post-calendar work
    e) Put out your boxes the day before calendar
    f) Set new PFCs
    g) Calendar Assignments
        i) Specify whether or not you have and special motions scheduled; and if so, the date, calendar, case #, and who will be covering for you

Prior to the ASA going on annual leave, the ASA must meet with the division County Training Attorney in order to determine the work that must be completed prior to the ASA's departure, as well as, coverage for any work that needs to be completed during their absence. Any additional work will be the responsibility of the County Training Attorney.

Your Coverage Memo should be sent to all members of the unit, including all attorneys and support staff. The Coverage Memo should be addressed to the Division Chief and should be given to the Chief no later than two days prior to your leave. A hardcopy of your Coverage Memo should be posted on your office door during the period of absence. Your Coverage Memo should be updated on the last day that you are in the office, if there are any additions, deletions or changes to the information. If such additions, deletions or changes occur, please send out a revised Coverage Memo in hard copy form and via e-mail, and make sure that everyone has received it before you leave.

You should also activate the "Out of Office Assistant" in Outlook and setup an Out of Office voice-mail message before leaving for vacation. The following is the list of State Holidays that will be observed by the office:

The following is the list of State Holidays that will be observed by the office:

New Year's Day	Monday January 1, 2018
Martin Luther King, Jr. Birthday	Monday January 15, 2018
Memorial Day	Monday May 28, 2018
Independence Day	Wednesday July 4, 2018
Labor Day	Monday September 3, 2018
Veteran's Day	Monday November 12, 2018
Thanksgiving Day	Thursday November 22, 2018
Friday after Thanksgiving Day	Friday November 23, 2018
Christmas Day	Tuesday December 25, 2018
New Year's Day	Tuesday January 1, 2019

ADMINISTRATIVE LEAVE

Time taken to speak at schools or go to training sessions out of the office should be handled like vacation time for purposes of obtaining approval and ensuring proper coverage. You need to speak with the Division Chief before you commit yourself to any speaking engagement or out of office training sessions. See Employee Handbook, page 49-68, for a definition of Administrative Leave.

SICK LEAVE

If an Attorney becomes ill or is to be absent for medical reasons he/she must contact the Division Chief or Assistant Chief directly, prior to the working day for each and every day of unforeseen leave. In this situation, directly means the ASA must speak with the Division Chief or Assistant Chief in person or telephonically, not through any third party. See Employee Handbook, pages 53-55, for the Sick Leave policy.

OTHER TYPES OF LEAVE

The Employment Handbook, pages 49-68, specifically explains the office policies regarding other types of approved leaves of absence including funeral leave, jury duty, educational leave, family and medical leave, military leave, personal leave of absence, as well as leave without pay.

LATE ARRIVAL POLICY

If an Attorney is to be late, he/she must contact the Division Chief directly, as soon as it becomes apparent the Attorney is going to be late. "Directly" means that the ASA must speak with the Division Chief in person or telephonically, not through any third party. If the Division Chief is out of the office or unavailable, contact the Assistant Chief.

CALENDAR COVERAGE

"Weekly Assignment Calendars" will reflect which ASAs are to be in court to cover calendars. ASAs shall not trade or switch Calendar assignments without prior approval of the Assistant Chief or Division Chief. If there is a scheduling conflict, ASAs shall notify the Division Chief or Assistant Chief, so that a "Revised Weekly Assignment Calendar" can be produced. The calendar is sent via email to the entire Domestic Violence unit as it becomes available.

YOUR WHEREABOUTS AND CONTACT WITH DIVISION SECRETARY

Make sure to tell the division secretary when you will be out of the office. The division secretary should know when you arrive in the morning, when you go to court, when you get back from court, when you leave for lunch, when you return from lunch and when you leave for the day, as well as, any other time that you leave the office to attend any matter. If the division secretary is unavailable, inform your CTA, the Assistant Chief or the Division Chief.

TELEPHONE MESSAGES

Return telephone calls promptly but no later than 24 hours after receipt of the telephone calls. Make sure that you have called everyone that has left a message on your voice mail and clear the system so that people can leave additional messages.

E-MAIL MESSAGES

E-mail must be read and responded to within 24 hours of receipt.

CONTACT THROUGH PERSONAL CELL PHONES

Please remember that during the working week, you must keep your personal cell phones with you at all times during business hours so that you can be contacted when necessary. If you receive a call, you should be answering the call immediately, unless you are the only person in court and cannot find someone else to answer the call for you or take over the calendar while you return the call.

MAIL INBOXES

Each attorney should keep an inbox tray on the corner of your desk where you will receive personal mail, documents associated with your cases, and new cases to set for PFC. All attorneys should check their mail folder twice a day (once in the morning and once in the afternoon). All mail pertaining to open cases should be reviewed immediately and filed in the appropriate case file by the end of business the day that the mail is received.

COMPUTER SCHEDULER (MICROSOFT OUTLOOK)

Each attorney shall use his/her Outlook Scheduler to keep track of PFCs/PTCs, court assignments, all work-related obligations, scheduled absences, training sessions, etc. ASAs shall personally input all scheduled obligations into their Outlook Schedulers. For PFCs/PTCs, ASAs shall indicate the case number, defendant's name, and full name of the victim, witness, or officer who is scheduled to appear. Please make sure that your CTA, division ASAs, division secretaries, receptionist staff, Administrative Secretary, Lead Worker, Staff Supervisor, Assistant Chief, and Division Chief, all have computer access to your Outlook Scheduler. Each attorney should also schedule the mandatory ASA trainings in his/her Scheduler.

THURSDAY TRAINING

The ASA Training unit arranges training sessions on Thursdays from 2 p.m. to 3:30 p.m. at the Graham building. These sessions provide continuing legal education for Prosecutors in the office, and CLE credits may be given depending on the training topic. All ASAs shall attend training sessions at Graham, unless ASAs are in trial or are otherwise excused by the Assistant Chief or Division Chief. ASAs shall not schedule PFCs/PTCs or other obligations on Thursday afternoons between 2 p.m. and 3:30 p.m., in order to attend mandatory training sessions.

UNIT MEETINGS

Every Friday there will be a **mandatory** unit meeting from 2:30pm – 3:30pm. Mandatory means that all ASAs are expected to be in the conference room promptly @ 2:30 p.m. PFCs/PTCs shall not be scheduled during this time slot. Any conflict (including Bonds, PVHs or DV Drug Court) should be addressed with the Assistant Chief or Division Chief prior to 1:30 p.m. on Friday. All attorneys should bring pen and paper to the unit meetings.

ADDITIONAL TRAINING

Additional Trainings may be required at the discretion of the Division Chief.

MOVEMENT

The decision to promote an ASA from the Misdemeanor Domestic Violence Unit to the Juvenile Unit is made by the Division Chief. The Assistant Chief will contribute to this decision. The best indicia of movement will be the performance of the attorney. Compliance with the policies and procedures contained herein will constitute a significant factor in the consideration of movement. An attorney's trial experience, case management, and in-court performance will also be significant factors in the consideration. Any questions or concerns regarding movement should be addressed to either the Assistant Chief or Division Chief.

Upon notice of promotion all ASAs are responsible for ensuring that their phone messages have been reviewed and responded to, that their voice mail systems indicates which ASA will be replacing them and how the promoted ASA can be reached, that all mail for their assigned cases has been properly filed and/or addressed, and that they have drafted a transfer memo for their division CTA, as well as the ASA who will in inherit their files. All closing memos must be submitted to the Division Chief prior to the ASA leaving the office. Offices should be left in a clean and orderly fashion.

CHAIN OF COMMAND

General questions, issues, and concerns should be addressed through the following Chain of Command:

- Fellow unit ASAs
- County Training Attorneys
- Assistant Chief
- Division Chief

Domestic Violence presents often novel and difficult issues. The Division Chief's door is always open (as is the Assistant Chief's). Nevertheless, if you find that both the Division Chief and the Assistant Chief are occupied or in any way unable to address an issue involving Domestic crimes, you have other options. You can always contact any one of the following ASAs with respect to Domestic Violence prosecution issues:

Scott Dunn	Barbara Govea
Mari Jimenez	Cristina Diamond
Ayana Duncan	Shakia Burnam

E-mail is the best option for contacting these individuals. If you e-mail any of the above ASAs, please CC: the Assistant Chief and Division Chief on the e-mail. Alternatively, you can contact them telephonically by using the SAO Telephone List. Please formulate your specific question prior to contacting any ASA in the office.

If your issue is personnel-related, and after consulting the Division Chief or the Assistant Chief, further assistance is needed, the Chain of Command is as follows:

- Scott Dunn – Division Chief Felony Domestics Unit
- Don Horn – Chief Assistant State Attorney
- Katherine Fernandez-Rundle – State Attorney

Please note that Senior Employment Counsel Lorna Salomon remains available to all Attorneys to discuss personal and professional issues.

INVESTIGATIVE POLICIES AND PROCEDURES

THREE BOX SYSTEM

This Unit uses a "Three Box" system. This means that all files in ASAs' offices will be organized in one of three clearly marked boxes. The Three Boxes represent the future setting dates for all assigned cases: Arraignment (ARR), Sounding (SND), and Trial. There will not be any miscellaneous files in ASAs' offices.
A box for Probation Violation Hearings (PVH) may be placed in an ASA's office when assigned to the calendar.

FILE ORGANIZATION

THESE ARE THE ORGANIZATIONAL GUIDELINES FOR A DOMESTIC VIOLENCE UNIT CASE FILE. All files shall be organized consistent with these guidelines.

When organizing individual case files, ASAs shall use manila folders labeled with the categories shown below in order to properly file all documents that pertain to each case.

Note that an asterisk (*) indicates a category or item that may *not* be applicable to every case. The list of documents that follows each category is non-exhaustive and meant as a guide. Some files will contain all of the listed documents, while others will contain only some of the documents. If you have a document that you are unsure of where to file, please see a CTA, Assistant Chief or Division Chief for guidance.

1. INFO / A-FORM / PRIORS / STAY AWAY ORDERS (SAO)

This folder shall contain the following documents:

- **a.** A copy of the Information filed in the case
- **b.** A copy of the Arrest Form
- **c.** A copy of the Defendant's **most recent** CJIS priors
    - i. Please note that the Defendant's original CJIS priors printout (e.g., the priors list used at the initial Bond Hearing) shall always remain in this folder.
    - ii. However, ASAs shall have the continuing obligation to include a copy of the most recent CJIS Priors printout every time a case is scheduled for a court calendar.
- **d.** A copy of the Stay Away Order (aka Order of Pre-Trial Release Conditions) issued by the Court
- **e.** Modified Stay Away Orders
- **f.** The defendant's NCIC/FCICs

2. PRE-FILE CONFERENCE (PFC) / CASE NOTES

This folder shall contain the following documents:

- **a.** All notes taken by ASAs and Paralegals during PFCs and/or PTCs with Victims, Witnesses, and Officers (including copies of identification cards of victims/witnesses)
- **b.** PFC's taken in the felony unit prior to a bind-down / direct file
- **c.** All notes taken by ASAs and Paralegals during court calendars of Victims, Witnesses, and Officers
- **d.** Child Assessment Center interview/report
- **e.** E-mails and other communications with other Prosecutors at the State Attorney's Office regarding the case

f. Victim Data Sheet (green sheet)
g. Domestic Assessment Form (yellow sheet)
h. A copy of the Domestic Violence Drug Court Checklist
i. All Case Notes taken by ASAs recording all of the following information (this list is not exhaustive and case notes should be stapled together in chronological order with the most recent case notes on top):
    i. Attempted telephonic contact and communications with victims, witnesses, and officers
    ii. All telephonic communications with victims, witnesses, and officers
    iii. Case specific directives, instructions, and plea approvals from the Division Chief, Assistant Chief, and/or CTAs
    iv. Communications with felony ASAs regarding possible global pleas, consolidation of charges, and other pending felony case issues
    v. Communications with Defense Attorneys
    vi. Communications with other civil attorneys (e.g. the victim's attorney for the criminal case and/or a family law attorney when there is a divorce pending)
    vii. Communications with any other third parties pertaining to the case
    viii. ASAs notes regarding efforts to complete special tasks
    ix. Information regarding any and all special circumstances involved in the case
    x. "To Do" lists of any tasks that must be completed in order to prepare the case for trial
    xi. Notes from other unit ASAs advising the assigned ASA of a particular involvement in the case
j. Victim / Witness correspondence and/or affidavits
k. Victim / Witness change of address and/or contact information (ASAs must immediately notify the victim/witness coordinators via-email)
l. Emails received from the DART Counselor regarding the case

Note: Do not copy and paste the text of emails into the case notes section of Hydra. Our emails are public record, but our case notes are work product. If you copy/paste the content of your emails into your case notes, it opens the door for the defense to compel your case notes under the public record exception.

3. POLICE REPORTS/EVIDENCE

This folder shall contain the following documents:

a. Offense Incident Report (s)
b. Domestic Violence Supplement (DV SUPP)
c. Detective Supplemental Report
d. Supplemental Reports/Narrative Continuation Reports
e. Crime Scene Reports
f. Use of Force Reports
g. Photographs
    i. Any and all photos taken by the police
    ii. Photocopies of photos taken by police are acceptable, however the Assigned ASA has the responsibility of obtaining the originals prior to the day of trial
    iii. Any and all photos taken by SAO staff
    iv. Any and all photos taken by victims/witnesses

h. Written Statements (by Victim/Witness/Defendant)
   i. Written statements of victims, witnesses, and/or defendants
   ii. Tapes or CDs of any recorded statements (including translation and transcription if the taped statement is in a language other than English)
   iii. Any transcribed statements

i. Miranda Form

j. Property Receipts (inventory of items impounded by the Police including but not limited to weapons, contraband, Polaroid photos, narcotics, clothing)

k. 911 Tape including:
   i. The original 911 tape
   ii. ASAs written notes detailing the contents of the 911 tape
   iii. Translation and/or transcription of the 911 tape (if applicable)

l. Taped Statements

4. STATE (K) PLEADINGS

This folder shall contain the following documents:

a. Original Discovery (including addendum)

b. Amended Discovery

c. Other State Pleadings including but not limited to
   i. Motions in Limine
   ii. Williams Rule Notices
   iii. Motions to Increase/Revoke Bond
   iv. Requests for compulsory judicial notice
   v. Notices of Intent to Rely on Business Record Certifications

d. Brady, Bagley, or Giglio material handed over in Discovery

5. DEFENSE (Δ) PLEADINGS

This folder shall contain the following documents:

a. Defense witness list (if any **ALWAYS ON TOP**)

b. Notice of Alibi (see Fla.R.Crim.P 3.200)

c. Defense Pleadings
   i. PD's Affidavit/Acknowledgment of appointment
   ii. Notice of Appearance
   iii. Written pleas of Not Guilty
   iv. Speedy Trial Demand
   v. Notice of Expiration
   vi. Motions (e.g. Suppression, C-4s, reduction of bond)
   vii. Reciprocal Discovery pursuant to Fla.R.Crim.P. 3.220

6. SUBPOENAS / AVAILABILITIES (A/Vs) / LETTERS TO VICTIM / REQUESTS

This folder shall contain the following documents:

a. All Victim/Witness/Officer subpoenas for PFC, PTC, and Trial

b. Victim/Witness availability sheet (printed from HYRDA)

c. Letters and notices sent to the victim and witnesses

d. Copies of Trial subpoenas

e. All secretary sheets completed by ASAs containing action requests to the support staff (attached in chronological order)

f. All requests issued by the support staff to agencies for materials pertaining to the cases (attached in chronological order)
g. All responses by agencies regarding SAO requests

CASE SPECIFIC DOCUMENTS
Any additional folders created to separate other case-specific types of evidence, motions, or documents should be labeled accordingly. The following are examples of commonly added case-specific folders:

a. INJUNCTION PAPERWORK*
When the charge is an injunction violation, this folder must appear and shall contain the following documents:
i. A certified copy of the Petition for Injunction
ii. A certified copy of the Temporary injunction(s) (including Orders extending temporary injunctions)
iii. A certified copy of the Final/Permanent Injunction
iv. Odyssey Printout showing service of the injunction
v. A return of service form
vi. A certified copy of the Sheriff's service packet (for both the temporary and permanent injunctions if necessary)
vii. All other relevant paperwork pertaining to the civil injunction
viii. A copy of the Injunction Hearing CD and transcript (if applicable)

b. WILLIAMS RULE*
When a Williams Rule Motion is filed, a folder should be created and contain the following documents:
i. Copy of the Notice of Intent to Rely on Williams Rule
ii. Copy of Memorandum of Law in Support of Williams Rule
iii. Williams Rule Evidence
iv. Relevant case law

c. INEXTRICABLY INTERTWINED EVIDENCE*
i. Copy of the Notice of Intent to Rely on Inextricably Intertwined evidence (not mandatory) and/or Copy of the corresponding Motion in Limine
ii. Memorandum summarizing the particular inextricably intertwined evidence for the case
iii. Relevant case law

d. DEFENDANT'S CERTIFIED CONVICTIONS*

e. PHONE RECORDS*
i. A copy of the Notice of Intent to Rely on Business Record Certification
ii. A Business Record Certification
iii. The phone records for the victim and/or defendant
iv. This file may also include text messages

7. BIND-DOWN PAPERWORK *
This folder shall contain the following documents:

a. A copy of the Bind-down Memorandum and/or Cover Sheet PFC Bind-down sheet
b. Any and all documents pertaining to the investigation at the felony level **(<u>except PFCs</u>)**

8. MENTAL HEALTH *
This folder shall contain the following documents:
a. Copies of any and all Competency and/or psychological evaluations of the defendant
b. Copy of diagnosis and/or treatment plans for the defendant
c. Copies of Court Orders to Transport the Defendant to mental health facilities
d. Other documents pertaining to the defendant's mental health

9. PRE-TRIAL DIVERSION PAPERWORK *
This folder shall contain the following documents:
a. All documentation pertaining to the Pre-trial diversion referral
b. All PTD Revocation paperwork

10. PROBATION VIOLATION HEARING (PVH)*
These folders shall contain the following documents (*more information in the PVH section)*
a. A copy of the Order Placing the Defendant on Probation
b. A copy of the most current CJIS Case Inquiry printout (aka Docket Sheet)
c. Most current priors
d. A copy of the Probation Violation Affidavit
e. A copy of the Probation Violation Warrant issued in the case
f. PVH Discovery
    i. Substantive cases
        1. All relevant police reports
        2. Witness lists
    ii. Technical Violations
        1. Revocation paperwork from the Advocate/Private providers
        2. Sign in logs
        3. Witness list
g. PVH Subpoenas (if any)

<u>DOMESTIC ISSUES</u>
You are a member of the Domestic Violence Unit. This unit presents unique challenges and opportunities. One of these opportunities is to learn the invaluable skill of victim/witness contact. Remember victims of domestic violence are individuals. The victim of a non-domestic crime is generally quite willing to testify and actively participate in the prosecution of the Defendant. Conversely, domestic violence victims sometimes find themselves deep in denial and without the coping skills, economic resource, or support necessary to break the cycle-of-violence. This is your challenge. These are your cases, this is your duty, and these are your victims. **Do not expect the Victim/Witness coordinators to prepare your victims for trial or to testify. It is YOU who must attempt to contact the victims and witnesses on each of your assigned cases as early in the process as possible, with a <u>minimum</u> 3 attempts prior to Arraignment.** Contact attempts include, but are not limited to, telephone calls (at varying times and dates), personal service subpoenas, victim/witness contact letters, and victim/witness locates as deemed appropriate. You are the attorneys, and if the Misdemeanor Domestic Violence Unit is to be successful, you must accept the challenge and actively engage these victims.

VICTIM POLICY

Article I, §16 sub. (b) of the Florida Constitution states that victims of crimes are entitled to the right to be informed, to be present, and to be heard, at all crucial stages of the criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused. *See also*, Fla. Stat. § 960.

Therefore, it is our responsibility to keep the victim informed at every stage of the prosecution. This includes informing the victim of future hearing dates, the status of the case, the purpose of the future hearing date, and the State's intentions on proceeding forward with the case.

PRE-FILE CONFERENCES (PFCs)

Post bond hearings, all cases will be designated as either "Paralegal PFC" or "Attorney PFC". If the designation if for "Attorney PFC", the assigned ASA must immediately set all victims, witnesses, and officers for a prefile conference.

ASAs should attempt to contact all victims and witnesses (but not officers) by phone prior to setting the PFC to coordinate a date and time that is convenient. If a phone number is not listed for a witness, the ASA should draft and mail a contact letter to the witness stating the need to speak with them about the case with the ASA's contact information. ASAs must schedule at least one PFC with all witnesses prior to the Arraignment calendar. ASAs muct make at least 3 separate attempts to contact all victims and witnesses prior to Arraignment (phone calls, contact letters, and PFC subpoenas each count as a method of contact).

For officer PFC's, the ASA should make all feasible attempts to schedule the PFC during the officer's work schedule. All officer work schedules can be found in Cop Search, CJIS or HYDRA. All officer's MUST bring their reports to their PFC. In the event an officer fails to bring the appropriate reports, the officer must either make arrangements to have them faxed or e-mailed immeidately or they will be rescheduled.

Our office now has the ability to conduct officer PFCs via video conference with certain police departments. The list of police departments setup for video conferencing now includes: Aventura, Bal Harbour, Hialeah, Hialeah Gardens, MDPD Hammocks Station, Medley, Miami Beach, Miami Shores, Miccosukee Trail District, North Miami Beach, Sunny Isles Beach, Surfside and Sweetwater.

These participating departments have a dedicated PC in their station where the officers know to go for their video appointment. You then call that PC via Lync/Skype for Business.

To schedule video conferences with participating police departments:

- Make sure you write "Video PFC" in parentheses next to the PFC date/time on your secretary sheet
- Make sure that you note clearly in your outlook calendar which PFCs are video vs. in-person so you don't forget and mark that officer as failing to appear
- When the time comes to make the call open VIDEO PREFILE SITES from the START MENU and follow the instructions

ASAs will receive sample questions to ask of victims, witnesses and offcers during PFCs during ASA Training.

VICTIM CONTACT PROCEDURES FOR DEFENDANT'S FOR G.P.S. MONITORS

If a G.P.S. monitoring device through CPI is a condition of pre-trial release for one of your defendants, the ASA assigned to the case must make contact with the victim in order to ensure they are aware of the condition. You must first make sure you're speaking with the actual victim. This can be done through verification of the victim's date of birth, address, the incident location or other details of the incident. Next, go over how the G.P.S. system works (i.e., an electronic barrier or zone is programmed into the G.P.S. ankle monitor which is then hooked-up to the defendant; based on the defendant's location and proximity to the victim's residence or other restricted areas, a silent alarm will go off and the G.P.S. monitors will contact the police). Next, ask if the victim wants us to disclose her/his address to the CPI program for purposes of this monitoring (that decision must be ***clear and unequivocal***). Additionally, inquire as to whether additional barrier zones (ie. work, school, etc.) need to be set up for their safety. If the victim does not want to disclose their address to CPI, then CPI will not be able to monitor whether the defendant is near the victim's house or other restricted areas. Finally, either contact Maylin Garcia with the CPI program (305-549-7170), the PTS program (786-263-4899) or (786-263-4111), or GPS Intake (305-548-5642), to give them the victim's information. It is extremely important that you clearly write a detailed HYDRA note regarding this conversation with the victim and place it in the file

PARTIES WHO ARE PUBLIC OFFICIALS, POLICE OFFICERS, OR ATTORNEYS

In reviewing a case, the assigned ASA must determine whether the Defendant/Victim is a public official, police officer, or an attorney. If the Defendant/Victim is any of the above, the ASA must notify the Assistant-Chief immediately. Additionally, the ASA must notify Johnette Hardiman, ASA in the Public Corruption Unit, via e-mail and fill out all required paperwork. The ASA shall not file an Information, offer a plea, or dispose of the case prior to this required notification.

If you have a case in which an attorney has been arrested, please notify the Legal Division in writing via email and attach a copy of the A-Form and the Information (if one has been filed).

CHILD VICTIMS/WITNESSES

In reviewing a case, the assigned ASA must determine whether the listed victim or witness is a minor (under 18 years of age). If the victim or witness is a minor, the ASA must notify the Assistant Chief immediately. The ASA shall not file an Information, offer a plea, or dispose of the case prior to this required notification. Minor witnesses should be listed in discovery by their initials only and the notation "(a minor)." ASAs should review discovery to ensure that all evidence has been properly redacted to list minors only by their initials and not their full name. Moreover, if a ***victim*** is 11 years old or younger, the ASA must speak with a Chief to determine whether a forensic interview needs to be set up. These interviews take place at the Children's Advocacy Center (aka "Kristi House"), located at 1265 NW 12th Avenue, across the street from the Graham Building. The Kristi House phone number is 305-547-6800. ASAs must attend all forensic interviews that are taken for their cases. ***Forensic interviews should not be set up without first seeking approval from the Assistant Chief and/or Chief.*** ASAs may take statements of victims and witnesses 12 years of age and older, however, please speak with the

Assistant Chief or Chief first. If a ***witness*** is 11 years old or younger and you feel it is necessary to speak to them, see a Chief to discuss and evaluate before scheduling.

WITNESS HAS OPEN CASE / GETS ARRESTED DURING PENDENCY OF CASE

If the victim/witness (including a police officer) has an open case at the time of the incident or is arrested during the pendency of your assigned case, this information *must* be disclosed to the defense because this information is Brady, Bagley, and Giglio material. Consequently, if this victim/witness/officer should testify at any trial, the defense will be allowed to question the person on the fact that she/he has pending criminal charges, and what the charges are, for the purpose of exploring possible bias (e.g., trying to curry favor from the State). See Breedlove v. State, 580 So.2d 605 (Fla. 1991). Once an ASA becomes aware that a witness has pending criminal charges, the ASA should determine the nature of their open charges, whether or not the defendant is witness or victim to their open case, and consult a Chief about whether it is okay to contact the witness. Generally speaking, if a victim/witness is represented by defense counsel, the ASA should seek to obtain permission from the individual's defense counsel before contacting them to discuss the case.

DEFENDANT THAT HAS AN OPEN CASE (FELONIES/MISDEMEANORS)

Before each hearing the assigned ASA must determine if the defendant has any open felony and/or misdemeanor cases (including open probation cases). If it is found that the defendant has an open case, the ASA must notify the Assistant Chief prior to the next scheduled court date. Additionally, the ASA must immediately contact the ASA assigned to the open felony/misdemeanor, advise them of the status of the DV case and inquire as to the possibility of a global resolution being reached (if applicable).

MUTUAL COMBATANT CASES

In reviewing a case, the assigned ASA must determine whether the arrest involves mutual combatants. The term "mutual combatants" means that more than one individual involved in the incident was arrested for committing a crime upon each other. At Bond hearings, the ASA shall argue that the court find probable cause (if such probable cause exists) for both combatants. Furthermore, if both combatants were assigned public defenders the court, on its own motion pursuant to Fla. Stat. § 27.53, should appoint private counsel, other than the public defender, for at least one of the mutual combatants due to the inherit conflict of interest.

The assigned ASA will be required to conduct pre-file conferences in all cases involving mutual combatants. If the files are assigned to two separate ASA's, those ASA's need to coordinate the PFC dates and times so as not to require the witnesses to attend twice. These pre-file conferences will involve all possible witnesses (other than the mutual combatants) and the arresting officer. During the pre-file conference the ASA shall review with the arresting officer Fla. Stat. § 741.29 (2)(b) and Fla. Stat. § 741.29 (4)(b). ASAs shall not conduct pre-file conferences of mutual combatant defendants without obtaining express approval from the person's defense attorney.

PRO SE DEFENDANTS

At no time shall an ASA discuss with a Pro Se defendant the facts of a case, provide legal advice, or review a rights waiver form. All discussions and plea negotiations with Pro Se defendants should be conducted in open court and on the record. Remember that the rules of Discovery are the same for Pro Se defendants as they are for defendants represented by counsel.

BIND-UPS

Binding a case up means to increase a misdemeanor charge to a felony charge after conducting a thorough investigation of the facts and law involved in the case. If you have a case that you believe should be bound-up to Circuit Court, first bring the file to the Assistant Chief. The Assistant Chief will review the file and direct the ASA accordingly. Once the Assistant Chief makes the determination that the case is appropriate to bind up, the ASA will send an email, which includes the facts of the case, as well as the detailed acts that support the felony charge, to the Assistant Chief of the Felony Domestic Crimes Unit for approval. Once that approval is received, the ASA will forward the approval to the Division Chief, who will provide the ASA with detailed instructions on how to proceed to prepare the necessary paperwork. If the bind-up is approved, the ASA must prepare a transfer memo detailing the facts of the case, analyzing the pertinent evidence, and explaining the rationale for the bind-up. Once all necessary preparations are complete, the file should be brought to the Division Chief. The Division Chief will not review or sign off on a file unless all appropriate witnesses have given sworn statements, all evidentiary materials have been obtained, and a bind-up memo has been prepared and reviewed.

BIND DOWNS

Binding a case down means to reduce a felony charge to a misdemeanor charge after conducting a thorough investigation of the facts and law involved in the case. Each bind down file should be contained in a blue file folder. Moreover, each of these files will be reviewed by the Chiefs prior to being assigned to an ASA. All bind-down cases shall be set for trial as soon as practicable to avoid speedy trial problems. Each ASA shall review all assigned bind down files to determine whether a Stay Away Order is in place, a proper bond has been set, and to assess whether there are any speedy trial issues. The ASA shall notate the date of the expiration of the speedy trial period on the front of the file under the column titled "speedy trial date." In addition, the ASA shall notate the name of the Victim and list the filed charges on the front of the file. If the charged offense is a Violation of Pre-Trial Release Conditions, the ASA shall order and review the felony bond hearing tape/DVD, and obtain a certified copy of the Order of Pre-trial Release Conditions issued in the original case. Furthermore, each ASA shall verify whether a new Order of Pre-trial Release Conditions was issued when the case was transferred to county court and whether the defendant was given personal notice of the new Order.

You do not need to set pre-file conferences for victims that failed to appear at the felony pre-file after receipt of personal or alternate service. However, ASAs should review the subpoenas to make sure the victims and witnesses were actually served. If they were not served, then you may re-subpoena them (after attempting to procure a better address). If they were served, you may want to send them a contact letter informing them that the charges were bound down to a misdemeanor, what the new offer is (especially if it is no longer prison) and how to contact you. Additionally, as in all criminal cases, ASAs must attempt to contact Victims and Witnesses via telephone at least three (3) separate times prior to all court dates. ASAs must reset pre-trial conferences with primary/responding officer, arresting officers, and detectives, as well as obtain any missing evidence or Police reports.

DISCOVERY

Pursuant to Fla. Crim. P. 3.220 Prosecutors have specific ongoing Discovery obligations. ASAs must continuously read and review Fla. Crim. P. 3.220 and have an up-to-date working knowledge of this rule in order to comport with their discovery obligations. Additionally, each ASA is required

to read and brief Richardson v. State, 246 So.2d 771 (Fla. 1971), Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963), Giglio v. United States, 405 U.S. 150, 92 S. Ct . 763 (1972), and United States v. Bagley, 473 U.S. 667, 105 S. Ct. 3375 (1985).

The staff will amend Discovery as it arrives. Nevertheless, in order to avoid inordinate amounts of Motions to Compel Discovery, Attorneys must do the following:

- **When the defense makes a request for discovery:**
  - Amend discovery immediately if you have what is requested.
  - If you do not have it, and the defense is entitled to it, request it immediately and inform the defense in writing that the material has been requested.
  - If the defense is not entitled to the requested information, respond to the defense in writing explaining such (you should consult with a Chief before doing so).
  - Methods of requesting discovery include, but are not limited to:
    - E-mailing and/or calling the police department records department.
    - E-mailing and/or calling the listed officers on the case. Officer e-mail addresses and phone numbers can be located through Cop Search or HYDRA (in HYDRA, enter your case > click "Appt./e-notify" > click "Officer Schd." > select officer name > click "ecourtNotify Schedule").
    - E-mailing and/or calling the records custodian in possession of the requested information
- Organize requests so that you know when 2 weeks have passed since your request for discovery, do not re-order prior to 14 days elapsing.
- If you have not received what you requested: contact the police officer who has the document or item of evidence or contact whoever can help you get it (including police officer's supervisor).

If you are pre-filing the case: make sure that the officer gives you everything that is available. **Do not pre-file police officers who fail to bring the offense incident report or domestic violence supplement.** Instruct police officers to bring all of their reports. In the event that you must reset an officer for failure to initially bring his/her reports to the pre-file conference, get the officer's contact information (cell phone number) prior to his/her departure. Provide the officer with a subpoena to appear at the rescheduled PFC if necessary to ensure the officer's appearance.

MAIL - 911 TAPES

If 911 CDs are received **prior to** Arraignment, the division Arraignment Secretary will place the CD in the front of the respective case files after amending HYDRA with the Custodian of Records.

If 911 CDs are received **after** Arraignment and prior to Sounding or Trial dates, the division trial secretary will place the CDs in the respective case files after amending HYDRA with the Custodian of Records and place them in the amended discovery boxes.

1. ASAs shall then be responsible for picking up the 911 tapes, listening to the tapes, summarizing the contents of the tapes, and confirming the tapes' applicability to the respective cases.
2. ASAs must properly annotate the case files as to the contents of the tapes (e.g., possible Excited Utterances, Spontaneous Statements, Identification of Defendant, Identification of Victim, Defense Admissions, etc.).
1. ASAs shall then place the 911 tapes and summaries of their contents in the appropriate folder in the case files, as outlined in the File Organization section of this manual.

2. If the requesting attorney is an Assistant Public Defender, then:
    a. The ASAs shall make one (1) copy of the 911 tape to turn over to the Defense via Amended Discovery pursuant to Fla. R. Crim. P. 3.220.
    b. ASAs shall then fill out a Secretary Sheet requesting that the division trial secretary prepare and send out an Amended Discovery Notice indicating that, **"A copy of the 911 tape for the instant case is attached."**
    c. ASAs shall also request on the secretary sheet that the appropriate 911 records custodian be added as a witness in the case.
    d. ASAs shall indicate on the Secretary Sheet that the copies of the 911 tapes are in an envelope located inside the case files.
    e. In addition, ASAs shall indicate on the Secretary Sheet who the Defense attorney handling the case is (e.g., Public Defender's Office, Pro-se Defendant, Private Attorney) and provide a complete mailing address, so that the Amended Discovery notice can be mailed to the correct party.
    f. ASAs shall staple the completed Secretary Sheet to the front of the case file.
    g. ASAs shall place the copies of the 911 tapes in an envelope labeled with the Defendant's name and case number, and place the envelope inside the front of the case file, so that the division trial secretaries are able to easily locate the envelope containing the copy of the 911 tape upon receipt of the Secretary Sheet.
    h. ASAs shall then return the case files to the division trial secretary for completion of the work request.
    i. Finally, at the end of the work week, ASAs shall compose an email to the Administrative Secretary listing all of the cases where a 911 tape or CD was copied. This email shall contain the case number, defendant's name, whether a tape or CD was copied and to whom the copy went. (See Commonly Used Forms)
3. If the requesting attorney is private counsel or regional conflict counsel, then:
    a. ASAs shall notify attorneys that a cost of $15 is associated with the copying of DVDs and $10 with the copying of CDs. All checks will be made payable to the Miami-Dade State Attorney's Office.
    b. Upon receipt of the check, ASAs shall fill out a litigation support form (See Commonly Used Forms)
    c. The checks and completed forms will then be taken to the Administrative Secretary who will inform the Fiscal Division at the Graham Building, 4th floor, for authorization.
    d. Once authorization is complete, then follow steps **a-h** as stated in section 2 above.

This Review and Return policy must be followed within 72 hours of receipt of any 911 tape.

ASAs shall then be responsible for listening to the 911 tapes, producing a written summary of the contents of the tapes, confirming the tapes' applicability to the cases, annotating the case files as to the contents of the tapes (e.g., possible Excited Utterances, Spontaneous Statements, Identification of Defendant, Identification of Victim, Defense Admissions, etc.), and making one copy of each tape to provide to Defense counsel via Amended Discovery. Upon completing these tasks, ASAs shall follow the procedures outlined above regarding the procedures for Amending Discovery to provide copies of 911 tapes.

Translation of 911 Tapes

After listening to a 911 tape, if the ASA determines that an Excited Utterance and/or Spontaneous Statement is contained on the tape in a language other than English, the ASA must immediately request a translation and transcription of the tape. The ASA shall prepare a secretary sheet requesting that the 911 tape be sent out to the Interpreters Office for translation. The ASA must make an additional copy of the 911 tape to be sent along with the translation request. The case file along with the secretary sheet and copy of the 911 tape shall be forwarded to the division secretary for processing of the request. If you intend to use it at trial, translations and transcriptions of 911 tapes, as well as the name and address of the translator, must be handed over to the defense prior to the first Sounding calendar.

TAPED OR RECORDED STATEMENTS OF DEFENDANTS, VICTIMS OR WITNESSES

ASAs must listen to all taped and recorded statements of defendants, victims or witnesses **immediately** upon receipt (making sure to listen to the entirety of the tape and/or recording). If the tape and/or recording was made in a language other than English, the ASA must follow the same steps delineated for the Translation of 911 Tapes procedure described above. ASAs shall prepare an Amended Discovery Exhibit and turn over copies of all taped statements to the defense. In addition, ASAs must turn over translations of any taped statements.

MOTIONS TO COMPEL

Pursuant to Fla. R. Crim. P. 3.220(b), the State has 15 days from the filing of formal charges to turn over discovery (presuming there has been a written request by defense counsel for discovery). Only discoverable evidence may be compelled. See Fla. R. Crim. P. 3.220(b) for a definition of that which is discoverable. All pre-trial motions must be made in writing. See Fla. R. Crim. P. 3.190(a). However, defense attorneys consistently make Motions to Compel ore tenus—Object to ore tenus Motions and request that the Motion be made in writing pursuant to the Rule.

When the motion to compel is placed on calendar in writing or made ore tenus:

- Prior to filing a formal Motion to Compel, defense attorneys should first contact the ASA assigned to the case to request the desired information and determine whether it is in the State's possession, pending request, or exists at all. If a defense attorney files a Motion to Compel without first making this informal request, inform the court of such and request a continuance to obtain the discovery before a Motion to Compel is entertained. Under most circumstances, the judge will grant this request.
- If Motion to Compel is filed after an informal request was made but you still do not have the requested discovery, advise the judge how much time you have had to comply between the date of the request and the motion, the steps taken in attempt to obtain the discovery, and the reasons why you need more time to comply with the defense's request/motion.
- Do not agree to provide any items that you do not have and make sure that the judge tailors his/her order only to what you do have so that the defense cannot argue later that you have not given it to them even if it does not exist. Ask for proof or a proffer of the existence of the item requested so that you do not waste your time asking for things that do not exist (this applies to items not routinely produced in a misdemeanor DV case – DNA results, out-of-state victim's priors, etc.).
- An additional example of an improper Motion to Compel would be: at Arraignment, the Public Defender makes a Motion to Compel the OIR—this is not a timely Motion. Rule 3.220 states that "after the filing of the charging document" the State has 15 days to provide discovery

(3.220(b)(1)). Of course, if the PD wants to "request" specific items we will provide them accordingly. However, the Judge should not grant a Motion to Compel, it is improper and the State does not want the Court file to reflect an improperly granted Motion.

PFC STATISTICS

ASA's must enter into their individual Outlook calendars all scheduled attorney PFC's. ASA's must annotate attendance of all witnesses and officers on their calendars, specificying:

- Whether this was the first, second, third, etc. time that the witness was subpoenaed
- If witnesses or officers appear:
    - Which witnesses or officers appeared, individualy by name
    - Whether a statement was taken or the PFC had to be rescheduled (ie., if officers forget reports)
- If witness does not appear:
    - Whether PFC was cancelled or rescheulded in advance and the reason why (ie., called to reschedule, officers had training/got stuck on a call, subpoena returned without service, etc.)
    - Whether the witness will be rescheduled and reason why if not rescheduling (ie., officer not needed or reached end of service, witness with open case, etc.)

ASA's must print a weekly view of their calendars reflecting these annotations and submit to the Administrative Secretary by 5:00 PM every Friday, or 9:00AM the following Monday.

CLOSING MEMOS

When the State takes No Action (KNA) in a case or announces a Nolle Prosequi (KNP), the assigned prosecutor must provide a written explanation for this decision. This will require providing a Closing Memo that accompanies the file upon the closing of the case. The memo shall describe the legal and factual basis for the disposition of the case, including a detailed discussion of the evidence pertaining to the case, application of relevant legal concepts to the facts involved, and an account of the State's efforts to prosecute the case. Prosecutors can contact the SAO Legal Division concerning specific legal issues that may be dispositive in your case. However, it is necessary to properly research the issue and review with a Chief, prior to contacting the Legal Division. In the event that there is no contact with a victim or witness, please be prepared to discuss the results of your personal efforts to make contact (making reference to searches performed, relevant case notes and proof of service for subpoenas as applicable). If you have spoken with a victim or witness, please provide ample notations as to what was discussed, and the impression with which you were left. All ASAs shall submit appropriate closing memos within **seven (7)** days of the case being closed.

When a case is closed via a plea offer, indicate on the file flap pertaining to the hearing during which the plea was accepted, whether the plea is a Court offer or State offer. Notate the exact terms of the accepted plea, using all appropriate abbreviations and notations set forth in this manual. In addition, indicate whether or not the victim was in agreement with the plea (and if not, notate that you reviewed your decision with the Assistant-Chief or Division Chief). If applicable, indicate whether or not the State objected to the plea offer made by the Court (the State shall always object to a plea that is inappropriate based on the circumstances of the case, is in contravention to office policy or is proscribed by legal/statutory requirements).

APPEALS

Any possible appellate issue(s) should be addressed immediately with the Assistant-Chief or Division Chief. Remember, if the Court dismisses a case, object (as appropriate) for the record and request that the Court issue a written Order. All appeals are handled by the ASA assigned to the case at trial or at the time the appeal is sought. In order to keep track of all appeals, the ASA shall make a copy of the appellate paperwork filed with the clerk's office, and provide it to the Division Chief. An e-mail must be sent to the Division Chief memorializing compliance with this procedure.

PLEA GUIDELINES

The pleas in domestic violence cases are, by statute, different from those pleas negotiated in non-domestic cases. Domestic Violence pleas shall contain one (1) year reporting probation with a domestic batterers' intervention program, **unless** the State is seeking 180 days or more of incarceration. The rationale for not requiring a batterers' intervention program in a case where the defendant receives 180 days in jail or more, is that the defendant will not have time to complete the program. The Judge has discretion to allow for a straight jail plea of greater than 180 days (Fla. Stat §741.281). All jail terms of less than 180 days should be made a special condition of probation (see discussion below).

Domestic violence pleas **must** also include a Stay Away Order, unless said Order has previously been modified by the victim in court. A Modified Stay Away Order (MSAO) allows the Defendant to have contact with the victim, but that contact must be peaceful and non-threatening. The State should object to any modification of a Stay Away Order, unless the defendant has completed a significant portion of the batterers' intervention program and there are indices that no future violence will occur.

It is assumed that the prosecutor assigned to a specific case is in the best position to determine the appropriate plea. It is important, however, to understand the general principles and rules that ASAs must apply when exercising this prosecutorial discretion:

- Pursuant to Fla.R.Crim. P. 3.172 (g), no plea offer or negotiation is binding until it is accepted by the trial judge formally after making all the inquiries, advisements, and determinations required by the rule. Until that time it may be withdrawn by either party without any justification.
- Our purpose is to prevent Domestic Violence from occurring within Miami-Dade County, to break the "cycle-of-violence," to protect the victim's rights and interests (including family – specifically children), and to effectively prosecute a defendant to the fullest extent of the law.
- ASAs must speak to all victims prior to pleading out their cases unless the victim has expressed his/her sentencing preference to the pre-filing attorney and/or paralegal, and the plea that is being offered does not go against the wishes of the victim or that of the officer **(you should make an effort to contact the victim, irrespective of the case notes, as sometimes circumstances change).**
- ASAs should speak with all listed officers prior to formulating a plea offer. Remember that in Domestic Violence cases civilian witnesses may be reluctant to prosecute. Therefore, ASAs should solicit officers' opinions regarding the disposition of the case, because they may sometimes provide a better understanding of the incident and assistance with the case's prosecution.
- Where the officer is the listed victim (i.e. a charge of resisting without violence) you **must** speak to him/her prior to formulating and conveying any plea.
- As mentioned above, all cases involving domestic violence require a statutorily mandated year of probation with a state certified batterers intervention program as a mandatory condition of that probation (Fla. Stat § 741.281). Make sure to remind the judge of this mandate if and when he/she attempts to plea out a case involving a domestic charge to a sentence that does not include these mandatory conditions. Should the judge plea the case out without these conditions even after you remind him/her, please make sure that you object on the record. Also

remember that Fla. Stat § 741.283 carries with it a 10 day Minimum Mandatory jail sentence (see discussion below).

- If applicable, no plea should be tendered unless restitution has been considered and made part of a probation or pre-trial diversion plea.
- **As a general rule, any plea that you offer should be higher than the defendant's last sentence**. Sanctions in ascending order are as follows:
    h) Pre-Trial Diversion
    i) Withhold of Adjudication & 12 Months Reporting Probation + Vacate (WH=12MRP + Vacate)
        i) Must have a Chief approval to offer this plea
    j) Withhold of Adjudication & 12 Months Reporting Probation (W/H + 12 MRP)
    k) Adjudication & 12 Months Reporting Probation (ADJ + 12 MRP)
    l) Adjudication 12 Months Reporting Probation with Special Condition of Days in Dade County Jail (ADJ + 12 MRP S/C DCJ)
    m) Adjudication & Days in Dade County Jail (ADJ + 180 DCJ)
- The Special Conditions of any plea offer should reflect the facts of the offense and the desired level of sanction.
- Pursuant to Fla. Stat § 775.083 the maximum fine available for a first degree misdemeanor is $1,000 dollars and for a second degree misdemeanor is $500 dollars.
- Alternative pleas to non-domestic violence charges must be approved by a Chief.

I. DEFENDANTS WITH OPEN CASES

A. ASAs must receive express written approval from the Division Chief or Assistant Chief to run any sentence on a misdemeanor DV case concurrent and/or co-terminus with a sentence on an open felony and/or felony probation case involving the same defendant.

B. ASAs must receive express written approval from the Division Chief or Assistant Chief in order to run any sentence on a misdemeanor DV case concurrent and/or co-terminus with a sentence on an open misdemeanor and/or misdemeanor probation case involving the same defendant.

C. If a defendant has an open Felony case, especially if that open felony is related to the misdemeanor, the misdemeanor ASA must contact the Felony ASA regarding the possibility of a global resolution of the cases and special instructions.

II. PRE-TRIAL DIVERSION (PTD):

Counseling and supervisory programs are provided by The Advocate Program in conjunction with the State Attorney's Office for first time offenders pursuant to Fla. Stat. §741.325. If a Defendant is placed into Pre-Trial Diversion, the pending criminal case remains open while the defendant complies with all conditions imposed. Once the defendant successfully completes all conditions and pays all required fees, the case will be placed on calendar for the State to announce a Nolle Prosse. It is in the SOLE discretion of the State whether to offer this program or not. It is also in the sole discretion of the State to revoke a defendant from the program at any time, as appropriate. State v. Winton, 522 So. 2d 463 (Fla. 3DCA 1988).

A. PTD ELIGIBILITY

1. Victim approval
2. No prior convictions (including withholds of adjudication)

3. No prior participation and/or completion of PTD for a Domestic Violence case
4. No serious and/or extensive injury to the victim
5. No choking involved in allegation
6. No serious threat of future harm to the victim
7. No pending domestic violence cases
8. No Stalking cases
9. No Injunction Violation cases

B. CONDITIONS OF PTD (mandatory conditions are in bold)

1. **Batterers' Intervention Program (BIP)**
   a) Intimate partner batterers' intervention program: 26 weeks
   b) Other family member anger management course: 5 weeks/10 hrs

   Determination of the type of classes is solely made by the State and the Advocate
2. **Substance Abuse Assessment & Treatment (SAAT)**
   Final determination is made by the State and the Advocate
3. **Psychological/Mental Health Screening (MH)**
   Final determination is made by the State and the Advocate
4. **Stay Away Order (SAO)**
5. Community Service Hours (CSH)
6. Parenting Course
7. Restitution to Victims or Police Departments (the State has sole discretion to determine appropriate restitution)
8. Donation to approved charity (**NOTE:** Per office policy, any donations required as a condition of PTD must go to The Denise Moon Fund)
9. Cost of Recovery to Police Department
10. Repayment of VCF to Attorney General's Office (when victim receives an award; this is statutorily mandated)

Pre-Trial Diversion will only be offered prior to Trial. Unless express written approval has been obtained from the Assistant Chief of Division Chief, PTD will not be offered at Trial calendar. At Arraignment, when PTD is offered and rejected, the file should be notated to reflect the defendant was present and PTD was offered, but rejected. ASAs should not offer PTD again if a defendant has previously rejected it.

The State will not offer re-enrollment into the PTD program, except under exceptional circumstances. Sometimes, the Advocate Program will prefer that a Defendant be re-enrolled. Reach out to Advocate to determine if this is this is an exceptional circumstance. If a defendant is re-enrolled into PTD with appropriate approval, the special conditions must include payment by the defendant of all counseling/supervision costs that remained outstanding when the defendant was revoked from the program.

If the defendant is bounced-out of PTD for failure to pay costs only, the case should be reset on the Judicial Review Calendar in two (2) weeks with in-court notice to the defendant, in order to allow defendant time to pay prior to the State announcing a Nolle Prosse for completion of PTD. If the defendant fails to pay in the allotted period of time, the case should be set for

Arraignment and the ASA should consult the Assistant Chief or Division Chief prior to the next court date.

The Defendant must agree to the full amount of restitution prior to accepting PTD. The State shall not agree to any restitution hearings as a condition of PTD.

The State does not Nolle Prosse cases in exchange for monetary donations.

III. **REPORTING PROBATION**: Misdemeanor Domestic Violence Probation is monitored by the Advocate Program. Pursuant to Fla. Stat. § 741.281, the Defendant shall serve one (1) year reporting probation. In structuring a probation plea the following factors should be considered:

A. Whether the Defendant should be offered a Withhold of Adjudication or an Adjudication of Guilt; and
B. What special conditions should be included as part of the sentence to be served.

Guidelines for determining whether a probation plea offer should include a Withhold of Adjudication or an Adjudication of Guilt are as follows:

A. WITHHOLD OF ADJUDICATION (W/H + MRP)
   1. No prior convictions or previous withholds of adjudication in misdemeanor or felony cases
   2. No serious and/or extensive injury to the victim
   3. No serious threat of future harm to the victim
   4. No pending Domestic Violence cases or felony cases

B. ADJUDICATION (ADJ)
   1. Defendant has a prior withhold of adjudication for a misdemeanor or felony case
   2. Defendant has a prior conviction for a misdemeanor or felony case (including outside of Miami-Dade County)
   3. Significant Injury to the victim
   4. Threat of future harm to the victim
   5. Previous DV case with this victim
   6. Previous DV case with another victim
   7. Previous case involving violence

C. SPECIAL CONDITIONS OF PROBATION (S/C)
   (mandatory conditions are in bold)
   1. **Batterers' Intervention Program (BIP)**
   2. **Substance Abuse Assessment** & Treatment (SAAT)
      Final determination is made by the State and the Advocate
   3. **Mental Health Screening (MH)**
      Final determination is made by the State and the Advocate
   4. **Credit for all time served (CTS) awaiting trial**
   5. **Stay Away Order (SAO)**

6. Community Service Hours (CSH)
7. Parenting Course
8. Letter of Apology to Officer (Resisting Officer Without Violence) – Probation Order must contain Officer's name and court ID number
9. Restitution
10. Donation to approved charity
11. Fine
12. Cost of Recovery to Police Department
13. Repayment of VCF to Attorney General's Office (when victim receives an award; this is statutorily mandated)

D. ELECTRONIC MONITORING FOR SEX OFFENDERS

Pursuant to Fla. Stat. § 948.30(3)(c), for crimes committed after September 1, 2005, the Court must order mandatory electronic monitoring as a condition of community control or probation for defendants who are designated as Sexual predators pursuant to § 775.21 or have previously been convicted of enumerated sexual offenses involving victims 15 years or younger. (See Exhibit Plea #1 – List of Enumerated Sexual Offenses that Qualify for Electronic Monitoring.)

ASAs shall be responsible for verifying whether defendants qualify for mandatory electronic monitoring prior to conveying a plea offer involving probation to convicted sex offenders. ASAs must review the defendant's local and NCIC/FCIC priors in order to verify whether the defendant has any qualifying convictions for sexual offenses in any jurisdiction. If a defendant has any qualifying convictions for sexual offenses, ASAs must consult with the Assistant Chief or Division Chief prior to conveying any plea offer. In addition, ASAs must make sure that as part of the plea colloquy, the Court advises the defendant on the record that electronic monitoring is a mandatory condition of the probation plea. The Probation Order must specify electronic monitoring as a mandatory condition of a defendant's probation.

E. Whenever defendants accept probation pleas or are sentenced to probation after convictions at trials, the ASAs assigned to the cases are responsible for properly filling out the Orders Placing Defendants on Probation. This must be done prior to the commencement of the plea colloquy. This means completing all sections pertaining to the case number, defendant's name, defendant's change of plea, charge(s) being resolved by the plea agreement, length of the probation term, and all special conditions that are part of the defendant's particular sentence.

- The only exception is that ASAs cannot complete sections of the Order pertaining to court costs, costs of supervision, statutory fines, and liens for Public Defenders. These sections shall be left blank, but ASAs must inform the judge presiding over the plea colloquy of the need to complete these sections at the time of the acceptance of the plea and the signing of the Probation Order.

IV. **JAIL**: All jail sentences will be served in the Dade County Jail (DCJ).

A. ELIGIBILITY

1. Serious injury to Victim
2. Large amount of blood loss, possible permanent scarring and/or injury
3. Previous misdemeanor or felony convictions (including outside Miami-Dade County)
4. Previous DV cases with this victim
5. Previous crimes of violence
6. Extensive criminal priors
7. Serious threat of future harm to the victim and the community

B. MITIGATED PLEAS

If you or your judge offer a defendant a plea whereby the defendant will plea to the charge and is sentenced to 364 days in Dade County Jail (DCJ) mitigated to a lesser amount of jail time (greater than 180 DCJ upon the defendant's surrender to the jail), then the plea **must** provide that the mitigation is **contingent** upon the defendant surrendering at **a specified date and time**, having no further law violations or violations of any Stay Away Order at the time of surrender, and testing negative for drugs. An example of this would be:

> **ADJ + 364 DCJ mitigated to ADJ + 180 DCJ upon the defendant's surrender on Monday, January 7, 2015 at 9 a.m. at the Arraignment Calendar in courtroom 2C.**

Mandatory, at the time the defendant takes the plea, you should have the court explain to the defendant that if he or she fails to surrender on that specified date and time, violates the law or violates the Stay Away Order, or tests positive for drugs, then the defendant's sentence **automatically** reverts to **364 DCJ**.

To avoid future complications at a PVH hearing, order a copy of the plea transcript whenever a mitigated plea is accepted. If the record is made properly at the time of the defendant's plea, then the defendant will not be able to assert that the 364 mitigation was never explained to him or her at the time the defendant accepted the plea.

All mitigated pleas require approval from the Division Chief or Assistant-Chief. All mitigated plea approvals must be in writing.

C. TEN (10) DAY MINIMUM MANDATORY

Fla. Stat. § 741.283 requires the Court to impose a mandatory sentence of 10 days incarceration upon a defendant adjudicated guilty of a crime of domestic violence in which the defendant has intentionally caused "bodily harm" to another person. This 10-day incarceration rule only applies to adjudications of guilty and is mandatory (non-discretionary).

The State retains discretion to determine whether there is sufficient evidence of "bodily harm" to prove said element beyond a reasonable doubt. If the State

believes that the evidence is weak and/or insufficient, the State may allow the defendant to take a plea to "Battery-Touch".

D. DOMESTIC VIOLENCE IN THE PRESENCE OF A CHILD

E. Where a crime of domestic violence takes place in the presence of a child, Fla. Stat. § 741.283(b) requires the Court to impose a mandatory sentence of 15 days in the county jail for a first offense, 20 days for a second offense, and 30 days for a third or subsequent offense as part of the sentence imposed. The child must be under the age of 16 and the defendant must have intentionally caused bodily harm to another person during the crime. HABITUAL MISDEMEANOR OFFENDERS (HMO)
Pursuant to Fla. Stat. § 775.0837, a Habitual Misdemeanor Offender is defined as a defendant who has been previously convicted, as an adult, of four (4) or more specified misdemeanor offenses. Defendants who qualify for HMO status must be sentenced to a minimum mandatory sentence as provided by the statute; unless the court makes a finding that an alternative disposition is in the best interest of the community and defendant.

Fla. Stat. §775.0837 outlines the enumerated crimes that may be used as predicate offenses for establishing a defendant's HMO status. (See Exhibit Plea #2 - List of Enumerated Misdemeanors that Qualify for HMO status.)

The State's determination that a defendant qualifies as Habitual Misdemeanor Offender requires the State to file a Notice of Intent to Seek Enhanced Penalty with the Court when the defendant is present to receive notice. The Notice of Enhancement advises the Court and the defendant that the State will seek enhanced penalties at the time of sentencing as provided in § 775.0837(2). (See Exhibit Plea # 3 – Sample Notice of Enhancement.)

ASAs shall file Notices of Intent to Seek Enhanced Penalty only after consulting with the Assistant Chief or Division Chief. Notices shall be filed at Arraignment calendar with the defendant present. If the defendant is not present for any reason, the State shall file the Notices anyway and advise the Court the defendant must be informed of his HMO status the next time he appears before the Court. HMO Notices must be filed prior to trial.

ASAs shall be responsible for identifying whether defendants in their assigned cases qualify for sentencing enhancements under the HMO statute, for consulting with the Assistant Chief or Division Chief, and for filing the required Notices.

F. MANDATORY DNA COLLECTION FOR STALKING CASES
Effective July 1, 2008, Fla. Stat. § 943.325 requires the collection of DNA from persons **convicted** of any felony and enumerated misdemeanors, including Stalking under § 784.048.

Specifically, this law requires that any person who is convicted or was previously convicted for any offense enumerated in § 943.325(1)(b), and who is either still

incarcerated or on probation, community control, parole, conditional release, controlled release, or any other type of court-ordered supervision, shall be required to submit two specimens of blood or other biological specimens approved by the Department of Law Enforcement to a Department of Law Enforcement designated testing facility as directed by the department.

In light of this requirement, at the time of sentencing ASAs must request a court order for DNA collection for any case in which the Defendant receives an adjudication for a Stalking charge; regardless of whether the sentence involves jail, probation or a combination of two. (See Exhibit Plea # 4 – Sample Notice of Mandatory DNA Collection.)

The Department of Corrections is responsible for collecting a Defendant's DNA sample pursuant to the court order, and then filing the required Notice of Compliance, if the defendant is in custody. A judge's bailiff is responsible for taking DNA swabs if the defendant is out of custody. See Exhibit Plea #5 – Sample Notice of Compliance with F.S. 943.325.)

PLEA #1

Enumerated Sexual Offenses For
Mandatory Electronic Monitoring under Fla. Stat§ 948.30(3) (c)

In order for a defendant to qualify for mandatory electronic monitoring as a condition of a probation or community control sentence imposed for any offense committed on or after September 1, 2005,

the defendant must fall under one of the following categories:

(1) The defendant is designated as a sexual predator pursuant to Fla. Stat.§775.21, The Florida Sexual Predators Act;

OR

(2) The defendant has previously been convicted of a violation of specific sexual offenses, AND the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

The specific sexual offenses are:

a. Any offense under chapter 794, Sexual Battery

b. § 800.04 (4), Lewd or Lascivious Battery

c. § 800.04 (5), Lewd or Lascivious Molestation

d. § 800.04 (6) Lewd or Lascivious Conduct

e. § 827.071, Sexual Performance by a Child

f. § 847.0145, Selling or Buying of Minors

Enumerated Misdemeanors for Habitual Misdemeanor Offenders

In order for a defendant to be a Habitual Misdemeanor Offender, he needs **4 prior offenses** within the last **12 months.**

- Only **one count** or charge from each incident date can be counted.
- The charges must result in a **conviction or a withhold of adjudication.**

The four prior offenses and the current 5th case all must be on this list of enumerated offenses:

CHAPTER 741
Including Domestic Violence charges

Chapter 784
Including Assault and Battery

Chapter 790
Including Weapons and Firearms charges

Chapter 796
Including Prostitution and Solicitation of Prostitution

Chapter 800
Including Lewd and Lascivious Behavior, Indecent Exposure

Chapter 806
Including Arson and Criminal Mischief

Chapter 810
Including Burglary, Trespass, Possession of Burglary Tools

Chapter 812
Including Theft, Robbery, Possession of Stolen Property

Chapter 817
Including Fraudulent Practices

Chapter 831
Including Forgery and Counterfeiting

Chapter 832
Including Worthless Checks

Chapter 843
Including Obstruction of Justice, Resisting Arrest

Chapter 856
Including Disorderly Intoxication, Loitering and Prowling

Chapter 893
Including Drug Possession, Possession of Drug Paraphernalia

Chapter 901
Including False Name to Law Enforcement Officer

Everything except…
Disorderly Conduct,
Drinking in Public,
Urinating in Public,
Contracting without a License
and
Misdemeanor Traffic Charges!

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PLEA #3

STATE OF FLORIDA CASE NO:

vs. JUDGE:

_____,
Defendant(s).

NOTICE OF STATE'S INTENTION TO SEEK ENHANCED PENALTY PERSUANT TO F.S. 775.0837 HABITUAL MISDEMEANOR OFFENDER

COMES NOW KATHERINE FERNANDEZ RUNDLE, State Attorney of the Eleventh Judicial circuit of Florida, by and through the undersigned Assistant State Attorney and gives notice that the defendant qualifies for an enhanced penalty pursuant to 775.0837 Florida Statutes, as a habitual Misdemeanor Offender, and upon conviction of the defendant in the above-styled cause, the State will seek imposition of any of the aforementioned enhanced penalties.

Respectfully submitted

KATHERINE FERNANDEZ RUNDLE
State Attorney

By: _____
Assistant State Attorney
Florida Bar #
175 NW 1st Avenue, Suite 2500
Miami, FL 33128
(305) 349-5830

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above was furnished to the *Defense Counsel, Type Defense Counsel Address*, on this _____ day of _____, _____.

_____
Assistant State Attorney

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PLEA #4

STATE OF FLORIDA CASE NO:

vs. JUDGE:

_____,
Defendant(s).

NOTICE OF MANDATORY DNA COLLECTION

COMES NOW, KATHERINE FERNANDEZ RUNDLE, by and through the undersigned assistant state attorney, and gives notice that the Defendant, having been convicted of a felony or enumerated misdemeanor, to wit: in this cause, is required to provide a DNA sample upon imposition of sentence pursuant to F.S. 943.325.

Respectfully submitted,

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

BY: _____
Assistant State Attorney
Florida Bar #
175 N.W. 1st Avenue
Suite 2500
Miami, Florida 33128
(305) 349-5830

PLEA #5

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO:

vs. JUDGE:

_____,
Defendant(s).

NOTICE OF COMPLIANCE WITH F.S. 943.325

The undersigned officer of the Department of Corrections hereby notifies the Clerk of the Court that a DNA sample was obtained from the Defendant in this cause after the imposition of sentence as required pursuant to F.S. 943.325

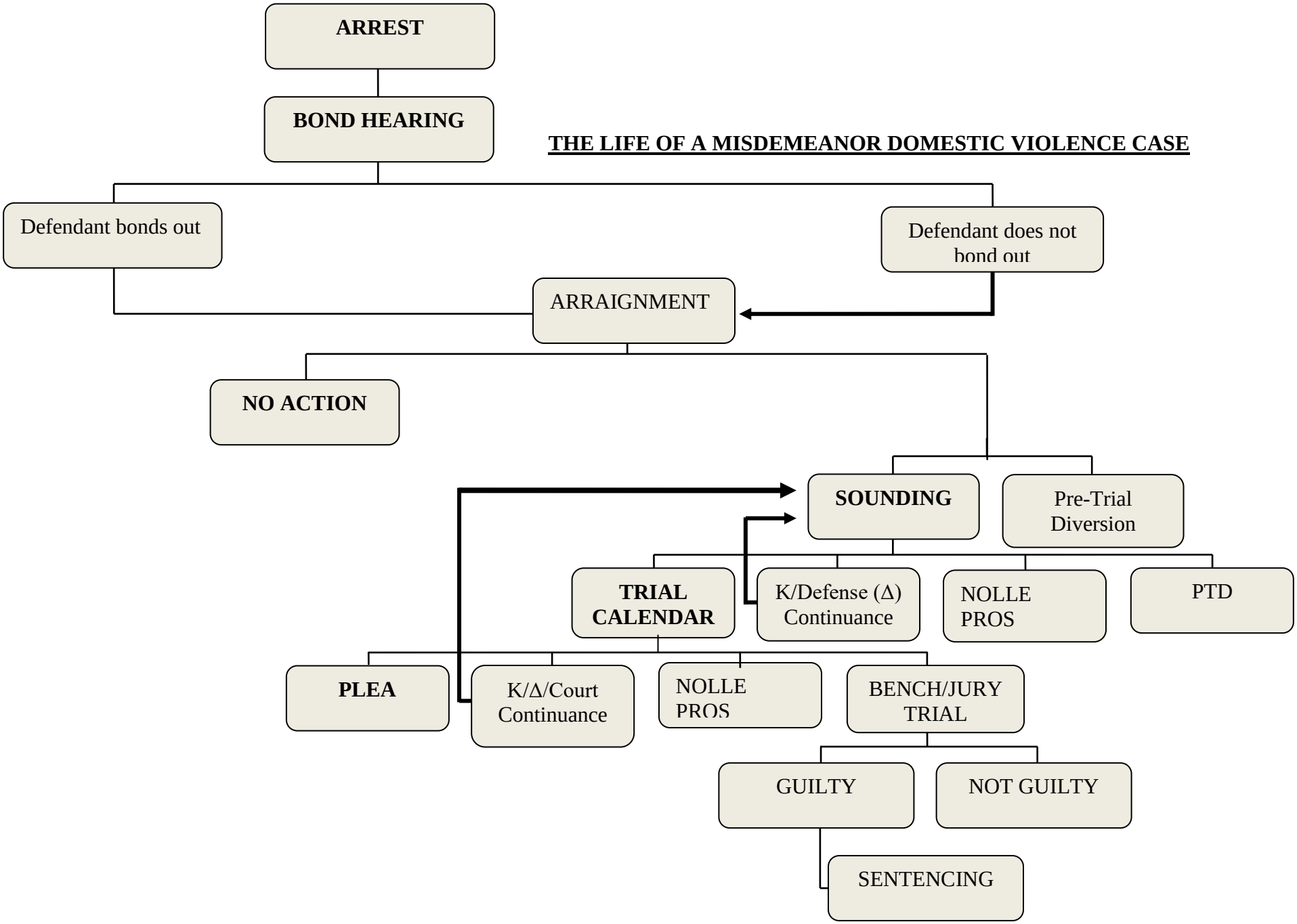
_____
(Print Name)

_____
(Signature)

Calendar Preparation and Procedures

Misdemeanor Domestic Violence Unit

Office of the State Attorney, Eleventh Judicial Circuit of Florida


ARREST
BOND HEARING
THE LIFE OF A MISDEMEANOR DOMESTIC VIOLENCE CASE
Defendant bonds out
Defendant does not bond out
ARRAIGNMENT
NO ACTION
SOUNDING
Pre-Trial Diversion
TRIAL CALENDAR
K/Defense (Δ) Continuance
NOLLE PROS
PTD
PLEA
K/Δ/Court Continuance
NOLLE PROS
BENCH/JURY TRIAL
GUILTY
NOT GUILTY
SENTENCING

BOND HEARING CALENDAR

PURPOSE:

The purpose of the Bond Hearing Calendar is to provide defendants with a first appearance hearing within 24 hours of arrest, as provided by Rule 3.130. This calendar is when defendants learn the conditions of their pre-trial release (if any).

The calendar begins at 11:00 a.m. and is held in courtroom 2A. The assigned ASA will receive an email at approximately 9:30 am, by the Bond Hearing Secretary when the cases are available for pick up and preparation. If the email is not received by this time, the ASA must take affirmative steps to obtain these files immediately to allow ample time for preparation.

I. BOND HEARING CASES:

A. There are two different types of cases that appear on this calendar:

1. **New Cases:** A defendant must be brought before a judge within 24 hours of an arrest (Fla. R. Crim. P. 3.130). Moreover, according to Fla. R. Crim. P. 3.132, unless the State files a motion for pre-trial detention, the first appearance judge must consider conditions of release. The defendant need not be present for the determination of probable cause (Fla. R. Crim. P. 3.133 (a)(3). A probable cause determination will take place at the Bond Hearing (thus satisfying Rule 3.133). If the defendant is not brought before the court within **48 hours of arrest** for purposes of a probable cause determination, the defendant shall be released on his own recognizance (Rule 3.133). In all domestic violence cases, the conditions of pre-trial release will be set and a Stay Away Order will be issued in favor of the victim. (Fla. Stat. §907.041(4)(a)(18) and §903.047.)

2. **Bench/Arrest/Probation Warrants and Writs of Bodily Attachment:** These will be issued by the judge if the defendant has an open case or probation case in which he/she failed to appear for some proceeding.

   a. A Bench Warrant (BW) stays in the system until a defendant has drawn attention to themselves and the police run a check. If issued in a domestic case, the defendant will be brought before the judge at a bond hearing. Pursuant to Fla. R. Crim. P. 3.131(c)(2) "any defendant who willfully and knowingly fails to appear and breaches a bond specified in § 903.26, Fla. Stat. and who is arrested at any time following forfeiture shall not be eligible for a recognizance bond or any form of bond that does not require a monetary undertaking or commitment equal to or greater than $2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater."

   b. An Arrest Warrant (AW) means that the police can actively go and find the defendant and arrest them. At bond hearing, the defendant's bond should be set in the amount of the Arrest Warrant. If the arrest warrant was issued on a direct file, the State must request that a bond be set in the amount of the warrant, and that a Stay Away Order be issued in favor of the victim.

c. A Probation Warrant (PW) means that the police can actively go and find the defendant and arrest them. At bond hearing, the defendant's bond should be set in the amount of the Probation Warrant. Request that the case be set on a probation violation calendar in at least three (2-3) weeks (in order to allow subpoenas to be generated for the State's witness).

d. A Writ of Bodily Attachment (WOBA) means that the police can actively go and find the defendant and arrest him. At bond hearing, the defendant's bond should be set in the amount of the Writ.

e. Civil Cases When there is a DV Warrant issued on a civil injunction case, there is no action that must be taken by the ASA in court.

II. CALENDAR PREPARATION:

Start by reading the Arrest Form (A-Form). There are several categories on your file flap **(See Exhibit BH #1)** that you will have to fill in with information from the A-Form.

A. **Probable Cause (PC).** Read the narrative contained within the arrest affidavit. Determine whether the narrative establishes PC by describing with adequate specificity the elements of the crime charged within the four-corners of the arrest affidavit.

1. If PC exists for the crime charged, i.e. Battery or Injunction violation, notate the file by writing what the PC is (ex: Slap in Face, Went to Home, etc.). **(See Exhibit BH #1, Section 1).**
2. While reading the narrative, look to see if there are any uncharged crimes that the A-form established PC for the elements. This will sometimes require you to use your statute book as well. Look for common secondary crimes, such as: Criminal Mischief, Culpable Negligence, Petit Theft, Witness Tampering, or Trespass.
3. If PC is not established by the 4 corners of the A-from consider whether a PC hearing is appropriate. A PC Hearing is where the case is reset for the next day, to bring in either the Victim, Police Officers, or both to offer testimony which will supplement the A-Form. If a PC hearing will not properly address the issue then confer with a CTA prior to conceding that there is no PC. If a PC Hearing is appropriate, it will be set for the next day. You should email the ASA who will be on Bond Calendar the next day to let them know, as well as call and subpoena the Victim and Officers in the case. **(See Exhibit BH #10)**.
4. Underline the act constituting the elements of the offense (i.e., Defendant struck Victim on face). This cannot be a legal conclusion by the officer. For example, the officer may not write, "Suspect battered the Victim on this date and time." The officer must write out the facts describing how the battery occurred.
5. An arrest affidavit may establish PC for a felony charge. A good example of this is when the facts state that the defendant touched or struck the victim and the defendant knew or should have known the victim was pregnant. These facts would establish PC for Aggravated Battery. A misdemeanor judge can find PC for a felony case. Martin v. Circuit Court of the 15th Judicial Circuit, 690 So.2d 674 (Fla. 4th DCA 1997).

B. **Jurat.** At the bottom center of the arrest affidavit is the jurat. The jurat reads "Sworn to and subscribed before me, the undersigned authority, this _____ day of _____". This must be signed. If the Jurat is signed, notate the file by writing Jurat YES **(See Exhibit BH# 1, Section 2).** If the Jurat is not signed request that the Defense waive the defect. If the Defense does not wish to waive the defect in the a-form, be prepared to make appropriate argument that the Defendant should remain in custody and that the case should be reset in 24 hours to get the officer in to swear to the arrest affidavit, under Florida Rule of Criminal Procedure 3.133. The ASA should notify via e-mail the victim/witness coordinator or paralegal who was present in court that the arresting officer needs to be subpoenaed for the following day's Bond hearing. The ASA should CC: the email to the Assistant Chief, the Division Chief, the Bonds Secretary, the Lead Worker, Kristen Jackson (Unit Supervisor), and the ASA assigned to the following day's Bonds, so they may be aware of the upcoming PC hearing.

C. **Brady: This refers to the relationship that allows for the case to be heard in the Domestic Violence Courthouse, such as "dating for 2 years," "married for X years," mother/son, father/daughter, brothers, sisters, have a child in common, or living together.**

1. Review the front and back of the A-Form and any other available documents (e.g., emails from DART counselor, Police Reports, Statements, etc.) to determine the nature of the relationship between the listed victim(s) and the defendant. The ASA must annotate the file flap to indicate this information, so that it can be conveyed to the Court prior to the issuance of the Stay Away Order. (See Exhibit BH# 1, Section 3).
    a. The 1993 Brady Bill (18 USCA 921) provides that certain enumerated relationships are protected under federal firearms laws. The enumerated relationships are known as the Brady Indicator, which include spouse, former spouse, a person who cohabitates or has cohabitated with the defendant, a parent of a common child, a child of that person, or a child of the Defendant.
    b. At Bond hearings, ASAs must always advise the Court whether the relationship between the defendant and the victim is a Brady relationship. This will allow the Judge to annotate the Order of Pre-Trial Release Conditions accordingly.
    c. If the nature of the relationship between the defendant and the victim is unclear or unknown prior to the Bond hearing, ASAs must annotate the file flap by writing "relationship: unknown," and then advise the Court that there is insufficient information about the relationship. Do Not Transfer to county at this juncture.
    d. The State has a continuing obligation to investigate and advise the Court whether the relationship falls within the Brady Indicator.

D. **Concealed Weapons Permit/Weapons/Ammunitions/SVPP.** Review the NCIC/FCIC and verify whether the defendant has a State issued Concealed Weapons Permit. Pursuant to Fla. Stat. § 790.06, persons who are arrested for felonies, misdemeanor domestic violence cases or have active injunctions issued against them, shall surrender all weapons, ammunitions, and Concealed Weapons Permits to the nearest Police department forthwith, and provide written proof of surrender to the Court (e.g., Property Receipt). Similarly, the

Conditions of Pre-trial Release for domestic violence cases order defendants to comply with this requirement.

1. Thus, if prior to the Bond hearing, the ASA determines that a defendant has a Concealed Weapons Permit or the ASA receives information indicating that a defendant has access to firearms/ammunition, the State must annotate the file flap accordingly. **(See Exhibit BH# 1, Section 4)**. Once in Court, the ASA must advise the Court of this information in conjunction with the reading of the criminal priors.
2. Upon conveying this to the Court, the ASA must request that the Judge instruct the defendant to surrender the Permit, firearms, and/or ammunition immediately to the nearest Police station and to bring written proof to the next scheduled hearing (e.g., Arraignment).
3. The ASA shall request the Clerk's set the case on the nearest Division Arraignment calendar for the defendant to show proof of surrender.
4. In addition, the ASA must ask the Judge to annotate the Court docket to indicate that the defendant has been instructed accordingly, in order to preserve this information for all Judges who may preside over the case in the future. If defendants fail to comply with this statutory requirement, the State shall file a Motion to Revoke the Defendant's Bond based on non-compliance.

E. **Department of Children and Families Notification.** While reviewing the facts, if you find a child is the victim, witness or was present in the home during the act of domestic violence, notate the file flap with "Contact DCF," complete the DCF Fax transmittal form**(See Exhibit BH#7)**, and fax it to the number at the top of the form (after bonds). A copy of the form should be placed in the file. On your Bond Calendar Flap, you should also note that DCF has been contacted **(See Exhibit BH #1 Section 5).**

I. LOCAL AND NATIONAL PRIORS

A. Local Priors

1. Review the Criminal Justice Information System (CJIS) printout **(See Exhibit BH#2)** to see if the Defendant has any open or past criminal history. If the Defendant's CJIS printout says that the Defendant could not be positively ID'd, **(See Exhibit BH#4)**, you will need to check the Defendant's NCIS record. **(See Exhibit BH#8)**
2. For all prior Domestic Violence Cases, regardless of the disposition, put the year and charge on your file flap. (Note: "Y" next to the case number, under the letters "Dom," indicates whether a prior is domestic in nature). **(See Exhibit BH#3)**You will also need to check and see if the Victim in those cases was the same as the Victim in the current case. You should make notes of any past local DV, violent, or other relative priors on your Bond Flap. **(See Exhibit BH #1, Section 6).** This can be done 3 different ways:
    a. **HYDRA:** Check in Hydra to pull up the past case. If the case is shown in Hydra, you will be able to go into the case, click on the "Witness" button, and see who the Victim's name.
    b. **CJIS:** If the case does not come up in Hydra, or you want to use a different way, you can pull up the case history on CJIS. Log into CJIS using your normal log-in. Type: "**15" for Inquires** > "**10**," **for Docket >**

enter in the **prior case number** > "**F8**" will allow you to scroll through the Docket History and show who the **"Stay Away Order"** was issued to protect.

c. **V-Case System**: Type the prior case number into V-Case, and this will often pull up the folder for the prior case. Once the folder is up, access the A-Form from the prior case, which will give you the name of the Victim in that case.

B. NCIC/FCIC PRIORS

1. Review all NCIC/FCIC priors. **(See Exhibit BH #8)**. This will help you determine if the Defendant has a criminal history from outside of Miami-Dade County or the State of Florida. If the Defendant has out of county or out of state priors, they should be listed in the priors sections on your Bond Flap. **(See Exhibit BH #1, Section #6)**.

C. HOLDS

1. Felony or Probation Holds: If the defendant has an open felony case or is currently on felony probation, the State must request that defendant be "taken into custody on the open felony" (a.k.a. "felony hold"). If a hold is issued, this means that the Defendant will remain in custody and be taken in front of that Judge the following day.
   a. Note: if the new case's incident date pre-dates the Felony arrest or Felony probation acceptance a felony hold is not requested (as the defendant has not violated their release conditions).
2. Felony Hold Email: The ASA covering Misdemeanor Bonds must then send an email and the Misdemeanor A-Form to Domestic Crimes Unit so they are prepared for calendar the next day **(See Exhibit BH #13)**.
   a. **Felony Hold Email Recipients:** Barbara Govea, Barbara Sanchez, Christina Miranda, Scott Dunn, Rosalba Sanchez, Ellen Isabel, Jaisel Cordoba. You must also 'CC' your Division Chief, and your Assistant Chief.
3. A common objection from the Public Defender's Office is that the County Court Judge lacks jurisdiction to hold a defendant or alter the defendant's felony bond.
   a. Our response is as follows-

      Section 903.02(3) defines the term "court" as used in Chapter 903 to include "all state courts." The terms "bail" and "bond" include "any and all forms of pretrial release" under section 903.011. Section 903.047(1)(a) specifically provides that "as a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant … shall refrain from criminal activity of any kind." A defendant who violates this condition of pretrial release is "'thumbing his nose' at the court," which impugns the integrity of the judicial process. Parker v. State, 843 So.2d 871, 878 (Fla. 2003). Section 903.0471 provides that "[n]otwithstanding s. 907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release." Section

903.26(2)(a) provides that "if there is a breach of the bond, the court shall declare the bond and any bonds or money deposited as bail forfeited." Thus, when these statutes are read together, it is clear that at the time the defendant is arrested on a new criminal charge, even a misdemeanor, and probable cause is found that the defendant committed the new crime, the defendant is considered at that time in breach of the bond, and it is deemed to have been forfeited. As emphasized by the Florida Supreme Court in State v. Paul, 783 So.2d 1042, 1050 (Fla. 2001): "**By breaching a condition of the bond originally set by the court, a defendant forfeits the right to continued release under the terms of the bond**." As such, the defendant no longer has a right to continued release under the bond on the felony case and it is necessary for the judge who is presiding over the new case, to refer the case to the felony division for a determination of whether the defendant should be permitted to have a bond, and if so, if there should be any different conditions.

4. Open Misdemeanor Cases: Determine whether or not the defendant has any open Misdemeanor DV cases. (See Exhibit BH# 7) If so, request an enhanced bond and notify the ASA assigned to the open case via e-mail informing them to file a Motion to Increase/ Revoke Bond (There is a requirement under Rules 3.191(d) that the defense be provided at least 3 hours notice regarding such a motion; thus the ASA assigned the case should prepare and submit the appropriate motion). Check to see if the Defendant has any other warrants (e.g. traffic warrants) and/or holds.
5. Defendant "Not Positively Identified": If the CJIS printout reflects that the defendant was not "positively identified," and the NCIC/FCIC is not available, then write "ΔNPI" on the file. Take every available measure to obtain an updated CJIS printout prior to the Bond Hearing. If necessary, speak to the Pre-trial Services representative or Corrections Officers, because they may have information as to the defendant's priors.

II. BOND HEARING CALENDAR PROCEDURE

ASAs must bring the Bonds files and their West's Florida Criminal Laws and Rules Book to Court.

A. The following should *always* occur at a bond hearing:

1. Determination by the court of whether defense counsel will be appointed to represent the defendant.
2. Probable cause determination by the Judge.
3. Issuance of Conditions of Pre-trial Release for the defendant, including the order to surrender firearms, ammunition, and Concealed Weapons Permits forthwith, if applicable.
4. Issuance of Stay Away Order in favor of all victims, reflecting appropriate Brady Indicator.
5. Defendant's verbal acknowledgement that he/she understands the conditions of the Stay Away Order/PTR Conditions on the record.

B. The following *may* occur at bond hearings:

1. Modification of the Stay Away Order.
2. Defendant taken into custody on open felony (a.k.a. Felony Hold issued).

3.Reset for probable cause determination.
4.Service of Injunction upon defendant.
5.Issuance of a G.P.S. device through the Court Programs Inc.'s (CPI) service or the Department of Corrections.

C. Procedure

1.The judge will call the defendant's name and announce the charges.
2.Appointment of the Public Defender (PDA). This should be done before the Public Defender is allowed to make argument regarding PC. Notate whether the PD was appointed.
3.Probable Cause (PC) Determination. Next, the judge will make a PC determination. If appropriate, make PC argument for a felony charge and notate file "Possible Bind Up." (All bind-ups require approval from the Division Chief).
4.If the judge finds PC, notate this on the file. **Make sure to specify the exact charge for which PC was found and how many counts PC was found for**. (See Exhibit BH# 5)
5.If the judge finds no PC *and you believe this finding could be remedied by a PC Hearing*, request that the case be reset for 24 hours to allow the officer to testify and establish PC (Rule 3.133), unless the probable cause is found on a separate charge on the A-Form. Sometimes the lack of PC on an A-Form cannot be remedied by a PC Hearing (i.e., when injunctions were not served, assaults that are conditional threats over the phone, arrests for PTR violations when the defendant is on PTD/probation, etc.). Do not request a PC Hearing in these situations. Stipulate to the release from custody, and notate the file flap accordingly with the reasons for the stipulation.
   a. If the judge allows you to reset, record this on the file, "Reset for (next day's date) for PC Hearing/No PC found." Then state the reason no PC was found.
   b. If the judge will not reset, makes a finding of no PC and wants to release the defendant from custody—OBJECT! Indicate on the record that the appropriate remedy is to reset the case and reiterate the reasons why this defendant is a danger to the community and/or a flight risk pursuant to Fla. Stat. §907.041. Write on the right side of the file, "No PC found, Δ Released from Custody OKO, Motion for reset denied (name of Judge) OKO, PFC/Contact Victim ASAP."
      i. Note that a "release from custody" is not the same as an ROR. When a defendant is ROR'd, they are still considered to be "out on bond" and are subject to Pre-Trial Release Conditions, including a Stay Away Order. However, when a defendant is "released from custody," they are not considered out on bond and are not subject to any other restraints other than to return to court for trial. This means that an Order of Pre-Trial Release or Stay Away Order may not be imposed. (See Griglen v. Ryan, 138 So. 3d 1172 (Fla. 3d DCA 2014)).
   c. If no PC is found, an Order of Pre-Trial Release Conditions and Stay Away Order will not be issued and the victim will remain unprotected until PC is found at a subsequent Non-Adversarial PC Hearing or an Information is filed.
6.Recitation of Priors. If the Defendant has CJIS (local) or NCIC/FCIC (out of county/state) priors, recite them at this point. If the Defendant has felony convictions, begin by stating the amount of felony convictions the Defendant has on his record (i.e. "Your Honor, the Defendant has five previous felony convictions that include…") Then provide the court with information concerning the most recent and most violent priors

first. Mention all prior domestic case(s) whether convictions, No Actions or Nolle Prosses. In the event the Bond Hearing Judge states that he/she does not wish to hear prior domestic violence cases that did not result in a conviction, please remind him of Fl. Stat. §741.2901. This statute states that this "information shall be presented at first appearance." List the sentences for convictions. Inform the court whether the defendant has any open cases or is currently on probation. If the defendant has an open felony case, request that the defendant be taken into custody on the open felony (aka felony hold) for the Judge handling the felony case (See Post-Hearing Procedure below).

7. If the NCIC is not available, and the defendant has no local priors, inform the court, "the defendant has no priors within Miami-Dade County." CJIS reflects only Miami-Dade County.
8. Concealed Weapons Permit. If the NCIC/FCIC indicates that the defendant has a State issued Concealed Weapons Permit or the State has received information that the defendant owns firearms or ammunition, the ASA must advise the court and request the necessary order be given to the defendant (see above).
9. Conditions of Pre-trial Release. The standard bond for a "battery" charge is $1,500. You note this on the right side of the file flap under "Results". (See Exhibit BH# 5). The judge may set the case for consideration of Pre-Trial Services the following day and issue an Alternate Bond of $1,500. Notate file accordingly.
10. Stay Away Order (SAO) Issued. First, the ASA must advise the judge whether the relationship is a Brady Relationship, and specify the nature if necessary. Notate that a SAO was issued. (See Exhibit BH# 10) If the victim is present, he or she may seek to modify the SAO, the State shall object and make the appropriate arguments. Check the victim's identification, notate file "VP ID√". Notate whether or not the SAO was modified.
11. The ASA covering Bond hearings must accurately notate all of the information described above on the file flap.

D. Bench Warrant/Arrest Warrant Issues

1. Bench Warrant / Arrest Warrant Vacated – means to nullify; make void; invalidate; and overrule the bench warrant (i.e. If a speedy demand is filed, and the bench warrant is vacated, the vacated bench warrant will not affect the speedy trial period and an NOE.)
2. Bench Warrant / Arrest Warrant Quashed – means to annul make void or to terminate a bench warrant (same effect on speedy demand or NOE as "bench warrant vacated")
3. Bench Warrant / Arrest Warrant Set Aside – means to annul or vacate, something that is reserved or put aside for a specific purpose (causes the demand for speedy trial and/or NOE to be stricken)

III. ROLES OF DART, VICTIM/WITNESS COUNSELOR, AND PARALEGAL:

The DART Counselor, a Victim Advocate, reaches out to victims prior to the Bond hearings and will provide important case information via email to the ASA on Bonds duty. For example, emails may advise of significant facts about the incident not included in the A-Form, the name and ages of minor children witnesses, the defendant's access to firearms, threats made to the victim by the defendant or third parties, etc. ASAs should always print out emails from the DART Counselor, annotate the Bonds file flap accordingly for use in Court, and include the email in the file. Similarly, always consider what information your victim/witness counselors or paralegals

may offer. The Vic/Wit and paralegal will attend BH, will speak with all victims present, check the victim's ID, photograph injury, inform the ASA whether the victim is seeking to modify the SAO and receives the files from the ASA as the cases are called. The Vic/Wit or paralegal may have information regarding the case that is not contained within the file. For instance, the Vic/Wit or paralegal may be privy to information regarding the victim, such as a statement regarding his or her fear and past events of violence. This information should be provided to the court, as appropriate, in seeking an enhanced bond.

IV. **POST-BOND HEARING PROCEDURE**: At the conclusion of Bonds calendar, the ASA shall take the files back to complete all necessary post-Bonds activities as described below. Upon completion, the ASAs will take the files to the Division Chief or the Assistant Chief for a determination of which cases will be Pre-filed. A "PFC" notation shall be made by the Division Chief or Assistant Chief on the inside bottom of the file flap.

If a Felony Hold was granted at Bond hearings, you must notify the felony Domestic Crimes Unit (DCU) via e-mail (To: Barbara Govea, Barbara Sanchez, Christina Miranda, Jaisel Cordoba, Scott Dunn, Rosalba Sanchez, Ellen Isabel. You must also 'CC' your Division Chief, and your Assistant Chief.) and inform them of the misdemeanor case number, the felony case number with the name of assigned felony judge. (See Exhibit BH # 9) Additionally, you must either attach a copy of the front and back of the A-Form to the email or fax a copy of the email and A-Form to felony DCU @ 305-547-0259.

If the judge at Bond hearing found no Probable Cause (PC) and the request for a PC Hearing was granted, the ASA must send an email to the paralegal or vic/wit on calendar that day (CC: to Division Chief, Assistant Chief, ASA covering the next day's Bonds, and Maria Gomez) requesting the issuance of a MANDATORY NOTICE FOR OFFICER TO APPEAR instructing the arresting officer(s) to appear for a PROBABLE CAUSE HEARING at the following day's Bonds calendar. This email must indicate the case number, the defendant's name, and the date/time and courtroom location of the Bonds calendar.

If for any reason a case is reset for weekday bond hearings at CHC, you must email the Bonds/Jails Secretary and the ASA assigned to cover bond hearings on the reset date (CC: Assistant Chief and Division Chief). The email must include the case number, defendant's name, and reason for the reset. **(See Exhibit BH #11)**.

If for any reason a case is reset for weekend bond hearings, you must email all the ASAs handling the weekend bond hearing (CC: to the Division Chief, the Assistant Chief) informing them of all the issues pertaining to the reset case and special instructions, if appropriate. You must also fax a copy of the email, the front and back of the A-Form, and the defendant's priors (CJIS & NCIC/FCIC), to each of the ASAs on Weekend Bonds duty. **(See Exhibit BH #12)**.

The names of the ASAs assigned to weekend bond hearings can be found on the Weekend Bonds roster or the Branch Court schedules, which are distributed periodically via email by the Assistant Chief(s) of the Crimes Division. If you do not receive these lists via email, you must consult the Assistant Chief or Division Chief to get copies.

All files for cases that have been reset for another bond hearing calendar must be returned to the Bonds/Jails secretary along with all other bonds cases, unless instructed otherwise by supervisors.

If during the bond hearing it is determined that the defendant has an open felony for which a Felony Hold was not issued or an open misdemeanor case in any unit, you must contact the ASA assigned to the other open case via e-mail to advise that prosecutor of the defendant's new arrest (See Exhibit BH # 11). In addition, you must make a copy of the front and back of the new A-Form along with the CJIS priors, in order to aid the prosecutor with the filing of a Motion to Revoke Bond based on the new case. Please CC the Division Chief, Assistant Chief and the DV Unit ASA assigned to the case, if different.

If it is determined that a child was present or is the listed victim you must contact DCF by faxing a report and a copy of the A-Form and all available Police Reports, pursuant to Florida Chapter 30. (See Exhibit BH# 6)

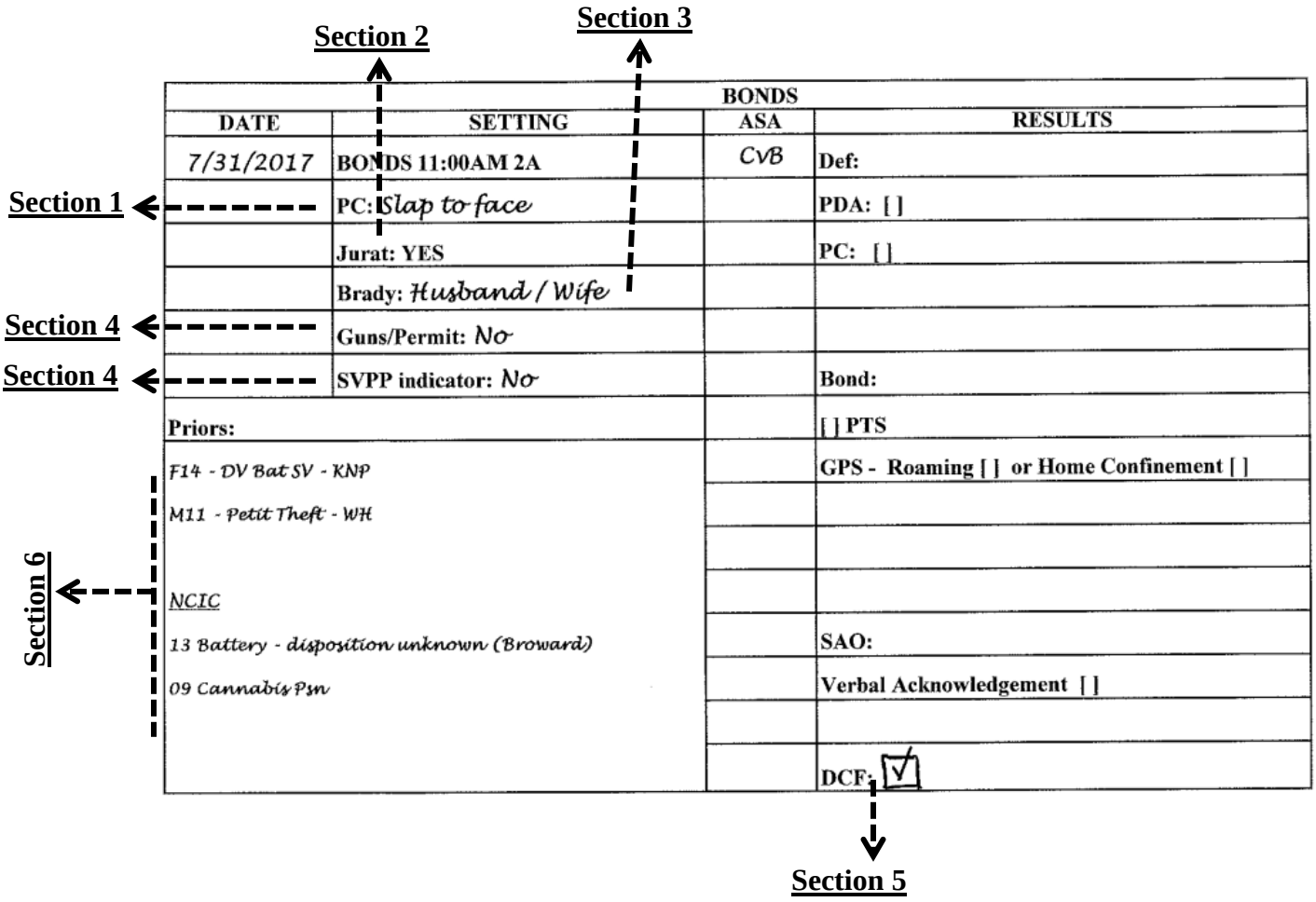
If a G.P.S. monitoring device through CPI is a condition of pre-trial release, you must send an email to the assigned ASA for that case, so they can try to make contact with the victim. (See Exhibit BH# 12).

Upon compliance with these procedures, ASAs shall forward the files to the Division Chief or Assistant Chief in a timely fashion, but no later than 2 p.m. on the day of the Bond hearing.

V. WEEKEND BOND HEARINGS:

Each ASA will be assigned to Bond hearings on weekends and holidays. In preparation, the ASA should arrange to attend a weekend bond hearing prior to their first assigned weekend. This opportunity to observe will allow the ASA to better be prepared upon their assigned weekend. Upon being assigned a weekend bond hearing and before attending the weekend bond hearing, the ASA must schedule a meeting with their assigned CTA to review the policies and procedure for weekend bond hearings. This meeting must be scheduled in writing via email. During this meeting the ASA must discuss appropriate plea guidelines, directions to bond hearing locations, and contact information for supervisors. Any emergency questions or concerns that arise during the weekend bonds should be addressed immediately via telephone with the Assistant Chief or Division Chief.

BH #1



BONDS			
DATE	SETTING	ASA	RESULTS
7/31/2017	BONDS 11:00AM 2A	CVB	Def:
	PC: Slap to face		PDA: [ ]
	Jurat: YES		PC: [ ]
	Brady: Husband / Wife		
	Guns/Permit: No		
	SVPP indicator: No		Bond:
Priors:			[ ] PTS
F14 - DV Bat SV - KNP			GPS - Roaming [ ] or Home Confinement [ ]
M11 - Petit Theft - WH			
NCIC			
13 Battery - disposition unknown (Broward)			SAO:
09 Cannabis Psn			Verbal Acknowledgement [ ]
			DCF: ☑

JOB-NUM: J950199
PROGRAM: CJSB088

M E T R O P O L I T A N D A D E C O U N T Y
CRIMINAL JUSTICE INFORMATION SYSTEM
JAIL ARRAIGNMENT LOCAL HISTORY PRIORS
COUNTY COURT

IDS: 2693013 CIN: 0763785 POLICE CASE: 12062806 DEPT: 008 ARREST DATE: 06/28/2012 JAIL: 120041877
JUDGE: VICTORIA DEL PINO SECT: M087 HEARING DATE: TIME: TYPE: COURTROOM: 2-49
NAME: EVANS, MATTHIAS RACE: B SEX: M DOB: 01/18/1988 RELEASE DATE:

CURRENT CHARGES

CASE	DOM	TYPE	DEG	STATUTE NUMBER	INT	VER	DESCRIPTION	BONDAMT	WARTYPE	WARRANT NO.
B12028012	Y	M	1	741.31(4)(A)	N	A	DOM VIO/INJ VIOLATIO	TO BE SET		
2984FTY								2,000	BW	
7723GTH								2,000	BW	
7513WHM								1,500	BW	

DADE COUNTY HISTORY INFORMATION
OPEN CASES

CASE NUMBER	DOM	HEARING DATE	HEARING TYPE	TYPE	DEG	CHARGE	JUDGE	SECT	AKA NAME
B12016411	Y	07/02/2012	ARRAIGNMENT	M	2	ASSAULT	317	M087	EVANS, MATHIAS NATHANIE
	Y	07/02/2012	ARRAIGNMENT	M	1	CRIM MIS/200-1000	317	M087	EVANS, MATHIAS NATHANIE
M12016412	Y	07/02/2012	ARRAIGNMENT	M	2	ASSAULT	317	M087	EVANS, MATHIAS NATHANIE
B12028012	Y		NO FUTURE HEARING	M	1	DOM VIO/INJ VIOLATIO	317	M087	

CLOSED CASES

CASE NUMBER	D	CLERK'S FILE DATE	T	D	CHARGE	DISPOSITION	CLOSED DATE	SENT	NEXT CASE	SECT	PROB	PROBATION END DATE	AKA NAME
J01000361		01/18/2001	M	2	LOITERING OR PROWL	NO ACTION	04/12/2001			J014			EVANS, MA
F03021176		07/27/2003	F	3	COCAINE/POSSESSION	WH ADJ-SUSP ENT SE	08/15/2003			F002			EVANS, MA
F04031440		10/20/2004	F	2	COKE/SELL/DEL/W/IN	CONV-YOUTHFUL OFFN	02/10/2005	4.00Y		F017	2Y	01/12/2012	EVANS, MA
		10/20/2004	F	3	CANN/SELL/DEL/PSNW	CONV-YOUTHFUL OFFN	02/10/2005	4.00Y		F017	2Y	01/12/2012	EVANS, MA
		10/20/2004	Z	0	PROBATION VIOLATIO	PROBATION REVOKED	02/10/2005			F017	2Y	01/12/2012	EVANS, MA
		10/20/2004	Z	0	PROBATION VIOLATIO	PROBATION REVOKED	02/10/2005			F017	2Y	01/12/2012	EVANS, MA
		10/20/2004	Z	0	PROBATION VIOLATIO	DISMISS/TERM	02/10/2005			F017	2Y	01/12/2012	EVANS, MA
BC5051099		10/08/2005	M	1	TRES PROP/AFTER WA	CONV/CTS/FINE/COST	10/08/2005						EVANS, MA
FC5028522		09/08/2005	F	3	CANN/SELL/DEL/PSNW	NO ACTION	10/06/2005			F017			EVANS, MA
		09/08/2005	M	1	CANNABIS/POSN/0-20	NO ACTION	10/06/2005			F017			EVANS, MA
		09/08/2005	F	2	COKE/SELL/DEL/W/IN	NO ACTION	10/06/2005			F017			EVANS, MA
F05001886B		01/19/2005	F	2	COKE/SELL/DEL/W/IN	CONV-YOUTHFUL OFFN	02/10/2005	4.00Y		F017	2Y	01/12/2012	EVANS, MA
		01/19/2005	F	2	COKE/SELL/DEL/W/IN	NOLLE PROS	02/10/2005			F017	2Y	01/12/2012	EVANS, MA
		01/19/2005	F	3	CANN/SELL/MAN/DEL	CONV-PROB SPEC CON	02/10/2005			F017	2Y	01/12/2012	EVANS, MA
		01/19/2005	Z	0	PROBATION VIOLATIO	PROBATION REVOKED	02/10/2005			F017	2Y	01/12/2012	EVANS, MA

BH#2

JOB-NUM: J950199
PROGRAM: CJSB088

M E T R O P O L I T A N D A D E C O U N T Y
CRIMINAL JUSTICE INFORMATION SYSTEM
JAIL ARRAIGNMENT LOCAL HISTORY PRIORS
COUNTY COURT

DATE: 07/01/2012

IDS: 0974525 CIN: 0782100 POLICE CASE: DEPT: ARREST DATE: 02/26/2011 JAIL: 110014226
JUDGE: SPENCER J MULTACK SECT: M088 HEARING DATE: 03/22/2011 TIME: 09:00 TYPE: A COURTROOM: 2-49
NAME: GARRIDO, JOHN PAUL RACE: W SEX: M DOB: 09/02/1985 RELEASE DATE: 04/27/2011

DADE COUNTY HISTORY INFORMATION

OPEN CASES

CASE NUMBER	DOM	HEARING DATE	HEARING TYPE	TYPE	DEG	CHARGE	JUDGE	SECT	AKA NAME
F11028541		07/20/2012	REPORT	F	2	ESCAPE	364	F014	
		07/20/2012	REPORT	M	1	CRIM MIS/200-1000	364	F014	
F11029086		07/20/2012	REPORT	F	2	ROBBERY/STRONGARM	364	F014	

CLOSED CASES

CASE NUMBER	D	CLERK'S FILE DATE	T	D	CHARGE	DISPOSITION	CLOSED DATE	SENT	NEXT CASE	SECT	PROBATION PROB	PROBATION END DATE	AKA NAME
B11047926		11/02/2011	M	1	CRIM MIS/200-1000	CONSOLIDATE-OTH CA	03/14/2012			F014			
M11008791	Y	02/27/2011	M	1	BATTERY	NOLLE PROS	04/21/2011			M088			
	Y	02/27/2011	M	1	BATTERY	NO ACTION	04/21/2011			M088			
	Y	02/27/2011	M	1	BATTERY	NO ACTION	04/21/2011			M088			
	Y	02/27/2011	M	1	BATTERY	NO ACTION	04/21/2011			M088			
B11005635		02/07/2011	M	1	CANNABIS/POSN/0-20	WH ADJ / CTS	02/25/2011			M003			
F11000733		01/10/2011	F	3	CANN/SELL/DEL/PSNW	REDUCED/TRN CNTY C	02/07/2011		B11005635	F003			
M10018239		04/18/2010	M	1	RESIST OFF W/O VIO	CONV/CTS/FINE/COST	04/18/2010			M004			
M09046354	Y	08/05/2009	M	1	BATTERY	NOLLE PROS	06/15/2010			M087			
M08011238	Y	03/03/2008	M	1	PRTRL REL/DOM VIOL	NOLLE PROS	08/04/2009			M087			
M08011239	Y	03/03/2008	M	1	DOM VIO/INJ VIOLAT	NOLLE PROS	08/04/2009			M087			
M09036570		06/22/2009	M	1	CANNABIS/POSN/0-20	WH ADJ W/FINE & CO	12/09/2009			M006			
		06/22/2009	M	1	FLS NAME/ID/AFT AR	DISMISSED	12/09/2009			M006			
M07067242	Y	11/26/2007	M	1	BATTERY	CONVICTION - JAIL	02/12/2008	320.00D		M087	12M	06/04/2010	
	Y	11/26/2007	Z	0	PROBATION VIOLATIO	PROBATION REVOKED	02/12/2008			M087	12M	06/04/2010	
F05020588C		06/29/2005	F	2	COKE/SELL/DEL/W/IN	CONV AND SENT	10/11/2005	364.00D		F013	3Y	09/29/2006	
		06/29/2005	M	1	RESIST OFF W/O VIO	CONV & SENT-CONCUR	10/11/2005	364.00D		F013	3Y	09/29/2006	
		06/29/2005	Z	0	PROBATION VIOLATIO	PROBATION REVOKED	10/11/2005			F013	3Y	09/29/2006	
F05020606		06/29/2005	F	2	COKE/SELL/DEL/W/IN	TRANSF TO OTHER CA	07/19/2005		F05020588C	F013			
		06/29/2005	F	2	COKE/SELL/DEL/W/IN	TRANSF TO OTHER CA	07/19/2005		F05020588C	F013			
		06/29/2005	F	2	COKE/SELL/DEL/W/IN	TRANSF TO OTHER CA	07/19/2005		F05020588C	F013			
		06/29/2005	M	1	RESIST OFF W/O VIO	TRANSF TO OTHER CA	07/19/2005		F05020588C	F013			
F04029185	Y	09/28/2004	F	3	STALKING/AGG/CT OR	CONSOLIDATE-OTH CA	10/18/2004		F04029184	F013			
F04029184	Y	09/28/2004	F	3	STALKING/AGG/CT OR	CONV AND SENT	10/11/2005	364.00D		F013	3Y	09/29/2006	
	Y	09/28/2004	M	1	DOM VIOL/INJUNC VI	CONV & SENT-CONCUR	10/11/2005	364.00D		F013	3Y	09/29/2006	
	Y	09/28/2004	M	1	DOM VIOL/INJUNC VI	CONV & SENT-CONCUR	10/11/2005	364.00D		F013	3Y	09/29/2006	
	Y	09/28/2004	M	1	DOM VIOL/INJUNC VI	CONV & SENT-CONCUR	10/11/2005	364.00D		F013	3Y	09/29/2006	
	Y	09/28/2004	Z	0	PROBATION VIOLATIO	PROBATION REVOKED	10/11/2005			F013	3Y	09/29/2006	
J01007504A		07/24/2001	M	1	CANNABIS/POSN/0-20	SUPR TERM/MOD/REVO	11/15/2001			J011	1Y	11/15/2002	

BH#3

JOB-NUM: J950182 PAGE: 12
PROGRAM: CJSB088 DATE: 06/29/2012

METROPOLITAN DADE COUNTY
CRIMINAL JUSTICE INFORMATION SYSTEM
D.V. JAIL ARRAIGNMENT LOCAL HISTORY PRIORS
COUNTY COURT

IDS: 0000000 CIN: 0000000 POLICE CASE: PD120628245874 DEPT: 030 ARREST DATE: 06/28/2012 JAIL: 120042089
JUDGE: JUDITH RUBENSTEIN SECT: M090 HEARING DATE: TIME: TYPE: COURTROOM: 0-0
NAME: SOMERS, LEROY RACE: B SEX: M DOB: 03/06/1978 RELEASE DATE:

CURRENT CHARGES

CASE	DOM	TYPE	DEG	STATUTE NUMBER	INT	VER	DESCRIPTION	BONDAMT	WARTYPE	WARRANT NO.
M12028100	Y	M	1	893.13(6)(B)	N	A	CANNABIS/POSN/0-20	1,000		

******* NOT POSITIVELY IDENTIFIED BY FINAL CALENDAR CUT-OFF ********

BH #4

MIAMI-DADE COUNTY, FLORIDA	Case#	B12-28012
	Police case#:	12062806
STATE OF FLORIDA	Division#:	M89
v.	ASA:	
EVANS, MATTHIAS	Δ Attorney:	

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
Erika Evans	6/28/2012	9/3/2012		N						
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	**DISCOVERY**	**IN**	**OUT**	**DATE ORDERED**
DV Injunction Violation	OIR			
	DV Supplement			
	911 tape			
	Photos			
	Video			
	Statements			
	Injunction			
	Fire/Rescue Report			
	Cert. Conviction			

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
6/29/2012	Bonds 11:00am 2A	CC	PDA: ✓
	PC:		PC:
	Injxn Violation: ✓		DV INJUNCTION VIOLATION: ✓
	Jurat: ✓		
	Guns/Permit: ✓		Bond: $10,000
	Brady: ✓ H/W		
Priors:	✓ w/SV		
			SAO: ✓
	*Contact DCF		Verbal acknowledgement: ✓

MIAMI-DADE COUNTY, FLORIDA	Case#	B12-28012
	Police case#:	12062806
STATE OF FLORIDA	Division#:	M89
v.	ASA:	
EVANS, MATTHIAS	Δ Attorney:	

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
Erika Evans	6/28/2012	9/3/2012		N						
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	**DISCOVERY**	**IN**	**OUT**	**DATE ORDERED**
Battery	OIR			
	DV Supplement			
Resisting w/o Violence	911 tape			
	Photos			
	Video			
	Statements			
	Injunction			
	Fire/Rescue Report			
	Cert. Conviction			

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
6/29/2012	Bonds 11:00am 2A	CC	PDA: ✓
	PC: Battery		PC:
	Resisting w/o Violence		Battery: ⦸ PC (Court found no int'l
	Jurat: ✓		touch/strike by Defendant)
	Guns/Permit: ✓		Resisting: ⦸ PC (Court found no lawful
	Brady: ✓ H/W		execution of a legal duty by ofcr)
Priors:	✓ w/SV		
			Bond: Ct #1: ROR
			Ct #2: ROR
			K request for PC hearing R/S denied
	*Contact DCF		VPID: ✓ MSAO: granted OKO

FLORIDA DEPARTMENT OF CHILDREN & FAMILIES

Fax Transmittal Form To Report Abuse/Abandonment/Neglect/Exploitation*
Fax Number: 1-800-914-0004

Reporter Information (required for professionally mandated reports of child abuse, abandonment and/or neglect, F.S. Chap.30)

Today's Date: 5/27/2010

Your Last Name: _____ Your First Name: _____ M.I.: _____

Your Occupation: _____ Your Agency: State Attorney's Office Fax #: (305) _____ Phone #: (305) _____

Address: Street # _____ Street: _____ City: Miami Zip Code: _____ County: Miami-Dade State: FL

Do you want a response verifying receipt of this fax? ☒ Yes ☐ No

Address where the victim is currently located: Home Telephone Number: _____ Work Telephone Number: _____

Street # 4601 Street: NW 183rd Street City: Miami Gdns Zip Code: 33055 County: _____ State: _____

Victim(s) - (if the victim is a child, please list **other children in the home**; if the victim is an adult, describe the disability and how he/she is impaired in the ability to care for or protect self in the "description of Incident section")

Last Name	First Name	DOB	SEX	RACE	SSN	Is this person a victim?
(1) Carter	Antoinette	03/28/1981	F	B	Unk	☒ Yes ☐ No
(2) Gray	Jaron	08/12/1999	M	B	Unk	☐ Yes ☒ No
(3)						☐ Yes ☐ No
(4)						☐ Yes ☐ No
(5)						☐ Yes ☐ No

Person(s) responsible for alleged abuse, abandonment, neglect or exploitation

Name	DOB	SEX	RACE	SSN	RELATIONSHIP
(1) Calvin Grace	05/24/1977	M	B	262-81-2367	Boyfriend/Father of child
(2)					
(3)					

Description Of Incident *Please include what happened, when and where incident occurred, frequency of occurrence, description of injuries/threat of harm.*
What happened?
PLEASE SEE ATTACHED ARREST FORM AND/OR OFFENSE INCIDENT REPORT
When did the Incident occur? **April 24, 2010**
Where did the incident occur? **4601 NW 183rd Street, Miami Gardens, FL**
Description of injuries/threat of harm: **The child was present when the defendant and victim became involved in a verbal altercation which escalated when the defendant punched the victim in the face several times. The child provided the police a written statement. There is an ongoing pattern of abuse between the victim and defendant in this case. The victim is also currently a defendant in another case with our defendant as the victim.**
FOR ADULT VICTIMS ONLY: Description of disability & how victim is impaired in the ability to care for or protect self.

Who else might be aware of the abuse/abandonment/neglect/exploitation of victim?				
Name	Relationship to the victim	Address	Home Phone	Work Phone

*Please read instructions in the Information Packet for Professional Mandated Reporters
**Relationship of Person(s) responsible for alleged abuse, abandonment, neglect or exploitation to the victim

---

The Department of Children & Families is committed to working in partnership with local communities to ensure safety, well-being and self-sufficiency for the people we serve.

Search Parameters

Purpose Code	C
Attention	MEGHAN WOOD
DLID	E162554850100
Sex	M
Race	B
SSN	594533827
Date Of Birth	1988-01-18
Last Name	EVANS
First Name	MATTHIAS

Report Produced For:

Sschuler
06-29-2012
08:46:30

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Table of Contents

Consolidated Results..... 1

FDLE [1-FDLE].....2

HOTFILES/NCIC [2-HOTFILES/NCIC]..... 8

HOTFILES [2-HOTFILES].....8

NCIC [3-NCIC]..... 9

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Consolidated Results

Subject Statuses	
Dept of Corrections Custody Status	
Driver License/ID Card Status	
Offender Status	
Warrant Information	
Open Case Status	
Immigration Violation	
Florida Concealed Weapon Permit	NO [594532827], NO [594533827]
Brady Indicator	
DNA	
Domestic Violence/Mental Health Cases	

Subject Information			
Alert	INMATE RELEASE STATUS [HOTFILES]	DC#	M50415 [FDLE,HOTFILES]
Brady Ind		DL#	
Name	MATTHIES NATUEL EVANS [FDLE] MATHIS EVANS [HOTFILES] MATTHIAS N EVANS [NCIC]	DL State	
		DL Year	
		FBI#	321860CC3 [ALL]
Date of Birth	1985-01-10 [ALL]	SID#	05283487 [FDLE] FL05283487 [NCIC]
SSN	594-53-3827,594-53-2827 [FDLE] 594-53-3827 [HOTFILES] 594-53-2827,594-53-3827 [NCIC]	DJJ#	
		Birth Place	
Address	4441 NW 178TH ST,MIAMI GARDE, FL [FDLE]	Birth County	
Alias	MATTHIAS NATHANIEL EVANS,MATTHIES NATHANIEL EVANS,MATTHIES C EVANS,MATTHIES EVANS,MATHIAS N EVANS,MATTHIAS N EVANS,MATTHIES N EVANS [FDLE] MATHIAS N EVANS,MATTHIES EVANS,MATHIAS NATHANIEL EVANS,MATTHIES C EVANS,MATTHIES N EVANS,MATTHIAS EVANS,MATTHIES NATHANIEL EVANS,MATTHIAS NATHANIEL EVANS,MATTHIES NATUEL EVANS [NCIC]		
Notes			
UCN#			

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FDLE [1-FDLE]

MATTHIES NATUEL EVANS (Subject 1 of 1)

	Alert	Name	Gender	D.O.B.	SSN#	DLID#	SID#
		MATTHIES NATUEL EVANS	M	1985-01-10	594-53-3827,594-53-2827		FL05283487

FDLE Details

Retrieve Complete Criminal History Record On-line

ATN/MEGHAN WOOD
FC.DLE/05283487.PUR/C.ATN/MEGHAN WOOD.OPT/D
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME,
A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR FUTURE USE
** THIS CRIMINAL HISTORY CONTAINS A JUVENILE ARREST RECORD **
\- FLORIDA CRIMINAL HISTORY -
NAME STATE ID NO. FBI NO. DATE REQUESTED
EVANS, MATTHIES NATUEL FL-05283487 321860CC3 06/29/2012
SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR BIRTH PLACE SKIN DOC NO.
M B 01/10/1985 5'07'' 160 BRO BLK FL M50415
FINGERPRINT CLASS SOCIAL SECURITY NO. MISCELLANEOUS NO. SCR/MRK/TAT
594-53-3827
IN AFIS - 3
OCCUPATION ADDRESS CITY/STATE
UNEMP 4441 NW 178TH ST MIAMI GARDE, FL

AKA	DOB	SOC	SCR/MRK/TAT
EVANS, MATTHIAS N	01/06/1985	594-53-2827	
EVANS, MATTHIES	01/10/1935		
EVANS, MATTHIES N	01/18/1988		
EVANS, MATTHIES NATHANIEL			
EVANS, MATHIAS N			
EVANS, MATTHIES C			
EVANS, MATTHIAS NATHANIEL			
EVANS, MATTHIAS			
EVANS, MATHIAS NATHANIEL			

********** JUVENILE **********
ARREST- 1 01/12/2001 OBTS NO.-1317004989
ARREST AGENCY-MIAMI-DADE POLICE DEPARTMENT (FL0130000)
AGENCY CASE-0763785 OFFENSE DATE-01/12/2001
CHARGE 001-PRE-ARREST DIVERSION - CONTACT ORI FOR INFO-
PREARREST DEVERSION PROGRAM
STATUTE/ORDINANCE-FL985.3065 LEVEL-
JUDICIAL-
AGENCY-DADE COUNTY COURT (FL013053J)
CHARGE 001 -COURT SEQ COURT NO.-132001CJ0003610001XX
PROSC DATA-AMENDED ,LOITERING-
OR PROWL
STATUTE/ORDINANCE- LEVEL-MISDEMEANOR,2ND DEG
DISP DATE-04/12/2001 DISP-NO ACTION TAKEN

ARREST- 2 07/26/2003 OBTS NO.-1305061460
ARREST AGENCY-MIAMI-DADE POLICE DEPARTMENT (FL0130000)
AGENCY CASE-0763785 OFFENSE DATE-07/26/2003
CHARGE 001-COCAINE-POSSESS-
COCAINE POSSESSION
STATUTE/ORDINANCE-FL893.13(6A) LEVEL-FELONY ,3RD DEG
JUDICIAL-
AGENCY-11TH CIRCUIT COURT - MIAMI (FL013025J)
CHARGE 001 -COURT SEQ COURT NO.-132003CF0211760001XX
SUPPLEMENTAL ARREST DATA-
STATUS- LEVEL-FELONY ,3RD DEG
PROSC DATA- COCAINE-POSSESS-
COCAINE POSSESSION
STATUTE/ORDINANCE-FL893.13(6A) LEVEL-FELONY ,3RD DEG
STATUTE DESCRIPTN-CNTRL SUB WO PRESCRIPTION
DISP DATE-08/15/2003 DISP-N/A
COURT DATA-COCAINE-POSSESS-
COCAINE POSSESSION
STATUTE/ORDINANCE-FL893.13(6A) LEVEL-FELONY ,3RD DEG
STATUTE DESCRIPTN-CNTRL SUB WO PRESCRIPTION
DISP DATE-08/15/2003 DISP-ADJUDICATION WITHHEL
COUNSEL-PUBLIC TRIAL-NONE PLEA-GUILTY
SENT DATE-08/15/2003

ARREST- 3 12/08/2003 OBTS NO.-1303095398
ARREST AGENCY-MIAMI-DADE POLICE DEPARTMENT (FL0130000)
AGENCY CASE-0763785 OFFENSE DATE-07/26/2003
CHARGE 001-COCAINE-POSSESS-
AW COCAINE POSSESSION
STATUTE/ORDINANCE-FL893.13(6A) LEVEL-FELONY ,3RD DEG

ARREST- 4 04/17/2004 OBTS NO.-1302109152

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BH#9

Suzanne Jackson

From: Annette Rasco
Sent: Tuesday, April 03, 2012 2:03 PM
To: Veronica Sumbu; April McClellan; Rhonda Tice
Cc: Elyse Targ; Leah Klein; Suzanne Jackson; Adam Goodman
Subject: FELONY HOLD 4/3/12

Good afternoon,

Please be advised that during the Misdemeanor Bond Hearings, Judge Cannava issued a felony hold for the following defendant:

Marte, Pedro: F11-19077 (JudgeBrennan)
-New case: M12-13726 (battery)

A copy of the A-Form will be faxed shortly.

Please make arrangements for the felony case to be set on Judge Brennan's calendar as soon as possible for Bond review.

Thank you,

Annette M. Rasco
Assistant State Attorney
Misdemeanor Domestic Violence Unit, Div. 89
Lawson E. Thomas Courthouse Center
175 NW 1st Avenue, Ste. 2500
Miami, Florida 33128
E-mail: AnnetteRasco@MiamiSAO.com
Direct Line: 305-349-5892
Fax: 305-349-6038

Suzanne Jackson

From: Annette Rasco
Sent: Wednesday, February 08, 2012 12:51 PM
To: Kamilah Ragoo
Cc: Michael Williams; Christa (Jane) Anderson; Suzanne Jackson
Subject: Probable Cause Hearing 2/9/12 (HICKS, KRISTLE; M12-5133)

Kamilah,

This Division 88 case was re-set for a Probable cause hearing for 2/9/12. The A-Form did not contain enough testimony for probable cause.

Please send a Mandatory Notice for Officer to Appear as follows:

Officer
ID# 02-526 **Cosner, Steven**
Date: **Thursday, February 9, 2012**
Time: **10:45 AM**
Location: **Lawson E. Thomas Courthouse Center**
175 NW 1st Avenue, Miami FL 33128
Courtroom #: **2-A**

Special Instructions: Officer's must appear and bring copies of all Police Reports for this case because his testimony is required for a Probable Cause Hearing, and because the A-form did not contain enough testimony to conclude that the Defendant struck the Victim first. Sworn testimony is necessary for the court to find probable cause.

Please forward a copy of the Notice to Appear to my office, and I will include it in the case file.

Thanks,

Annette M. Rasco
Assistant State Attorney
Misdemeanor Domestic Violence Unit, Div. 87
Lawson E. Thomas Courthouse Center
175 NW 1st Avenue, Ste. 2500
Miami, Florida 33128
E-mail: AnnetteRasco@MiamiSAO.com
Direct Line: 305-349-5863
Fax: 305-349-6038

Suzanne Jackson

From: Elena Doyle
Sent: Thursday, May 24, 2012 11:56 AM
To: Daniel Faltas; Taminka Robertson
Cc: Suzanne Jackson; Adam Goodman
Subject: RE: 1 CASE RESET FOR 5/24 BOND HEARINGS

Taminka,

The following case went to Bonds today, but has been reset for tomorrow:

ADAMS, MARQUISE M12-21911 (CORRECTIONS COULDN'T FIND THE JAIL CARD)
BAILEY, LAURINSTON M12-21861 (D WAS AT FELONY BOND HEARINGS)

Please add a new file flap to the file and make sure that this file is included with tomorrow's Bonds cases.

Thank you!

Elena S. Doyle
Assistant State Attorney
Miami-Dade State Attorney's Office
Misdemeanor Domestic Crimes Unit
305-349-5861

Suzanne Jackson

From: Brian Meola
To: Nicholas Lacina; Natalie Maresma
CC: Suzanne Jackson; Adam Goodman
Subject: Weekend Bonds 6/2/12 Reset cases from DV

Nick and Natalie,

There were four cases that went to bonds today, but were reset for Saturday, 6/2/12, as the defendants were not brought over in time.

For all of the cases, I will provide you with a copy of the A-Form and CJIS priors. Please leave these documents with the rest of the DV A-forms at the conclusion of weekend bonds.

Please take the actions listed below:

Seraphin, Jefferson B12-23242
Defendant has 2 open felony cases both in front of Judge Colodny, F12-2565 and F12-2555B for Burg, crim mis, grand theft, resist w/o. Please request elevated bond.
Please obtain a Stay Away Order in favor of the victim, Casmir Seraphin
Brady: Father/Son
There is PC for the battery.

DEF: McKinnon, Rory M12-23211
Defendant has open felony cases, F12-13529 and F12-13532, Both with Judge Migna Sanchez-Llorens. Request a Felony Hold**
Also, he has 93 other priors, 63 of them are convictions, 35 are in the past 10 years. One of those Priors is a conviction with the same victim and he was sentenced to a year. I notated the priors sheet.
Please obtain a Stay Away Order in favor of the victim, Melissa Ortega
Brady: Cohab, BF/GF.
There is PC for battery.

DEF: Harvery Jr. Alvin M12-23275
Defendant has no local priors. Has out of county priors from NCICs. Disorderly conduct from Hillsborough, evidence tampering from Fort Meade, and withhold Child support from Polk. See NCICs.
Please obtain a Stay Away Order in favor of the victim, Yolanda Lee
Brady: BF/GF, Cohab
There is PC for battery.

Please proceed accordingly. Thank you.

Brian Meola
Assistant State Attorney
Misdemeanor Domestic Crimes Unit
175 N.W. 1st Avenue, Suite 2500
Miami, FL 33128
P: (305) 349-5898

BH#13

Suzanne Jackson

From: Suzanne Jackson
To: Maryam Adeyola;
CC: Elena Doyle; Adam Goodman
Subject: Def: John Paul Garrido F11-54123

Good morning Maryam,

The above defendant currently has an open case in your division, set for status on June 12, 2012. On May 31, 2012, this defendant was arrested and charged with one count of battery for an incident occurring on May 29, 2012 with his girlfriend Jessica Rizzoli under case number M12-54123. Judge Joseph Davis found PC for battery, but, over the State's objection, did not issue a felony hold for the defendant to appear before your Judge re: Bond Status.

Please reply with the appropriate fax number so that I may send over the A-form or other documents you may need in order to revoke the defendant's bond.

Thank you,

Suzanne Jackson
Division Chief
Misdemeanor Domestic Crimes Unit
175 N.W. 1st Avenue, Suite 2500
Miami, FL 33128

Suzanne Jackson

From: Jarret McNeill
Sent: Thursday, April 05, 2012 1:05 PM
To: Sonali N. Desai; Ayana Duncan; Karin Curtis; Elena Doyle; Audra L. Thomas; Daniel Faltas; Kehinde Ijaola; Christine Rhee; Annette Rasco; Michael Williams; Brian Meola; Cristina Cabrera
Cc: Suzanne Jackson
Subject: GPS

Judge Multack issued GPS for defendants in the following cases. If the case is yours, please contact the Victim to let them know about the condition, and see if there are any other addresses that need to be added.

DIVISION 87

McKay, Travis Lamont M12-14031
Tashenika Algeria Beamon
6224 NW 13 Court
Miami, FL 33147
No phone number on A-Form

DIVISION 88

Elam, Juan Leonardo M12-14121
Laura Delgado and Christian Evora
9253 SW 204 Terrace
Cutler Bay, FL 33189
Laura: (786) 283-2602
Christian: (786) 215-8216
(NOTE: Christian DOB: 04/11/1999. DCF Contacted.)

Moralez, Ignacio M12-14097
Destiny Moralez
1340 SW 8 Avenue
Florida City, FL 33034
(786) 728-3905
(NOTE: V is the Def's youngest daughter. A-form has no DOB, but DCF was contacted.)

Rodriguez, Luis M12-13898
Celeste Romero
445 NE 171st Street
North Miami Beach, FL 33162
(786) 600-8348

DIVISION 89

Bazart, Amed M12-13910
Chris Ann Mollicone
16244 SW 52 Terrace

ARRAIGNMENT CALENDAR

WHAT IS IT?

LEGALLY: An Arraignment (ARR) is a formal preliminary step for the defendant to answer to the charging document filed by the State. See Ex parte Jeffcoat, 109 Fla. 207 (1933).

PRACTICALLY: This is when the State lets the defendant know whether the State is filing formal charges in each case, what those charges are, and what the initial plea offer is. In its simplest form, ARR will proceed with the Judge calling defendants' names and the State making the following three announcements:

First, the State announces one of three things:

1. The State has filed an Information charging the Defendant with _____. (eg: one count of Battery)

2. The State is asking for a (provide the Judge with length of reset, i.e. *two week reset)* for filing decision. This Defendant is/is not eligible for PTD.

3. The State is taking "No Action" in case No. _____. (eg; M17-10176)

In response, the defense automatically enters a plea of Not Guilty, Demand a Jury Trial, demand Discovery, etc…

Second, the State files Initial Discovery with the Court and provides a copy to Defense Counsel.

Third, the State lets the defendant know the plea offer in the case. Generally, this happens in two different ways. Either a jail or probation plea is extended or the Pretrial Diversion Program is offered and we also ask for the Public Defender to be discharge. See two possible examples below:

1. PROBATION: At this time, the State is offering a W/H ADJ + 12MRP + 26 week B.I.P + Substance Abuse Assessment & MH Eval & Treatment if necessary + Mand Parenting + SAO

2. PTD plus ONI: At this time, the State is announcing that we are not seeking any jail time, therefore we are asking for the Court to enter an Order of Non-Incarceration and discharge the Public Defender. The State is offering the Pretrial Diversion Program + 26 week B.I.P. + Substance Abuse Assessment & MH Eval & Treatment if necessary + SAO

LOGISTICS OF ARRAIGNMENT CALENDAR

Division	ARR Day
87	Monday
88	Tuesday
89	Wednesday

Each division has a specified arraignment day. The division Arraignment Secretary will provide the ASA with his/her Arraignment files, in a box, alphabetized and marked ARR (with the appropriate date clearly marked on box) at least seventy-two (72) hours prior to the ARR Calendar.

ASAs must return their assigned arraignment cases to their division Arraignment secretary by 9:00 a.m. the day before the scheduled calendar date, in order to allow the secretary sufficient time to account for all cases set on the calendar. The Arraignment secretary will complete calendar preparations by 1:00 p.m. on the day before the calendar date. A setting sheet will also be included in the ARR box, to allow the ASA to determine the total amount of cases set for the particular Arraignment date and prepare any last-minute add-on cases. ASAs are responsible for consulting with Arraignment secretaries to locate any files listed on the setting sheet that may be missing from the arraignment box. Be sure to review with the ARR calendar provided to all ASAs by the ARR secretary to confirm all your cases are accounted.

The ASA will prepare all assigned files for Arraignment, take the files to the calendar, address the cases in court according to unit policies, and then return the box with the requisite secretary sheets to the Division secretary following the conclusion of the calendar and the completion of post-Arraignment procedures. ASAs must prepare secretary sheets as part of the preparation for Arraignment calendar, and return the files to the Division secretary by 3 p.m. on that day of the scheduled calendar.

Arraignment Deadline: ASAs must complete all required work for their assigned Arraignment cases one (1) full week ahead of each scheduled calendar. This means that ASAs must finish preparing upcoming Arraignment cases seven (7) full days prior to the actual date of the calendar.

I. ARRAIGNMENT CALENDAR PREPARATION

A. FILE ORGANIZATION:

1. The first step to preparing a file for Arraignment is to organize the case file.
2. When organizing case files ASAs must comport with the "File Organization Section" in the DV Unit Policy Guidelines. Each file should have 6 folders within it labeled accordingly
3. ASAs must check all previous file flaps for important notes regarding the procedural history of the cases as reflected in previous calendar settings.
4. ASAs must thoroughly review all of the documents contained in the file.

B. VICTIM CONTACT REQUIREMENTS PRIOR TO ARRAIGNMENT:

1. **Each ASA must either speak with the victim or make at least three (3) separate attempts to contact the victim prior to the arraignment date**.
2. When speaking with a victim prior to arraignment the ASA must discuss the facts of the case, whether the victim is willing to prosecute, seek approval for plea offers, investigate the existence of additional witnesses, as well as inform the victim of how criminal cases proceed.
3. **ASAs must include detailed case notes in each file regarding all attempts to contact victims, as well as actual conversations with the victims at this stage**. **Detailed notes must be entered in Hydra under CaseNotes and printed for the file.**
4. The victim's telephone number will appear on the back of the A-form (See Exhibit ARR# 1) and the OIR (See Exhibit ARR# 2), DVS, M.O.V.E.S. paperwork, Victim Data Sheet (See Exhibit ARR# 3A) or PFC notes. (See Exhibit ARR# 3C).
    a. If a victim's phone number does not appear on the Aform, look to see if there was an Auto track request made already, if not this may be a way to get a phone number for the victim.
    b. Be sure to check the comments section for notes from the support staff indicating whether an auto track request was made and what the outcome was. Or if there is another phone number that was already found on the auto-track.

C. CHARGING DECISIONS:

1. Check the inside of the file flap and/or Hydra for special instructions regarding the filing of charges from the Division Chief or Assistant Chief.
2. The ASA must determine the appropriate charging document. The two most common types of charging documents in Misdemeanor Domestic Violence are:
    a. Information: The State will prepare an Information in all cases pursuant to Rule 3.140. Rule 3.140(g) provides "…An information charging the commission of a misdemeanor shall be signed by the state attorney, or a designated assistant state attorney, under oath stating his or her good faith in instituting the prosecution…"
    b. Rule to Show Cause: This is the charging document for contempt charges. This is sometimes used to charge a defendant with a violation of an Injunction or Stay Away Order.
3. The ASA must also use due diligence in order to determine the appropriate charge (if any). To make this determination the ASA should review:
    a. The Bond Hearing probable cause determination
    b. The Victim Assessment Form
    c. The A-form
    d. Offense Incident Report (OIR)
    e. Domestic Violence Supplement (DVS)
    f. Photographs
    g. 911 tape
    h. Victim/witness statements
    i. Pre-file Conference (PFC) notes
    j. Case notes
    k. Emergency Medical Services Report (EMS)
    l. Written/taped statements by the defendant
    m. Written Miranda warnings

n. Any additional documents or information within the file.
o. Applicable statutes

4. Resetting Arraignments: It may be necessary to reset an arraignment case under the following circumstances:
    a. No PC was found at Bond Hearing and no sworn statements were taken prior to the arraignment date, in order to support a good faith filing of the charging document. ASA should review the file for sworn statements and if victims/witnesses were set for Pre File Conferences.
        i. The ASA should review "Subpoena Services" program to ensure witnesses have received service.
    b. An unclear charge alleging a violation of an Injunction or a Stay Away Order; for example an ASA should not file charges on an Injunction Violation case, without first obtaining actual proof of personal service of the injunction upon the defendant or obtaining some other evidence of the defendant's actual knowledge of the existence of the DV Injunction**.**
    c. Stalking and Obscene/Harassing Phone Calls cases in which a sworn statement of the victim/witnesses and phone records are necessary prior to the filing of a charging document.
    d. Mutual combatant cases when the determination of who was the primary aggressor has not been addressed during a PFC with the arresting officer(s).
    e. The nature of the incident is still unclear at the time of arraignment (e.g. Assault where the overt act has not been determined).
    f. If the defendant has an open felony, you may have to reset the case in order to give you an opportunity to consult with the ASA assigned to the felony case. The ASA must consult with felony ASA regarding any charges and plea offers.
    g. Please note: under Fla. Rule of Crim. Pro. 3.134 the State has "30 days from the date on which the defendant is arrested" to charge a defendant with a crime by Information, otherwise:
        i. With good cause, after the 33rd day in custody the State can request a reset until the 40th day of custody since the date of arrest.
        ii. If no good cause is shown and the State has not filed formal charges, then the defendant shall be automatically released on his or her own recognizance on the 33rd day.
        iii. Therefore, check if your defendant is in custody and whether 30 days have elapsed before resetting an arraignment case. If more that 30 days have passed and charges have not been filed, then you must consult the Assistant Chief or the Chief prior to the calendar date.

D. PREPARING BIND DOWN CASES:
1. Generally, Bind Down cases appear in blue files.
2. Defendants in these cases were originally arrested for felonies but the State filed misdemeanor offenses only and the case was transferred to Circuit Court for further proceedings.
3. Do not file an Information on these cases, because one has already been filed.
    a. However, you must review the filed Information for accuracy of Defendant's name, Victim's name, incident dates, and charges filed. Often the Information filed does not include the "aka" language for a battery. If so, amend the information to include the correct language.

b. Additionally, if you have an unsigned information, check CJIS to see if it is filed and if so, get a signed copy from the court file.
c. Include a copy of the Information with Discovery for defense counsel.

4. The following documents must be reviewed and organized when preparing Bind Downs cases for Arraignment calendar:
    a. Information that was filed when case was bound down
    b. Bind Down rationale and/or Bind Down memo
    c. The felony victim/witness data sheet (usually yellow in color).
    d. NCIC / FCIC reports
    e. Felony PFC notes
    f. Felony case notes by intake Paralegal and/or ASA
    g. Additional police reports (making sure to look for a detective supplemental report)
    h. Victim/witness subpoenas
5. Attach a Bind Down file information sheet to the back of the case file and fill out accordingly.
6. Prepare the file flap with all the notations required for arraignment cases.
7. A pretrial conference will be necessary with all victims, officers, and witnesses as soon as possible so that you may prepare them for trial. This will also give you an opportunity to introduce yourself in person as the attorney handling the case.

E. PREPARING DIRECT FILES:

1. Direct Files are cases that are generated directly from the State Attorney's Office after taking sworn testimony and gathering available evidence for complaining victims/witnesses.
2. Do not file an Information on these cases, because one has already been filed.
    a. However, you must review the filed Information for accuracy of Defendant's name, Victim's name, incident dates, and charges filed.
3. Check CJIS in order to verify the date when the Clerk's office issued a Summons to Appear to the defendant for the scheduled arraignment and notate the date of issuance on the file flap.
4. Check to court file to verify whether the defendant was personally served the Summons to Appear and notate the date of issuance on the file flap.
5. Prepare the file flap with all the notations required for arraignment cases.
6. Whenever you cannot verify that the defendant was personally served with the Summons prior to the scheduled arraignment date, then you must annotate the file flap to indicate that the State must request **a 3-week reset with a specific new arraignment date, if and only if the defendant fails to appear on the first hearing date.**
7. *(See additional instruction on in-court procedures for handling Direct Files on pg. 85)*

F. PREPARING THE INFORMATION (IN HYDRA):

1. Enter the Case Filing Decision (FM - Filed Misdemeanor)
   The Case Filing Decision is entered in the Main Case Information Screen - field FD
2. Enter extradition code "D" in the Extradite section in the Main Case Information Screen
3. In Charges, verify all charges are correct. When a case is downloaded from CJIS into Hydra, the case is created with the charges chosen by the officer at arrest. Make sure you add/modify this section based on the charges you intend to file or No Action.

4. Enter a filing decision for each charge.
5. Complete the charge form for filed charges.

6. Print, Sign, and Date the completed Information.
9. Get the completed Information notarized.
10. Make two additional copies of the completed Information.
    a. The original Information is the Court's copy (write Ct on the top right corner/front page)
    b. One copy is for the defense (write Δ on the top right corner/front page)
    c. One copy is for the State's file (write K on the top right corner/front page).
11. Write on the front of the file (under "results"), "Info:_____" (See Exhibit ARR# 5)

G. PREPARING DISCOVERY:

1. The arraignment secretary prepares the Discovery packets. There should be three packets in each file set for Arraignment:
    a. The Court's copy
    b. The Defense's copy (which has all discovery material attached)
    c. The State's copy
2. Review these Discovery packets. Information that is not discoverable should be redacted. This includes:
    a. The Victim/Witness personal information (phone number, cellular number, social security number), all of which must be redacted.
    b. **Pre-File Conference (PFC) notes are work product and should <u>never</u> be included in discovery materials.** However, any <u>Brady</u>, <u>Bagley</u> or <u>Giglio</u> material that appears in PFC notes must be turned over to the defense (see division CTA for explanation and procedure for turning over this discoverable information).
    c. PFC's are never to be recorded, or written where the witness signs it or adopts it.
    d. Anything that the witness says in the PFC that is MATERIAL and is not anywhere on the reports, MUST be turned over.

    EX: The Victim tells you at the PFC that the Defendant told her "You deserved to be hit" right after he battered her. This Defense Statement is not found anywhere in the reports. This statement is MATERIAL and MUST be turned over to Defense Counsel in an Amended Discovery Form, which would read as follows:

    > "The Victim (name of victim) will testify generally that at the time of the battery the Defendant stated that she deserved to be hit."

    EX: The Victim tells you at the PFC that she and the Defendant were arguing over what kind of toothpaste to buy, which led to the Defendant pushing her. The A-Form reads that the Defendant and Victim were in a verbal argument, which led to the Defendant pushing the Victim. What the Defendant and victim were arguing over (the toothpaste) is NOT material and need not be turned over. The Amended Discovery Form would read as follows:

"The Victim will testify generally as to the facts that are alleged in the reports."

3. Check the defense attorney's Discovery packet to make sure that all discoverable material that is listed is actually included, such as police reports, statements, copies of photos, injunctions, etc.
4. Make sure all of the appropriate boxes are checked off on all three Discovery packets, in order to reflect the materials that are actually being turned over.
5. Following a complete review of the Discovery packets, sign all 3 packets and make sure that the Certificate of Service reflects the appropriate attorney of record and date of the respective Arraignment calendar.

H. PREPARING THE FRONT OF THE FILE FOLDER:

1. Make sure that the following items are correctly listed and/or filled out on the front of the case file prior to Arraignment calendar:
    a. Case number
    b. Police case number
    c. Trial division
    d. Name of assigned ASA
    e. Defense attorney
    f. Names of all victims
    g. Arrest date (date of service of Summons for Direct File cases)
    h. Date of Expiration of Natural Speedy period (day 90)
    i. Case evaluation boxes
    j. Charges section (Indicating PC / NO PC for each count)
    k. Discovery boxes
    l. Jail Certified box (indicating whether an Order Certifying No Incarceration has been entered for the case)
    m. Pre-trial Diversion Eligibility box
    n. Stay Away Order box
    o. Excited Utterance box
        i. The excited utterance box should be split in half so that an ASA can indicate whether there is an EU on the 911 tape, as well as an on scene EU.
    p. Injury box
    q. Photos/ Video box
    r. Observed box
    s. Defense Admission box. If there is a defense admission ASAs should mark the box appropriately and indicate the source of the admission next to that box. Remember, an admission is not necessarily a confession, but something that may be used at trial.
    t. 33rd Day – The 33rd day for the case should be written on the upper left of the folder.

2. SETTING section of Arraignment file flaps should be annotated in the following order (See Exhibit ARR# 5):
    a. Date, type of calendar setting, scheduled hearing time, and courtroom number
    b. PRIORS: Defendant Priors (including whether D has priors including with the same victim and/or the defendant has other open cases)

c. REL: Relationship between the victim and the defendant
d. DVS: Victim's demeanor as indicated on Domestic Violence Supplement
e. 911: Indicate whether the 911 tape contains EU or Spontaneous Statement
f. OTHER EU: any EU statements other than 911 (e.g. screams for help heard by neighbor or officer)
g. INJURY: Type of injury sustained (if any)
h. PHOTOS: Photos with any type of injury (if any)
i. GOA: Whether the defendant was "gone on arrival" of law enforcement officers.
j. VIC: Results of Victim contact attempts and assessment of whether Victim is on board to prosecute the case
k. WIT: Results of Witness contacts and whether witness will testify
l. KO: State's Plea Offer pursuant to Plea Guidelines section

3. RESULTS section of Arraignment file flaps should be annotated in the following order (See Exhibit ARR# 5):
    a. WPNG (by private attorney or Public Defender) and date pleading was filed
        i. If there is no copy of the Written Plea in the case file, then check CJIS to verify and annotate the file accordingly
    b. Notate the date when the Information was filed – INFO: (DATE)
    c. Indicate whether the State will be requesting an Order of No Incarceration (if appropriate) – ONI:
    d. If an ONI will be requested, then indicate whether the State will request the Public Defender be Discharged – PDD:
    e. Notate a section for the date when Discovery will be provided to the defense at the Arraignment - DISCO:
    f. Notate a section for anticipated acceptance of Pre-trial Diversion by the defendant (if applicable) – PTD:

I. PREPARING SECRETARY SHEETS:
1. Determine which evidence materials must be obtained in order to fully prepare the case for trial, and fill out the secretary sheet accordingly. (See TRIAL PREPARATION CHECKLIST contained in the "Commonly Used Forms" section of the Domestic Violence Manual.)
2. Set pre-file (prior to filing of Information) and/or pre-trial (post-filing of Information) conferences for all victims, witnesses, and officers involved in the case, for dates prior to the next Arraignment or Sounding calendar, as applicable.
    a. **Each ASA must request the issuance of personal service subpoenas for all victims, civilian witnesses, and police officers who failed to appear to give a sworn statement at a pre-file conference (PFC).** This PFC should be set with the assigned ASA and not the division paralegal. Depending on the facts and circumstances of the case, a second attempt to personally serve victims, witnesses, and officers may be appropriate immediately following the first Arraignment calendar and/or prior to the first Sounding calendar.
        i. Consult the Assistant Chief or Division Chief if in doubt as to when to request subsequent personal service subpoenas.

3. **Secretary Sheets for all cases must be completed prior to scheduled Arraignment dates for each case**. **However, they are not given to the secretary until after the arraignment calendar.**

J. PREPARING A CASE INVOLVING A PLEA OFFER OF PRE-TRIAL DIVERSION:

1. Determine whether the defendant is Pre-Trial Diversion eligible. (*See* Plea Guidelines, and check the inside file flap and/or HYDRA for specific instructions from the Division Chief or Assistant Chief regarding PTD eligibility).
    a. Although at Bond Hearings the file may have been notated Pre-Trial Diversion eligible by the ASA handling the Bond hearing, there may be additional factors that would preclude the State from offering PTD at Arraignment. (Examples – further violence, violations of pre-trial conditions, medical reports or photographs suggesting extensive injury, etc.)
2. If the defendant is PTD eligible, fill out the PTD Referral Form and place it standing up in the "Defense" file folder with a copy of the A-Form.
    a. The ASA offering PTD must print his/her name below Assistant State Attorney signature line on the form.
3. Determine whether the State should request an Order Certifying No Incarceration (ONI).
    a. The effect of an Order Certifying No Incarceration being issued is that the defendant cannot be sentenced to jail under this case number (only probation and/or fine), even if convicted at trial. It also means that if the defendant is sentenced to probation and violates said probation, he/she does not face jail time. Conversely, because the defendant is not facing jail, the defendant is not entitled to the services of the Public Defender (although the judge has the discretion to allow the Public Defender to continue representing the defendant pursuant to Rule 3.111(b)(1)(A)).
    b. Even if the State determines that the defendant is PTD eligible and will request an ONI at Arraignment, an Information and all Discovery packets must be prepared because the defendant may reject PTD.
4. If PTD is to be offered at Arraignment write on the file (under "setting") KO: PTD: (including all applicable conditions).
5. If the State is requesting an Order Certifying No Incarceration at Arraignment write on the file (under "Setting") "Request ONI."
6. If an ASA offers Mandatory Substance Assessment and Treatment as part of a PTD offer, then the ASA must also include Domestic Violence Drug Court Calendar (DVDC) as a special condition of the program.

K. PREPARING A CASE INVOLVING A PTD BOUNCE-OUT:

1. If a case is set on the Arraignment calendar after the defendant was "bounced-out" of the Pre-trial Diversion program, then the ASA must review the PTD Revoke Memo and determine why the defendant was revoked from the program.
    a. If necessary, the ASA must contact the Advocate Program directly to determine why the defendant was revoked from the program and whether the defendant is eligible for re-enroll. However, remember the Advocate's recommendation is only one part of the decision-making process when deciding if the defendant is eligible for re-enroll.

2. If the issue is "fee only," meaning that the defendant only owes program-related fees, then the State must request that the case be reset on the next available Judicial Review Calendar in three (3) weeks, to allow the defendant to pay the pending fees to the Advocate Program.
    a. If the defendant fails to pay within the three-week period, then the case will set for Arraignment and the prosecution of the case will resume as usual.
3. If the defendant has been revoked for any reason other than unpaid fees, then the case should prepared for Arraignment as described in this section. At Arraignment, the State should inform the Court that this case is a PTD bounce out and request Sounding and Trial dates.

II. MOTIONS CALENDAR PREPARATION

A. PREPARING MOTIONS THAT THE STATE SHOULD FILE AT ARRAIGNMENT. Determine whether or not any Motions should be filed by the State at the Arraignment calendar and prepare these motions in accordance with applicable rules and case law. The following list represents motions that are commonly filed at the time of arraignment:

1. **Notice of Intent to Rely on Evidence of Other Crimes – Williams Rule**
    a. Fla. Stat § 90.404(2)(a) addresses "Williams Rule" evidence. ASAs must first determine whether a notice pursuant to § 90.404(2)(a) is appropriate in the case, by assessing whether the evidence of the defendant's prior bad acts is relevant to prove any of the following:
        1. Motive
        2. Opportunity
        3. Intent
        4. Preparation or Plan
        5. Knowledge
        6. Identity
        7. Lack of Mistake or Accident
    b. Check the defendant's priors (regardless of the disposition), all the reports, and the Pre-File Conference (PFC) notes. If there is evidence of past violence involving the same Victim, you should be filing this notice, after ascertaining and reviewing the facts of the previous incident(s).
    c. If the evidence of past violence was reported and the defendant was arrested, request the file for the previous case by completing a Secretary Sheet with the appropriate case information. If the past violence was reported to the police, but the defendant was not arrested, complete a Secretary Sheet and request copies of the relevant police reports.
    d. Fla. Stat § 90.404(2)(c)(1) requires that the State, when it intends to offer evidence of other criminal acts, file a notice "no fewer than 10 days before trial". This notice can be located in your computer under FORMS/LEGAL NOTICES.
    e. Provide full discovery at Arraignment with respect to any Williams Rule evidence, if such evidence is available at that time.

2. **Request for Compulsory Judicial Notice.** Determine whether a Request for Compulsory Judicial Notice is appropriate pursuant to Fla. Stat § 90.202 and/or § 90.203.
    a. In an Injunction Violation or Stay Away Order Violation case, requests for compulsory judicial notice should be filed, asking that the court take judicial notice

of the case number and date on which the Injunction or Stay Away Order was issued.

b. The templates for these requests can be located in the network drive under FORMS/LEGAL NOTICES.

3. **Motion to Modify/Revoke Bond**

If the defendant was arrested on a new charge, the defendant violated the Stay Away Order or there has been a change in circumstances since the time the defendant was at the initial Bond hearing, then the ASA assigned to the case must file a Motion to Modify/Revoke Bond.

a. Pursuant to Fla.R.Crim.P. 3.131(d)(2), the State may seek to revoke the Defendant's bond when there is "good cause." Although not defined within the Rules, the State demonstrates "good cause," where probable cause has been found that the Defendant committed another crime while on pretrial release. See Perry v. State, 842 So.2d 301, 302 (Fla. 5th DCA 2003). The State can also show "good cause" for bond revocation by providing the court with "information not made known to the first appearance judge." See Keane v. Cochran, 614, So.2d 1186, 1187 (Fla. 4th DCA 1993); Calixtro v. McCray, 858 So.2d 1079, 1080 (Fla. 3d DCA 2003) (approving the Fourth District Court of Appeals' formulation of "good cause").

b. Essentially, the State may file a motion to revoke a Defendant's bond, when the Defendant violates a condition of pre-trial release (e.g., arrest for new offense, violation of Stay Away Order, failure to surrender weapons/concealed weapons permit, etc.) or the State files additional charges against the Defendant under a pending case.

c. Pursuant to Fla.Stat.S. 903.02(2) and Rule 3.131(d)(1), either the judge who set the original bond or the judge who is assigned for the trial of the case, has the legal authority to litigate a motion to modify bond. This limitation is meant to prevent forum shopping.

d. Fla.R.Crim.P. 3.131(d) (2) also provides that at least three (3) hours notice must be given to the defense prior to a hearing on the State's motion to modify bond.

   i. A Defendant's presence in court is not required when litigating a State's Motion to Revoke Bond.

   ii. However, the Defendant's presence is required when litigating a Defense Motion to Reduce Bond. See Rule 3.131.

e. Whenever possible, a State's Motion to Modify Bond must be filed, set on calendar, and litigated by the ASA assigned to the case. Furthermore, the Motion should be set for hearing before the assigned Division Judge.

   i. If the assigned ASA is unavailable to litigate the Motion to Modify Bond, then the ASA assigned to the Arraignment calendar should litigate the Motion after consulting the ASA assigned to the case.

   ii. However, if special issues exist and the assigned ASA is not available, the Motion should be reset on the Division Judge's next available calendar for a hearing.

   iii. Nonetheless, all ASAs assigned to the Arraignment calendar must be prepared to argue any Motion to Modify Bond filed by the State or the defense.

f. The ASA should attach a proposed Order to the Motion for the Judge hearing the Motion to sign. (See Exhibit ARR #14A/B).
g. If the motion to modify bond is based on the defendant picking up a new substantive charge or reported incidents, then the ASA must attach a copy of the A-Form for the defendant's new arrest with the motion or relevant police reports.

4. **Notice of Intent to Rely on Business Records.** In cases where the State intends to rely on the authenticity of documents through business records (usually stalking or threatening and harassing phone call cases where the State uses phone records), under Florida Statutes Section 90.803(6)(a) the State may:
   a. Obtain an Affidavit or Certification from the Records Custodian certifying that the records are produced and kept in the course of regularly conducted business activity. See Florida Statute Section 90.803(6)(a). (See Exhibit ARR #16).
   b. File a Notice of Intent to Rely Upon Business Records pursuant to the Florida Statute Sections 90.803(6)(a)&(c). (See Exhibit ARR #15).
   c. Attach a copy of the Affidavit or Certification to the Notice filed with the court.

B. PREPARE FOR DEFENSE MOTIONS. Any proper motion pursuant to the Rules of Florida Criminal Procedure may be heard at an Arraignment or any other criminal calendar. Several of the most common motions are discussed below:

1. **Motion to Modify Stay Away Order.** This motion is usually filed by a Victim who wishes to have non-violent contact with a Defendant who has a pending criminal case. The Victim requesting a modification of a Stay Away Order **must** be present in court and give sworn testimony in support of the request. When the Victim appears in court check identification, and ask the Victim the reasons for the request to have contact with the Defendant. Then inform the Victim that the presiding judge will make the ultimate ruling after questioning the Victim under oath, but the State will object to any modification based on specific factors pertaining to the case (e.g., Defendant's prior criminal history, severity and recency of incident, involvement of children in the incident, etc.). When the case is called at the hearing, inform the Court that the Victim is present and would like to modify the Stay Away Order. The court will make the required inquiry, and the State should make all appropriate arguments objections against the modification. Notate the file to reflect whether the Stay Away Order was modified. (See Exhibit ARR # 9)

2. **Procedure for Preparing Demands for Speedy Trial**. When a Demand for Speedy Trial (Demand) is properly filed pursuant to Rule 3.191(b), the State must take the following actions:
   a. Pursuant to Fla.R.Crim.P. 3.191 a Demand for Speedy trial cannot be filed until an Information or an Indictment is filed. Thus, the ASA should first determine whether an Information has been filed for the particular case and when it was filed. If an Information has not been filed, then the ASA must make an Ore Tenus (oral) Motion to Strike the Demand as untimely.
   b. If the Demand is properly filed, the ASA must identify the date that the Demand was filed and notate this information of the file flap. (See Exhibit ARR # 11).

c. Calculate the corresponding 50th day by using the charts found in the network drive (Public Files/SAODOCS/Speedy Calendars/Day 50). Each ASA is responsible for determining the actual 50th day for cases in which Demands have been filed.
d. Notate the corresponding 50th Day on the file flap. (See Exhibit ARR # 11).
e. Notate on the file flap the current Sounding and Trial dates for the case. (See Exhibit ARR # 11).
f. Notate on the file flap that the "Demand is Noted" by the State. (See Exhibit ARR # 11).
g. Determine whether the State must ask for alternate Sounding and Trial dates, in order to make sure that the State has sufficient time to prepare the case for trial prior to the expiration of the 50-day Speedy Demand period.
    i. If new Sounding and Trial dates are needed for the case, notate "Get New Dates" on the file flap. (See Exhibit ARR # 11).
    ii. If possible, identify appropriate Sounding and Trial dates for the case based on its respective trial division and notate those dates on the file flap, in order to ask the court to assign such dates to the case. (See Exhibit ARR # 11).

3. **Procedure for Preparing Notices of Expiration**. When a Notice of Expiration is filed pursuant to Fla.R.Crim.P. 3.191(h), and the case appears on the Arraignment calendar:
    a. Determine whether the NOE is "Well Taken."
        i. First verify that the speedy trial period for the case has actually expired.
        ii. Verify that there have been no defense continuances or delays attributable to the defense, which may have tolled/waived the speedy trial period for the case; consult the Assistant Chief or Division Chief if necessary.
            1. Examples of delays attributable to the defense are:
                a. Defense continuances charged by the court
                b. Issuance of warrants for Defendant's arrest for failure to appear at required court dates or for Revocations of Bond
                c. Transfer of the case on the Mental Health Track with cancellation of Sounding and Trial dates
        iii. Verify whether the NOE was filed on or after the 51st day or 91st day, depending on the respective speedy trial period for the case (e.g., natural speedies or demand speedies).
        iv. If the NOE was timely filed and speedies have not been waived, then the NOE is "Well Taken" and this information must be noted on the file flap. (See Exhibit ARR # 12).
        v. If the NOE is not "Well Taken," the ASA must request that the NOE be "Stricken" and provide all appropriate arguments.
    b. If the NOE was properly filed, then notate the date that it was filed on the file flap (See Exhibit ARR # 12).Then the ASA must calculate the 5th day from the date of filing; the hearing on the NOE must be heard by the 5th day. From the date the court addresses whether the NOE is well taken, the ASA must calculate 10 days for the last triable day.
        i. When calculating the 15th day refer to Fla.R.Crim.P. 3.040 for the legal method to use when computing time periods involving Saturdays, Sundays, and legal holidays.

c. Notate the 5th and 10th days on the file flap, and double-check the calculation for accuracy. (See Exhibit ARR # 12).
d. Identify and notate on the file flap the current Sounding and Trial dates for the case. (See Exhibit ARR # 12).
e. Notate whether the NOE is "Well Taken" or "Not Well Taken" on the file flap. (See Exhibit ARR # 12).
f. Request that the case be set on the next available trial calendar, in the appropriate division, within the recapture period, and with at least 5 business days prior to the Trial date to allow the State sufficient time to send out subpoenas to all witnesses.
g. Remember that the Speedy Trial Period begins on the date of defendant's arrest on the charges, not the date of the charged incident.
    i. The Incident date and Arrest date dates may be different, and they appear on different locations on the A-Form. (See Exhibit ARR # 13).
    ii. For Direct Filed cases the Speedy Trial Period begins on the date that the Defendant is served with the Summons to Appear at Arraignment.
    iii. Pay special attention to Bind Down cases. If there was a waiver of the speedy trial period or a delay attributable to the defense while the case was still in the Circuit Court, the speedies are waived at the County Court level.
h. Run a CJIS docket inquiry under the original felony case number to check for any speedy waivers.

4. **Motion to Set Aside Bench Warrant.** If a particular Defendant places a case on the calendar and moves the court to set aside, quash, or vacate any type of legally issued warrant, ASAs must:
    a. Review the procedural history of the case and notate on the file flap the type of warrant issued, the date that the warrant was issued, the amount of the warrant, and the reasons for the issuance of the warrant.
    b. Notate on the file flap how many previous warrants (if any) have been issued for the Defendant during the pendency of the case.
    c. Unless the defense provides a legal basis for setting aside a legally-issued warrant, the State must object to the court setting aside the warrant.
    d. The State must also request that the Defendant be taken into custody on the warrant and that the bond be set in the amount reflected on the warrant.
    e. If the warrant is set aside by the court, the State must inquire as to whether the court is reinstating the Defendant's original bond, and setting aside the bond estreature that was ordered when the warrant was legally issued.
    f. If there is a question regarding a Surety's willingness to remain liable for the Defendant after the original bond that was estreated, then the State must ask the court to keep the warrant outstanding pending the appearance of the Surety to unequivocally indicate that it continues to accept responsibility for the Defendant's appearance.
    g. The defense should be given 24 hours to provide written proof or in-court testimony regarding the Surety's willingness to keep the Defendant on the original bond.
    h. If the Surety does not remain liable on the original bond, the State must request that the Defendant be taken into custody based on the warrant and that an appropriate bond be set.

i. Whether or not a warrant is set aside, the State must ask the presiding judge to indicate in the court file that a Defense Continuance is charged as of the date that the warrant was issued, because this is a delay of the trial process which is directly attributable to the defense.
j. The State must also make sure that the judge strikes any Demands for Speedy Trial and Notices of Expiration that were filed prior to the issuance of the warrant, prior to the setting aside of the warrant, or prior to the Defendant being taken into custody on the warrant.
k. After litigating all issues pertaining to a legally-issued warrant, the State must request that the case be set for the next appropriate calendar setting (e.g., ARR, SND, Trial, etc.).

5. **Motion to Modify/Reduce Bond.** If the defense files a defense Motion to Reduce Bond and it is set on the Arraignment calendar, the ASA assigned to the calendar must review the defense motion prior to litigating the issue.
    a. If the defense makes a motion in court seeking to modify/remove a condition of bail or reduce the amount of original bond, the State must object if the motion does not meet the statutory and legal requirements. (Fla. Stat.S. 903 addresses "bail" and "bonds.")
    b. A copy of a defense motion may not have been provided to the State prior to the hearing date, or the motion will be made orally in open court.
    c. Prior to the Arraignment calendar, the ASA must review the file and ascertain the procedural history of the case. The ASA must be prepared to make appropriate arguments as to why the Defendant's bond should not be reduced.
    d. If the State has not had adequate time to review the defense motion, because a copy was not provided in a timely fashion, or the motion is made orally in court, or the Defendant is not present, then the ASA must request that the case be reset for hearing on the Division Judge's next available motions calendar.
    e. The State shall never agree to litigate an Oral Motion to Reduce a Defendant's bond. The ASA must object to such a motion and request that the defense file a legally sufficient motion with proper notice pursuant to Rule 3.131.

6. **Motions Pertaining to Setting Aside Bail/Bond Estreature.**
    a. ASAs must review motions involving Bond Estreatures carefully, in order to determine exactly which party is asking for what relief regarding the bond estreature. Remember the Surety's attorney is not the defendant's attorney. Be sure that the relief being requested by the moving party is allowed pursuant to Fla.Stat.S. 903 and applicable case law.
    b. Generally, if the case has been dismissed (Nolle Prosse or No Action] and the Motion to Set Aside a Bond Estreature is legally sufficient and meritorious, then the State will not object to the court setting aside the estreature and allowing the Surety to get its money back.

7. **Motion to Seal and/or Expunge Record**.
    a. Check CJIS in order to ascertain whether the case has been closed.
    b. Review the court file to verify that the Florida Department of Law Enforcement has issued a certificate authorizing the expungement/sealing of the defendant's record.

c. This certificate is generally issued after the defendant has completed all required forms, paid fees, and the designated representative from the State Attorney's Office (e.g., Division Chief) has signed off on the defendant's application.
d. When the judge asks the State about the Motion to Seal and/or Expunge, the State should respond:
    i. As long as the **seal is raised** and the **paperwork in order**, no objection from the State.

8. **C-4 Motion (Fla.R.Crim.P. 3.190(c)(4))/Motion to Dismiss**. **Motions to Dismiss must be handled by the ASA assigned to the case.** Pursuant to Fla.R.Crim.P. 3.190(d) a traverse or demurrer "shall be filed [in] a reasonable time before the hearing on the motion to dismiss."
    a. If a C-4 Motion appears on the Arraignment calendar, obtain a copy of the motion and ask that the case be reset for hearing in at least two-weeks in front of the Division Judge.
    b. At the conclusion of the Arraignment calendar send an e-mail to the assigned ASA (CC: the respective CTA, the Assistant Chief, and the Division Chief), including the Defendant's name, case number, and inform them that a C-4 Motion has been filed and the date of the scheduled hearing. Place a copy of the e-mail in the case file.
    c. The ASA assigned to a case in which a C-4 Motion to Dismiss is filed must confer with the Assistant Chief or Division Chief to receive instructions on how to proceed prior to the scheduled hearing date for litigation of the motion.

9. **Motion to Proceed in Abstentia (**Fla.R.Crim.P. 3.180(d))
    a. Persons prosecuted for misdemeanors may, at their own request, with leave of court, be excused from attendance at any or all of the proceedings mentioned in Fla.R.Crim.P. 3.180(a).
    b. However, if a defendant files such a motion, the ASA assigned to the case **must request that the defendant provide a written stipulation conceding to identification of the defendant** as the person charged in the case for the State to use at trial.

10. **Motion to Travel - See Assistant Chief or Division Chief for instructions on how to handle.**
    In general, if defense counsel provides dates of travel for the defendant and documentation, the State will generally not object **if there are not special circumstances.**

11. **Motion to Modify Pre-Trial Services (PTS)**
    a. Review the file in order to determine if there have been any previous bench warrants and/or arrest warrants.
    b. Determine if the motion complies with Fla.R.Crim.P. 3.131 & 3.132.
    c. If the defendant demonstrates a history of failure to comply with court orders or of having warrants issued against his arrest, then the State should object to the modification of PTS.

12. **Motion to Return Property**. If an impounded item can be construed as a weapon, is a firearm and/or is contraband, the proper procedure to return such property to its legal owner after the resolution of a criminal case is as follows:
    a. Once evidence is impounded as part of a criminal case and the prosecution has concluded (e.g., plea, Nolle Prosse, No Action, verdict), the Police departments will not release evidence to the legal owner without court order.
    b. The person seeking return of seized property must first file a written Motion for Return of Property. The motion must be timely filed, with legally-sufficient notice to the State and the respective police department. See Metropolitan Dade County v. Curry, 632 So.2d 667 (3rd DCA 1994) (Dade County did not receive notice of the hearing on the Motion for Return of Property. An order entered without notice or opportunity to be heard is a void order).
    c. Upon receipt of a Motion for Return of Property, the assigned ASA must determine whether the motion is legally sufficient.
        i. To be facially sufficient, a Motion for the Return of Property must allege that:
            1. the property at issue was the movant's personal property
            2. the property is not the fruit of criminal activity
            3. the property is not being held as evidence
        ii. Implied in this standard is the requirement that the Defendant must specifically identify the property at issue. Eight Hundred Inc. v. State, 895 So.2d 1185 (5th DCA 2005).
    d. If the motion is filed in court, the ASA should request a 3-week reset to have adequate time to review it and respond appropriately.
    e. The ASA should review the motion and be prepared to address the following issues with the Assistant Chief or Division Chief: facts of the underlying case, the circumstances under which the property was impounded, the disposition of the case, and the reasons for disposition.
    f. The ASA must verify whether the defendant has prior convictions for domestic violence offenses, is a convicted felon, has an open criminal case, or is the Respondent on an active Injunction.
    g. For motions involving a firearm, the ASA must review the Police Property Receipt to confirm that the identifying serial number listed on the motion and proof of ownership corresponds to the firearm that was impounded.
    h. The ASA must contact all appropriate parties at the respective Police department to determine the following:
        i. If the department has received notice of the motion
        ii. What is the department's position on the request for return of the property at issue
        iii. Whether the property being held is evidence in another criminal investigation
        iv. If the agency has any reason to object to the return of property
    i. The State will object to the return of any impounded property if there is a legal basis.

13. **Rule 3.850 Motions to Vacate a Plea, Judgment, or Sentence**

a. If the defense has filed a Motion to Vacate based on Fla.R.Crim.P. 3.850, the ASA handling the case in court must obtain a copy of the motion and request a 30-day reset for a Status Hearing, in order to determine how to properly respond to the motion.
    i. If the judge is unwilling to reset the hearing for a Rule 3.850 Motion, the in-court ASA must ask the judge for a recess in order to contact the Assistant Chief or Division Chief.
    ii. If the ASA is unable to contact the Assistant Chief or Division Chief, and the judge summarily grants the motion without allowing the State time to provide a written response, the ASA must object, and immediately order a transcript of the hearing from the court reporter present in court during the hearing. Should this occur, the ASA must bring this matter to the attention of the Assistant Chief or Division Chief immediately after the conclusion of the calendar.
b. If a Motion to Vacate case is reset for a future hearing, the ASA must send an e-mail to the ASA assigned to the case (CC: the respective CTA, the Assistant Chief, and the Division Chief), including the Defendant's name, case number, and inform them that a Motion to Vacate has been filed and the date of the scheduled hearing. Place a copy of the Motion and the e-mail in the case file.
c. The ASA assigned to the case must review the Motion to Vacate and Fla.R.Crim.P. 3.850, and then consult the Assistant Chief or the Division Chief to receive instructions on how to proceed prior to the next scheduled court date.
d. The State should never agree to provide a written response to a Motion to Vacate without first reviewing the Motion with the Assistant Chief or the Division Chief.
e. A Motion to Vacate a Plea should never be litigated at the first hearing after it was filed, especially if the State has not had sufficient time to review and research the issues involved in the motion.
f. ASAs cannot agree to Vacate a Plea without the prior approval of either the Division Chief or Assistant Chief or prosecutors of the SAO Legal Division.
g. If a case involving a Motion to Vacate is not the State's file, the ASA must contact the defense attorney and request that a copy be faxed to the ASA.
h. If the 3.850 Motion is based on State v. Green, 944 So.2d 208 (Fla. 2006), claim alleging the court's failure to advise the defendant of the deportation consequences of his plea, ASAs must follow all procedures described above.

14. **Motion to Correct, Reduce and/or Modify Sentence**.
    a. Pursuant to Fla.R.Crim.P. 3.800(a), the court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it, or a sentence that does not grant proper credit for time served.
    b. Pursuant to Fla.R.Crim.P. 3.800(c), the court may reduce or modify a sentence to include any of the provisions of Fla.Stat.S. 948 (Probation Statute), as part of a legal sentence imposed by it within sixty (60) days of the original sentence.

15. **Motion to Dismiss/Immunity Defense (Stand Your Ground) - See Division Chief or Assistant Chief for instructions on how to handle**
16. **Motion to Transfer to County Crimes - See Division Chief or Assistant Chief for instructions on how to handle.**

Cases should be reviewed for a domestic relationship. Should the case not have a domestic relationship, the ASA should request to transfer the case to County Crimes and prepare a Transfer Memo. The ASA assigned to the case must have the memo prepared prior to court. Upon return from calendar, the case should immediately be given to the Division Chief that same day.

III. ARRAIGNMENT CALENDAR PROCEDURES

1. Prior to going to calendar, insure that Discovery, PTD forms (if applicable) with a copy of the A-Form and the Information is standing up in files, as appropriate.
2. Before the calendar starts, file any charging documents and motions that have not been filed ahead of the Arraignment calendar.
3. The Judge will call the cases by the name of the defendant.
4. Once the Judge calls a case and the defendant is present or the defense attorney has filed a Notice of Appearance and written plea, the State should inform the Court whether an Information has been filed and what the charges are by stating, "the State filed an Information on (date of filing) charging the defendant with one count of Battery and one count of Assault."
5. If the defendant has failed to appear and his attorney has not filed a Notice of Appearance and written plea, then the State should inquire from the Court if the defendant received "good and timely notice."
    a. If the defendant has received the required notice to appear for arraignment, then the ASA must ask the court to issue a Bench Warrant due to defendant's failure to appear.
    b. If the defendant has not received the required notice, the ASA must request that the arraignment be reset in two (2) weeks, with notice to the defendant, in order to properly arraign the defendant.
6. Write the date the Information was filed in the line next to "Info:" (under "results") (See Exhibit ARR# 6, 6A & 6B)
7. If applicable, the State should announce whether Pre-Trial Diversion (PTD) is being offered, and when appropriate request an Order of No Incarceration (ONI).
    a. If the ONI is entered, as it is a matter of Court discretion, the State must request that the Public Defender be discharged from the case (PDD).
    b. Moreover, if the Public Defender is discharged and the defendant is not present at the hearing, then the State must request that the Arraignment be reset in two (2) weeks with notice to the defendant, in order to properly arraign the defendant.
    c. If the defendant does not appear at the following arraignment calendar and good and timely notice was sent by the clerk's office to the defendant, the State must request a bench warrant.
8. If the defendant accepts PTD:
    a. Write the date of acceptance on the line next to "PTD:" under the "Results" section of the file flap. (See Exhibit ARR# 7)
    b. Remember not to annotate PTD with brackets, because a PTD case is not closed until all the conditions are satisfied.
    c. If the defendant rejects PTD, write "ΔP, PTD Rejected" on the line next to "PTD:" under the "Results: section of the file flap. (See Exhibit ARR# 8)
9. If the defendants rejects PTD:
    a. The State should file initial discovery with the Court and provide a copy to the pro se defendant.

10. If the defendant is not PTD eligible, the defendant or defense attorney will announce their plea of not guilty, demand discovery and a trial by jury.
    a. Based on the announcement by the defense, the ASA must write "ΔPNG, DD, JT". This is an abbreviation for "Defendant Plead Not Guilty, Demands Discovery and Jury Trial."
    b. If the defendant is in custody, a trial date will be provided by the court, and it should be written on the file flap as "SFT (date)". (See Exhibit ARR# 8)
11. Give the defense and the Clerks their respective copies of Discovery packets and announce, "Filing discovery with the court and providing a copy to defense counsel in court."
12. Write the date that Discovery is actually provided on the line next to "Disco:" under "Results" section of the file flap. (See Exhibit ARR# 6).
13. If Discovery is provided to a Pro Se defendant, write "DIC to Δ" (this means Discovery in court to defendant).
14. A defense attorney may make an oral Motion to Compel at this point.
    a. Object if the Court grants any Motion to Compel because Rule 3.220 (b)(1) states that the prosecution has 15 days to provide Discovery after formal charges and a Notice of Discovery have been filed.
    b. Nevertheless, notate the file with "MTC:" indicating motion to compel, and then list the discovery materials that the court has ordered the State to produce. The ASA should also annotate the file to indicate how much time the court gives the State to produce the discovery.
15. The Victim may be present at Arraignment.
    a. If the Victim is present, first check identification.
    b. Speak to the Victim about the arraignment hearing (generally a paralegal will be present to assist you).
    c. Confirm the Victim's current contact information, including telephone number(s) and address(es).
    d. If the Victim wants to modify the Stay Away Order, discuss the reasons why State will object.
        i. Inform the Court that the Victim is present and would like to modify the Stay Away Order.
        ii. Make the appropriate arguments and object. Notate the file accordingly. (See Exhibit ARR# 9).

16. BIND DOWN CASES
    a. Make sure a misdemeanor Stay Away Order is issued when the defendant is present to receive notice.
    b. If the defendant is not present, the case must be reset with notice to the defendant for a date prior to the Sounding date, to allow the court to inform the defendant of the conditions of the Stay Away Order.
    c. ASAs should make sure that an appropriate bond was set when the case was bound down from Circuit Court.
    d. If a bond has not been set, ASAs must request that the defendant be taken into custody and a bond issued commensurate to the filed charges.

17. DIRECT FILE CASES
    a. **If the defendant is *not* present,** verify with the clerk that the defendant was served with the Summons to Appear. If the Defendant was not served with the Summons, then reset the case for proper service in four (4) weeks and request a specific date for the new arraignment hearing.
        i. After the case has been reset at least once and the State has obtained an unserved Summons showing/indicating diligent efforts to locate the defendant for purposes of service, then the State must request that an Arrest Warrant (not a Bench Warrant) pursuant to Florida Statute § 901.02.
        ii. Prior to requesting an Arrest Warrant, the ASA should subpoena the Victim to appear at the next arraignment hearing, in order to provide sworn testimony as required by Florida Statute § 901.02.
        iii. Florida Statute § 901.02 allows the Court to issue an Arrest Warrant, when:
            1. A complaint has been filed, charging the commission of a misdemeanor only.
            2. The summons issued to the defendant has been returned unserved.
                a. This means that, if the State shows the court that a Summons has been returned after unsuccessful attempts at personal service upon the defendant, then the State can ask the court to issue an Arrest Warrant.
            3. The Court's examination of the Victim and Witnesses leads the Court to reasonably believe that the person complained against has committed an offense within the trial court judge's jurisdiction.
            4. If the court declines to issue an Arrest Warrant, notate the file and consult the Division Chief or Assistant-Chief at the conclusion of Arraignment calendar.
    b. **If the Defendant was *personally served* with the Summons and *failed to appear*** for the arraignment, the State must ask that an Arrest Warrant be issued.
    c. **If the Defendant *is* present for the arraignment**:
        i. Follow normal arraignment calendar procedures supra.
        ii. If the Victim is present for the Arraignment, ask the court to take her sworn testimony for the purpose of finding probable cause to take the defendant into custody on the filed charges.
        iii. If probable cause is found by the judge, then the State must ask that the defendant be taken into custody and an appropriate bond be set.
        iv. If the Victim is not present to provide sworn testimony for probable cause purposes, then the State should stipulate to the defendant being released on his own recognizance (ROR).
        v. Always make sure that a Stay Away Order is issued in favor of the Victim.
18. After properly notating the file, place it facing backwards in the back of the box.

II. POST-ARRAIGNMENT CALENDAR PROCEDURES

After the Arraignment calendar ASAs must:

1. Return the Arraignment files to the assigned ASAs.
2. Review the information written on the "Results" side of the file flap, to ascertain what occurred in court.

3. Verify whether PFCs/PTCs listed on previously-prepared Secretary Sheets are still necessary (e.g. victim showed up at Arraignment and a statement was taken or defendant accepted PTD).
    a. Amend the Secretary Sheet accordingly.
    b. Even if the defendant accepts Pre-Trial Diversion (PTD), the 911 tape and any missing Discovery materials must be ordered following Arraignment calendar.
4. Notate the discovery check boxes to reflect all materials that were turned over to the defense at Arraignment. Write the letters "ARR" in the "Out" column if the item was provided in court as part of original discovery. If the item is mailed, notate the date it was sent in the "Out" column. (See Exhibit ARR# 10)
5. Direct Files: If the case was reset for Arraignment because the defendant was not served:
    a. Send an e-mail to the division trial secretary (CC: to the Assistant Chief, the Division Chief and Regina Johnson.
        i. The e-mail should advise that the case is a Direct File and the defendant was not served.
        ii. Request a Defendant Locate and Service of a Summons to Appear, to be completed by the SAO Investigations Unit (located on the 5th Floor Graham Building).
        iii. Provide a specific deadline for the completion of the Defendant Locate, which should always be one (1) week prior to the next Arraignment date.
        iv. Request the secretary to prepare a Summons to Appear addressed to the defendant, containing the date, time, and courtroom of the next Arraignment hearing.
        v. Request that the secretary attach two (2) certified copies of the "Filed stamped" Information, to the completed Summons.
        vi. Provide all available contact and/or biographical information pertaining to the defendant, so that it can be included with the request to Investigations.
    b. Place a reminder on your Microsoft Outlook regarding the deadline for completion of the Defendant Locate. This will allow you to follow up on the results of the request prior to the next Arraignment date.
    c. Print out and staple a copy of the e-mail to the Secretary Sheet and staple both documents to the front of the file.
    d. If an Arrest Warrant will be requested at the next arraignment date, then make sure to request that a personal service subpoena be issued instructing the Victim to appear at the next Arraignment calendar and indicate the exact date, time, and courtroom for the hearing. The ASA must also contact the victim in order to ensure that the victim will present.
6. Once the post-Arraignment files have been reviewed & Secretary Sheets are amended, ASAs must staple the sheets to the front of the files and return all cases to the Division Trial secretary.
7. ASAs will send an email to the Division Chief with the names of all defendants who either accepted or rejected a PTD offer.
8. All files should be returned to the Division Trial secretary at the earliest possible time, but no later than 3:00 p.m. the day of Arraignment. Do not return closed cases if closing

memos are not completed. Complete memos within the allotted time & return the files directly to the Chief.

The files will be returned to the ASAs three (3) weeks prior to the Sounding calendar in boxes clearly marked Sounding (SND) with respective hearing dates.

ARR #1

Officer Information

OFFICER NAME	Evidence Confiscated (Y/N)	Dist/Section	I.D. No.	Phone	Cell	Pager	Shift (Days Off/Duty Hrs
CPL. J. Faulkner		08/01	0018	305-681-1033	786-383-6560	N/A	SAT/S UNN 8HRS
☒LEAD ☐RESPONDING ☒ARRESTING ☐TRANSPORTING		DUI ONLY	☐(W) ☐(RS) ☐(B) ☐(M) ☐(MW) ☐(IC) ☐(ICW) ☐(BAFF) ☐(BAFFW) ☐(DRE)				☐(20MINOBS)
OFFICER NAME	Evidence Confiscated (Y/N)	Dist/Section	I.D. No.	Phone	Cell	Pager	Shift (Days Off/Duty Hrs
☐LEAD ☐RESPONDING ☐ARRESTING ☐TRANSPORTING		DUI ONLY	☐(W) ☐(RS) ☐(B) ☐(M) ☐(MW) ☐(IC) ☐(ICW) ☐(BAFF) ☐(BAFFW) ☐(DRE)				☐(20MINOBS)
OFFICER NAME	Evidence Confiscated (Y/N)	Dist/Section	I.D. No.	Phone	Cell	Pager	Shift (Days Off/Duty Hrs
☐LEAD ☐RESPONDING ☐ARRESTING ☐TRANSPORTING		DUI ONLY	☐(W) ☐(RS) ☐(B) ☐(M) ☐(MW) ☐(IC) ☐(ICW) ☐(BAFF) ☐(BAFFW) ☐(DRE)				☐(20MINOBS)
OFFICER NAME	Evidence Confiscated (Y/N)	Dist/Section	I.D. No.	Phone	Cell	Pager	Shift (Days Off/Duty Hrs
☐LEAD ☐RESPONDING ☐ARRESTING ☐TRANSPORTING		DUI ONLY	☐(W) ☐(RS) ☐(B) ☐(M) ☐(MW) ☐(IC) ☐(ICW) ☐(BAFF) ☐(BAFFW) ☐(DRE)				☐(20MINOBS)

☒VICTIM ☐WITNESS ☐OWNER FOR DV ONLY: (1) Relationship to defendant: _____; (2) ☐DCF contacted; (3) ***list all child witnesses

Name (Last)	(First)	(Middle)	(Race)	(Sex)	(Date of Birth)
LUMPKIN	CHACONDRA	L	B	F	02/23/1988

Home Address (Street, Apt. Number)	(City)	(State)	(Zip)	OTHER PHONE #'S
13124 ALEXANDRIA DR.# 123	Opalocka	FL	33054	(786) 312-0274 Cell
Business or Other Address	(City)	(State)	(Zip)	( ) - Pgr
Address Source: ☐Verbal ☐Driver's License ☐Voter's I.D. ☐Other: _____ D.L.# _____				( ) - Wrk

Synopsis of Testimony: _____

☐VICTIM ☐WITNESS ☐OWNER FOR DV ONLY: (1) Relationship to defendant: _____; (2) ☐DCF contacted; (3) ***list all child witnesses

Name (Last)	(First)	(Middle)	(Race)	(Sex)	(Date of Birth)

Home Address (Street, Apt. Number)	(City)	(State)	(Zip)	OTHER PHONE #'S
				( ) - Cell
Business or Other Address	(City)	(State)	(Zip)	( ) - Pgr
Address Source: ☐Verbal ☐Driver's License ☐Voter's I.D. ☐Other: _____ D.L.# _____				( ) - Wrk

Synopsis of Testimony: _____

☐VICTIM ☐WITNESS ☐OWNER FOR DV ONLY: (1) Relationship to defendant: _____; (2) ☐DCF contacted; (3) ***list all child witnesses

Name (Last)	(First)	(Middle)	(Race)	(Sex)	(Date of Birth)

Home Address (Street, Apt. Number)	(City)	(State)	(Zip)	OTHER PHONE #'S
				( ) - Cell
Business or Other Address	(City)	(State)	(Zip)	( ) - Pgr
Address Source: ☐Verbal ☐Driver's License ☐Voter's I.D. ☐Other: _____ D.L.# _____				( ) - Wrk

Synopsis of Testimony: _____

☐VICTIM ☐WITNESS ☐OWNER FOR DV ONLY: (1) Relationship to defendant: _____; (2) ☐DCF contacted; (3) ***list all child witnesses

Name (Last)	(First)	(Middle)	(Race)	(Sex)	(Date of Birth)

Home Address (Street, Apt. Number)	(City)	(State)	(Zip)	OTHER PHONE #'S
				( ) - Cell
Business or Other Address	(City)	(State)	(Zip)	( ) - Pgr
Address Source: ☐Verbal ☐Driver's License ☐Voter's I.D. ☐Other: _____ D.L.# _____				( ) - Wrk

Synopsis of Testimony: _____

ARR #2

INCIDENT/INVESTIGATION REPORT

Agency Name: Opa-locka Police Department			Case#: 12-0411-010
ORI: FL 0131200			Date / Time Reported: 04/11/2012 15:22 Wed
			Last Known Secure: 04/11/2012 15:22 Wed
Location of Incident: 13122 Alexandria Dr, Opa-locka FL 33054-	Premise Type: Highway/street/road/etc	Zone/Tract: 03	At Found: 04/11/2012 15:22 Wed

INCIDENT DATA

#1	Crime Incident(s): Assault / Threats- Simple 32SA (Com)	Weapon / Tools: VERBAL		Activity:
		Entry:	Exit:	Security:
#2	Crime Incident: Criminal Mischief- Under $1000 28UN (Com)	Weapon / Tools:		Activity:
		Entry:	Exit:	Security:
#3	Crime Incident: ( )	Weapon / Tools:		Activity:
		Entry:	Exit:	Security:

MO:

VICTIM

# of Victims: 1 | Type: INDIVIDUAL/ NOT LAW | Injury: N/a | Domestic: Y

	Victim/Business Name (Last, First, Middle)	Victim of Crime #	DOB	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
V1	LUMPKIN, CHACONDRA L	1,2	02/23/1988 Age 24	B	F	BFGF	Non-Reside	

Home Address: 13112 ALEXANDRIA DR - W-123, Opa-locka, FL 33054- | Home Phone: 786-312-0274

Employer Name/Address: UNKNOWN (SINGLE MOM) | Business Phone: 786-715-4006 | Mobile Phone:

VYR	Make	Model	Style	Color	Lic/Lis	VIN

OTHERS INVOLVED

CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: | Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status

Home Address: | Home Phone:

Employer Name/Address: | Business Phone: | Mobile Phone:

Type: | Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status

Home Address: | Home Phone:

Employer Name/Address: | Business Phone: | Mobile Phone:

PROPERTY

L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found ("OJ" = Recovered for Other Jurisdiction)

VI #	Code	Status Frm/To	Value	OJ	QTY	Property Description	Make/Model	Serial Number
1	36	D	$50.00		1	CELL PHONE	CELL/Phone	

Officer/ID#: MUNIZ-BUENO, O. A. (PAT. PAT) (0047)

Invest ID#: FAULKNER, J. (GIU, GIU) (00018) | Supervisor: DE LOS RIOS, G. O. (ADMN, ADM)

Status | Complainant Signature | Case Status: Arrest 04/23/2012 | Case Disposition: Cleared By Arrest | Page 2

Printed By: Q080801, RECORDS | Sys#: 17833 | 05/02/2012 10:59:35

ARR #3A

KATHERINE FERNANDEZ RUNDLE
State Attorney
Victim Data Sheet

Defendant Name: Danilo Icabalzeta Case No. M12022546 ASA: ___

INSTRUCTIONS: **Please print all information. The information requested will prevent unnecessary appearances in court.**

INSTRUCCIONES: **Por favor use letra de molde. La informacion que usted de en esta hoja evitara que usted comparezca innecesariamente.**

Name: Ivette Icabalzeta (Nombre) Race: H (Raza) Sex: F (Sexo) Birthdate: 11/14/68 (Fecha de Nacimiento)

Social Security #: 591-54-3004 (No. de Social Security) Marital Status: casada (Estado Civil)

Address: 4241 NW 196 St (Direccion) Apt: ___ (Apartamento) City: Miami (Ciudad) State: FL (Estado)

Zip Code: 33055 (Zona Postal) Country: ___ (Pais) Home Phone: 305 848 7430 (Telefono de Casa) Work Phone: 011 305 906 1220 (Telefono de Trabajo)

Internet E-Mail Address angelsalas6@Hotmail.COM

Permanent Address: ___ (Direccion permanente) Apt: ___ (Apartamento) City: ___ (Ciudad) State: ___ (Estado)

Driver's License#: 1214-404-68-914-0 (Numero de Licensia Para Menejar) Alien Registration # 028-688-568 (Numero de Registracion de Extranjero) Passport #: ___ (Numero de Passaporte)

Business Name: ___ (Nombre de Empleador) Address: ___ (Direccion)

City: ___ (Ciudad) State: ___ (Estado) Zip Code: ___ (Zona Postal) Workdays: ___ (Dias de Trabajo) Hours: ___ (Horas)

Occupation: Housekeping (Ocupacion) Supervisor: ___ (Nombre de Supervisor) Supervisor's Phone: ___ (Telefono de Supervisor)

Spouse/Legal Guardian Name: ___ (Nombre de Esposo(a) o Guardian Legal) Occupation: ___ (Ocupacion)

Wk Address: ___ (Direccion de Empleo) City: ___ (Ciudad) State: ___ (Estado) Zip Code: ___ (Zona Postal) Phone: ___ (Telefono)

LIST SOMEONE WHO KNOWS HOW TO CONTACT YOU (Nombre de persona que sepa como communicarse con usted-Madre, Padre, etc.)

Name: Grethel Salas (Nombre) Sister Home Phone: 786 200 1147 (Telefono de Casa) Work Phone: ___ (Telefono de Trabajo)

IF VICTIM IS A MINOR. list school name, address and phone: (Si la victima es menor de edad, escriba el nombre, direccion y telefono de la escuela que el(la) menor asiste):
Name /Address/Telephone (Nombre/Direction/Telephono): ___

RECEIVED SAO CHC
MISD DOMESTIC
12 JUL 18 AM 9:35

0852 - Document4

ARR #3B

DOMESTIC ASSESSMENT FORM

MOVES STAFF

MOVES MATCH: ☐ START TIME: ____ END TIME: ____ TOTAL HOURS: ____

☐ NOT MOVES INTERVIEW

TODAY'S DATE: 6/18/12 INTERVIEWER'S NAME:

COURT CASE NUMBER: M12022596 DEFENDANT'S NAME:

POLICE CASE NUMBER: DEPT: VICTIM'S NAME:

PFC DATE (if needed): DATE OF ARREST: 5/27/12 TIME:

Mosaic Score: _____ Mosaic Quotient: _____

Did victim call 911? ☐ Yes ☐ No If yes: ☐ Victim ☐ Neighbor ☐ Unknown ☑ Other

Race/Ethnicity: ☐ African-American ☐ Caucasian ☑ Hispanic ☐ Haitian ☐ Other Caribbean ☐ Multiracial ☐ Other ☐ Unknown

Sex ☐ Male ☑ Female

General Case Type: ☐ with firearm ☐ with other weapon ☐ no weapon ☐ Sex. Batt. ☐ Child of physical abuse

Relationship to Defendant: ☐ Boyfriend/Girlfriend ☐ Souse/Ex-spouse ☐ Live in/Ex-Live in ☐ Other family ☐ Other ☐ Same Sex Male ☐ Same Sex Female

Victim (check all that apply): ☐ 0-12 ☐ 13-17 ☐ 18-29 ☐ 30-45 ☐ 46-59 ☐ 60-65 ☐ 65+ ☐ Handicapped

Do you presently have an injunction? ☐ Yes ☐ No If yes, ☐ Permanent ☐ Temporary Date Obtained:

Are you living with this person? ☐ Yes ☐ No If yes, what is the living arrangement? ☐ Both own house ☐ Def owns ☐ Victim owns ☐ Both rent, both names on lease ☐ Def on lease ☐ Victim on lease

Are you financial dependant on Defendant? ☐ Yes ☐ No

Are you employed? ☑ Yes ☐ No

Do you have minor children in common living in the home? ☑ Yes ☐ No If yes, ages:

Has the Depatment of Children & Families ever been called? ☐ Yes ☐ No

Were the children in the house during the time you were being abused? ☑ Yes ☐ No If yes, did children see, hear, or other?

Were the children ever abused by the Defendant? ☐ Yes ☑ No If yes, ☐ Physical ☐ Verbal ☐ Both

Did you receive medical attention? ☐ Yes ☑ No If yes, ☐ Fire Rescue ☐ Hospitalization ☐ ER ☐ Other

Injuries? ☑ Yes ☐ No If yes, what were you injuries:

Medical bill costs? ☐ Yes ☑ No If yes, amount $ 0.00

Defendant's prior problems: ☐ Alcohol ☐ Drug ☐ Mental Illness ☑ Other:

Prior treatement programs attended by Defendant: ☐ Alcohol ☐ Anger Control ☐ Marital ☐ Counseling/therapist ☐ Other DV program

Defendant's present problems: ☐ Alcohol ☐ Drug ☐ Mental Illness ☐ Other:

Previous violence with defendant: ☑ Yes ☐ No If yes, ☐ Every week ☐ Every month ☐ Weekends Only ☐ Occasionally ☐ Other,

Prior incident(s) reported to police? ☐ Yes ☑ No

Additional threats since incident? ☐ Yes ☐ No If yes:

Telephone: ☐ By Defendant ☐ By other person

Written: ☐ By Defendant ☐ By other person

In person: ☐ By Defendant ☐ With a firearm ☐ With other weapon ☐ No weapon

☐ By other person ☐ With a firearm ☐ With other weapon ☐ No weapon

Explained Crimes Compensation: ☐ Yes ☐ Sent application (referred) ☐ Assisted to complete ☐ Provided application

Resources provided to victim? ☐ Yes ☐ Victim Declined

Victim assistance/referral: ☐ IFP ☐ Shelter ☐ Counseling ☐ Safety

Synopsis of present incident:

Synopsis of prior incident(s):

Comments:

OFFICE OF THE STATE ATTORNEY
ELEVENTH JUDICIAL CIRCUIT

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

ARR #3C

PFC NOTES	DATE: 2/9/10
DEFENDANT: John Adams	WITNESS: Rekita Watson
CASE #: M10-5018	WIT PHONE: 305-846-9069
ASA: Suzanne Jackson	WITNESS TYPE: VICTIM

Rekita Watson
DOB: 11/9/90
Sworn in at 2:10pm by ASA Jackson on 2/9/10
House phone: 305-846-9069
V stated that she was arrested once; she was in the mall filling out applications and her friend was stealing items (she did not know) and she was also arrested; V stated that she took PTD
V appeared with her 2 month old baby (Ds child)…stated that she is moving to Georgia and does not wish to pursue criminal charges
V stated that she has known D for 2 years, but they have been dating for the past year
V stated that she and D did not live together
V stated that there have been other incidents of DV and there were two reported incidents; V stated that D would always leave when she called the police and this is the first time he went to jail.

Prior incidents

- Oct/Nov 2009 - V stated that D did not hit her, but was throwing rocks at the house; V stated that she called the police so that he would not break the windows
- April 2009 – V stated she and D were arguing and he grabbed her; V stated that she called the police because he would not leave; when she called the police he left

Current incident

V stated that she was at her aunt's house (address on A-form)
V stated that D came over to see the baby; V stated that D was feeding the baby and she was texting another boy
V stated that she and D were no longer together
V stated that D grabbed the phone from her and asked "why are you texting another nigga in my face"
V stated that she got the phone from D
V stated that D kept trying to get the phone and she asked him to stop so that she would not drop the baby.
Finally, she gave him the phone and she went into the bedroom to lay the baby down
V told him to give her back the phone and get out
V stated that the baby started crying, so she picked her up

V stated that D slapped her and she put the baby back down…who fell asleep
V stated that a neighbor came over and asked her if everything was okay
V stated that she told the neighbor that she wanted D to leave, both asked and D refused
V stated that the neighbor went to get the baby
V stated that she went outside and D started pushing her and he grabbed her by the neck
V stated that her brother was across the street at her mother's house and saw D push her and told him to stop
V stated that D and her brother "got into it" and the neighbor asked them to stop.
V took the baby from the neighbor
D kept fussing at her, so she took the baby into the house, locked the door and called the police
V stated when the police came, D was gone; however, she told them where he might be
V stated that D kept calling her asking why she called the police on him
Brother: Ricky Watson (12-10-1991)
3040 NW 134th Street Apt#3 (same address as hers)
V stated that he would likely not testify as to what he observed
V stated that she did not know his phone number
V stated that neighbor did not observe did touch her as she had the baby in the house
V stated that at no time did D touch her while she was holding the child
V stated she was very upset that D would do this in front of the child
V stated that she calls Ds mother so that he can see the child
V stated that D is a "bad dad"…so parenting classes may benefit him
Explained that we would likely offer D probation
V does not want jail…okay with the probation
V stated that she will testify in court (kept asking if she would "have to"…kept explaining it is mandatory)

K

ARR # 4

IN THE COUNTY COURT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

THE STATE OF FLORIDA v.

DANILO ICABALZETA

Defendant(s)

INFORMATION FOR

1. BATTERY 784.03 Misd. 1D

ORIGINAL FILED
JUN 15 2012
HARVEY RUVIN
CLERK

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

KATHERINE FERNANDEZ RUNDLE, State Attorney of the Eleventh Judicial Circuit, prosecuting for the State of Florida, in the County of Miami-Dade, by and through her undersigned Assistant State Attorney, under oath, Information makes that:

RHEE,CHRISTINE :CR 06/14/2012

Jail No. , Bkd. 5/27/2012, CIN 1086404, W/M, DOB: 4/30/1974

M12022546
Delpino (M087)

ARR # 4

(CC#: M12022546)

COUNT 1

DANILO ICABALZETA, on or about May 27, 2012, in the County and State aforesaid, did unlawfully commit battery upon IVETTE ICABALZETA AKA JANE DOE by actually and intentionally touching or striking said person against said person's will, in violation of s. 784.03, Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

ARR # 4

(CC#: M12022546)

STATE OF FLORIDA, COUNTY OF MIAMI-DADE:

Personally known to me and appeared before me, the Assistant State Attorney of the Eleventh Judicial Circuit of Florida whose signature appears below, being first duly sworn, says that the allegations set forth in this Information are based upon facts which have been sworn to as true by a material witness or witnesses, and which if true, would constitute the offenses therein charged, and that this prosecution is instituted in good faith.

Assistant State Attorney/Bar #: 96110
Lawson E. Thomas Courthouse Center Building
175 N.W. 1st AVENUE, Miami, FL 33128
SUITE 2500
(305) 349-5830

Sworn to and subscribed before me this 14th day of June, 2012.

CIRCUIT & COUNTY COURTS CLERK IN GOD WE TRUST Dade County, Florida

By _____
Deputy Clerk for Clerk of the Courts, or
Notary Public

NOTARY PUBLIC STATE OF FLORIDA
REBECCA T. WHITE
MY COMMISSION # EE 094857
EXPIRES: June 24, 2015
Bonded Thru Budget Notary Services

ARR #5

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admissio
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED
Battery	OIR	✓		7/6
	DV Supplement	✓		7/6
Resisting w/o Violence	911 tape	✓		7/6
	Photos	✓		7/6
	Video	----------		
	Statements	✓		7/6
	Injunction	----------		
	Fire/Rescue Report	----------		
	Cert. Conviction	----------		

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	ARR: 9:45am 2C	CC	WPNG DD JT (PD): 7/2/11
	Priors: ✓ SV x2		
	Rel: h/w		Info:
	DVS: crying, fearful		Disco:
	911: Ordered		
	Injury: Bruising		
	Photos: ✓ Visible bruise		
	GOA: ⦸		
	Vic: VOB		
	Wit: ⦸		
	KO: Adj + 12mrp s/c		
	ATDV + SAAT + MH + SAO		

ARR #6

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓		7/6			
	DV Supplement	✓		7/6			
Resisting w/o Violence	911 tape	✓		7/6			
	Photos	✓		7/6			
	Video	----------					
	Statements	✓		7/6			
	Injunction	----------					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	ARR: 9:45am 2C	AR	WPNG DD JT (PD): 7/2/11
	Priors: ✓ SV x2		
	Rel: h/w		Info: 7/28/11
	DVS: crying, fearful		Disco: 7/29/11
	911: Ordered		
	Injury: Bruising		
	Photos: ✓ Visible bruise		
	GOA: ⦸		
	Vic: VOB		
	Wit: ⦸		
	KO: Adj + 12mrp s/c		
	ATDV + SAAT + MH + SAO		

ARR #6A

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
DV Injunction Viol	OIR	✓		7/6			
	DV Supplement	✓		7/6			
#11-17705-FC-04	911 tape	✓		7/6			
	Photos	✓		7/6			
	Video	----------					
	Statements	✓		7/6			
	Injunction	✓					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	ARR: 9:45am 2C	AR	WPNG DD JT (PD): 7/2/11
	Priors: ✓ SV x2		
	Rel: h/w		Info: 7/28/11
	911: Ordered		Disco: 7/29/11
	Injunction viol:		
	perm issued: 3/22/11		
	expiration: indefinite		
	served: 3/22/11		
	incident: 7/1/11		
	GOA: ⦸		
	Vic: VOB		
	Wit: Ofc observed		
	KO: Adj + 300 DCJ w/CTS		

ARR #6B

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED
Violation of Pretrial	OIR	✓		7/6
	DV Supplement	✓		7/6
Release conditions	911 tape	✓		7/6
	Photos	✓		7/6
	Video	----------		
	Statements	✓		7/6
	~~Injunction~~ SAO	✓		
	Fire/Rescue Report	----------		
	Cert. Conviction	----------		

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	ARR: 9:45am 2C	AR	WPNG DD JT (PD): 7/2/11
	Priors: ✓ SV x2		
	Rel: h/w		Info: 7/28/11
	911: Ordered		Disco: 7/29/11
	SAO Violation:		
	Case#		
	Issued:		
	Served:		
	DOI:		
	GOA: ✓		
	Vic: VOB		
	Wit: ⦸		
	KO: Adj + 300 DCJ w/CTS		

ARR #7

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓		7/6			
	DV Supplement	✓		7/6			
Resisting w/o Violence	911 tape	✓		7/6			
	Photos	✓		7/6			
	Video	----------					
	Statements	✓		7/6			
	Injunction	----------					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	ARR: 9:45am 2C	AR	WPNG DD JT (PD): 7/2/11
	Priors: ⦸		
	Rel: h/w		Info: 7/28/11
	DVS: crying, fearful		Disco: 7/29/11
	911: Ordered		
	Injury: Bruising		ONI: 7/29/11
	Photos: ✓ Visible bruise		PDD: 7/29/11
	GOA: ⦸		PTD: 7/29/11
	Vic: VOB (approves PTD)		
	Wit: ⦸		
	KO: PTD s/c ATDV +		
	SAAT + MH + SAO		

ARR #8

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓		7/6			
	DV Supplement	✓		7/6			
Resisting w/o Violence	911 tape	✓		7/6			
	Photos	✓		7/6			
	Video	----------					
	Statements	✓		7/6			
	Injunction	----------					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	ARR: 9:45am 2C	JM	WPNG DD JT (PD): 7/2/11
	Priors: ⦸		
	Rel: h/w		Info: 7/28/11
	DVS: crying, fearful		Disco: 7/29/11
	911: Ordered		
	Injury: Bruising		Δ in custody
	Photos: ✓ Visible bruise		ONI not requested
	GOA: ⦸		PD not discharged
	Vic: VOB (approves PTD)		
	Wit: ⦸		Δ rejected PTD
	KO: PTD s/c ATDV +		Δ PNG and wants trial
	SAAT + MH + SAO		SFS: 8/4/11 SFT: 8/10/11

ARR #9

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓		7/6			
	DV Supplement	✓		7/6			
Resisting w/o Violence	911 tape	✓		7/6			
	Photos	✓		7/6			
	Video	----------					
	Statements	✓		7/6			
	Injunction	----------					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	ARR: 9:45am 2C	AR	WPNG DD JT (PD): 7/2/11
	Priors: ✓ SV x2		
	Rel: h/w		Info: 7/28/11
	DVS: crying, fearful		Disco: 7/29/11
	911: Ordered		
	Injury: Bruising		Δ P, PNG
	Photos: ✓ Visible bruise		SFS/SFT: N/C
	GOA: ⦸		VPID: ✓
	Vic: VNOB		MSAO: denied
	Wit: ⦸		
	KO: Adj + 12mrp s/c		
	ATDV + SAAT + MH + SAO		

ARR #10

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓	ARR	7/6			
	DV Supplement	✓	ARR	7/6			
Resisting w/o Violence	911 tape			7/6			
	Photos	✓	ARR	7/6			
	Video	----------					
	Statements	✓	ARR	7/6			
	Injunction	----------					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	ARR: 9:45am 2C	AR	WPNG DD JT (PD): 7/2/11
	Priors: ✓ SV x2		
	Rel: h/w		Info: 7/28/11
	DVS: crying, fearful		Disco: 7/29/11
	911: Ordered		
	Injury: Bruising		Δ P, PNG
	Photos: ✓ Visible bruise		SFS/SFT: N/C
	GOA: ⦸		VPID: ✓
	Vic: VNOB		MSAO: denied
	Wit: ⦸		
	KO: Adj + 12mrp s/c		
	ATDV + SAAT + MH + SAO		

ARR #11

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓		7/6			
	DV Supplement	✓		7/6			
Resisting w/o Violence	911 tape	✓		7/6			
	Photos	✓		7/6			
	Video	----------					
	Statements	✓		7/6			
	Injunction	----------					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
7/29/2011	RPT: 10:30AM 2C	ED	
	Speedy Demand		
	Filed: 7/15/11		
	Day 50: 9/3/11		
	SFS: 8/26/11		
	SFT: 8/31/11		
	Demand Noted		
	Get new dates:		
	SFS: 8/11/11		
	SFT: 8/17/11		

ARR #12

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

33rd Day 8/3

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11		N	Y		Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓		7/6			
	DV Supplement	✓		7/6			
Resisting w/o Violence	911 tape	✓		7/6			
	Photos	✓		7/6			
	Video	----------					
	Statements	✓		7/6			
	Injunction	----------					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
10/1/2011	RPT: 10:30AM 2C	ED	
	Notice of Expiration		
	Filed: 9/30/11		
	Day 15: 10/15/11		
	SFS: 10/6/11		
	SFT: 10/12/11		
	NOE Well taken		
	Keep dates		

ARR #13

COMPLAINT/ARREST AFFIDAVIT - SAO RECORDS COPY

OBTS NUMBER

COMPLAINT/ARREST AFFIDAVIT

POLICE CASE NO. 12-0411-010

SPECIAL OPERATION: GIU

☐ FELONY ☒ MISD ☐ TRAFFIC ☐ JUV ☒ DV ☐ MOVES ☐ CIV INF ☐ WARRANT — FUGITIVE WARRANT ☐ In state ☐ Out of state

JAIL NO.

PMHD. ☐ Yes ☐ No ☒ Unknown

COURT CASE NO. B12016411

IDS NO.

AGENCY CODE: 08

MUNICIPAL P.D. DEF. ID NO.

MDPD RECORDS AND ID NO.

STUDENT ID NO.

GANG ACTIVITY RELATED ARREST ☐

FRAUD RELATED ARREST ☐

DEFENDANT'S NAME (LAST, FIRST, MIDDLE): ~~EVANS~~ MATHIAS, ~~MATHIAS~~ EVANS NATHANIEL

ALIAS and/or STREET NAME: "mathias"

SIGNAL ☐100 ☐150 ☐200 ☐300 ☐400 ☐500

DOB (MM/DD/YYYY)	AGE	RACE	SEX	ETHNICITY	HEIGHT	WEIGHT	HAIR COLOR	HAIR LENGTH	HAIR STYLE	EYES	GLASSES	FACIAL HAIR	TEETH
01101985	27	B	M	☐ Hispanic ☒ Not Hispanic AFR	505	155	BLK	SHT	AFR	BRO	☐ Yes ☒ No	FUL	VWH

SCARS, TATTOOS, UNIQUE PHYSICAL FEATURES (Location, Type, Description): NONE VISIBLE AT THIS TIME

PLACE OF BIRTH (City, State, Country): MIAMI FL USA

LOCAL ADDRESS (Street, Apt. Number): 4441 NW 178 ST. (City) MIAMI GARDENS (State) FL (Zip) 33055

PHONE: (786) 399 - 0104

CITIZENSHIP: USA

PERMANENT ADDRESS (Street, Apt. Number) ☐ Homeless ☐ Unknown: SAME AS ABOVE (City) (State/Country) (Zip)

PHONE: ( ) -

OCCUPATION: UNEMPLOYED

☐ BUSINESS OR ☐ SCHOOL NAME AND ADDRESS (Street): N/A (City) (State/Country) (Zip)

PHONE: ( ) -

ADDRESS SOURCE ☐ DL ☒ Verbal ☐

DRIVER'S LICENSE NUMBER / STATE: E-152-554-85-010-0 FL

SOCIAL SECURITY NO.: 594-53-3837

WEAPON SEIZED? Type ☐ Yes ☒ No

If Def. has Concealed Weapons Permit PERMIT # W-

INDICATION OF Y N UNK: Alcohol Influence ☐ ☐ ☒ Drug Influence ☐ ☐ ☒

ARREST DATE (MM/DD/YYYY): 06 18 2012 ARREST TIME (HHMM): 2045 ARREST LOCATION (include name of business): 13124 ALEXANDRIA DR.# 123 (GARDENS APARTMENTS) GRID: 0304

CO-DEFENDANT'S NAME (Last, First, Middle) 1. , DOB (MM/DD/YYYY) ☐ IN CUSTODY ☐ FELONY ☐ JUVENILE ☐ AT LARGE ☐ DV ☐ MISDEMEANOR

CO-DEFENDANT'S NAME (Last, First, Middle) 2. , DOB (MM/DD/YYYY) ☐ IN CUSTODY ☐ FELONY ☐ JUVENILE ☐ AT LARGE ☐ DV ☐ MISDEMEANOR

CO-DEFENDANT'S NAME (Last, First, Middle) 3. , DOB (MM/DD/YYYY) ☐ IN CUSTODY ☐ FELONY ☐ JUVENILE ☐ AT LARGE ☐ DV ☐ MISDEMEANOR

JAMES LIC VIOLENCE

JUV only ☐ Parent ☐ Guardian ☐ Foster Care (Name) (Street, Apt. Number) (City) (State/Country) (Zip) (Phone) ( ) - Contacted? ☐ Yes ☐ No

CHARGE	CHARGE AS:	COUNTS	FL STATUTE NUMBER	VIOL. OF SECT	CODE OF	UCR	DV	WARRANT TYPE OR TRAFFIC CITATION
1. Assault-Simple	☒ F.S. ☐ ORD	1	784.011			130C	X	☐ AC ☐ CAPIAS ☐ BW ☐ FW ☐ PW ☐ JUV PU ☐ AW ☐ DVW ☐ WRIT CASE #:
2. Criminal Mischief - over $200	☒ F.S. ☐ ORD	1	806.13(2)			2900	X	☐ AC ☐ CAPIAS ☐ BW ☐ FW ☐ PW ☐ JUV PU ☐ AW ☐ DVW ☐ WRIT CASE #:
3.	☐ F.S. ☐ ORD							☐ AC ☐ CAPIAS ☐ BW ☐ FW ☐ PW ☐ JUV PU ☐ AW ☐ DVW ☐ WRIT CASE #:
4.	☐ F.S. ☐ ORD							☐ AC ☐ CAPIAS ☐ BW ☐ FW ☐ PW ☐ JUV PU ☐ AW ☐ DVW ☐ WRIT CASE #:

The undersigned certifies and swears that he/she has just and reasonable grounds to believe, and does believe that the above named Defendant committed the following violation of law:

On the 18TH day of April, 2012, at 2045 (HHMM) at 13124 ALEXANDRIA DR.# 123 (GARDENS APARTMENTS) (Location, include name of business) (Narrative, be specific)

On the above listed dates and times , Defendant Mathias Evans had a heated verbal dispute with his live -in girlfriend and mother of his three kids Chacondra Lumpkin which escalated into the Police being called . Defendant Mathias became very irate during the verbal dispute and snatched Lump kin's cell phone from her and tossed it the ground causing it to shatter upon impact . Mathias then walked up to Lumpkin who was seated on the passenger side of her friends vehicle and stated Bitch i'm gonna break your jaw , I'm gonna hurt you " . Fearing for her safety Lumpkin came to the Opalocka Police Department and filed this Police Report . On todays date Police

HOLD FOR OTHER AGENCY VERIFIED BY Name:

I SWEAR THE ABOVE STATEMENT IS TRUE AND CORRECT.

CPL. Faulkner 0018(08)

OFFICER'S/COMPLAINANT'S SIGNATURE COURT ID NUMBER/LOC. CODE

CPL. J. Faulkner OLPD

NAME (Printed) AGENCY NAME

☐ HOLD FOR BOND HEARING. DO NOT BOND OUT (Officer Must Appear at Bond Hearing)

SWORN TO AND SUBSCRIBED BEFORE ME, THE UNDERSIGNED AUTHORITY THIS 18 DAY OF April 2012

Deputy of the Court or Notary Public

☐ I understand that should I willfully fail to appear before the court as required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concerning time, date, and place of all court hearings should be sent to the above address. I agree that it is my responsibility to notify Clerk of the Court (Juveniles notify Juvenile Division) anytime that my address changes.

☐ You need not appear in court, but must comply with the instructions on the reverse side hereof.

Signature of Defendant / Juvenile and Parent or Guardian

(right thumb print)

32.02.09-9 Rev. 05/06

ARR #14A

☐ IN THE CIRCUIT COURT OF ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

☑ IN THE COUNTY COURT IN AND FOR DADE COUNTY FLORIDA

	DIVISION	ORDER	CASE NUMBER
☑	CRIMINAL		
☐	TRAFFIC	Granting State's Motion to Revoke	M12-54321
☐	OTHER	the defendant's bond	

	THE STATE OF FLORIDA	VS.	CLOCK IN
		Joan Doe	
	PLAINTIFF	DEFENDANT	

THIS CAUSE having come on before the Court and the Court having been fully advised in the premises, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED THAT **The State's motion to revoke the defendant's bond** entered in the above styled cause is hereby

Granted. The defendant's bond is revoked and the new bond is in the amount of $25,000.

DONE AND ORDERED at Miami, Dade County, Florida, this _____day of _____20

JUDGE

ARR #14B

☐ IN THE CIRCUIT COURT OF ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

☑ IN THE COUNTY COURT IN AND FOR DADE COUNTY FLORIDA

DIVISION	ORDER	CASE NUMBER
☑ CRIMINAL ☐ TRAFFIC ☐ OTHER	Granting State's Motion to Revoke the defendant's bond	M12-54321

THE STATE OF FLORIDA VS.	CLOCK IN
Joan Doe	
PLAINTIFF DEFENDANT	

THIS CAUSE having come on before the Court and the Court having been fully advised in the premises, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED THAT **The State's motion to revoke the defendant's bond** entered in the above styled cause is hereby

Granted. The defendant's bond is revoked and a Writ of Bodily attachment is issued for $25,000

DONE AND ORDERED at Miami, Dade County, Florida, this _____day of _____20

_____

JUDGE

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Case No. M12-

Judge

Plaintiff,

v.

_____,

Defendant(s)

NOTICE OF INTENT TO RELY UPON CERTIFICATION OF BUSINESS RECORD

COMES NOW KATHERINE FERNANDEZ RUNDLE, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and pursuant to the Florida Statute Section 90.803(6)(c), hereby serves notice of its intent to offer evidence of the following business record(s) under F.S. 90.803(6)(a) by means of a Certification of Business Record:

The 911 recording associated with case M12-_____and police case number 2012-_____.

Respectfully submitted,

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

By: _____

Assistant State Attorney
Florida Bar #
Lawson E. Thomas Courthouse Center Building
175 NW 1st Avenue, Suite 2500
Miami, FL 33128
(305) 349-5830

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above was furnished to DEFENSE COUNSEL on this ___ day of _____ 2012.

_____

ARR #16

CERTIFICATION OF CUSTODIAN OF RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITIES

Pursuant to Fla. Stat. §90.803(6)(a) & (c), § 90.902(11), § 92.60(2), and/or § 90.605(5)

The undersigned declarant hereby declares, certifies, verifies or states the following:

I, _____, am a duly authorized officer and/or custodian of
Print Name
records for _____ with authority to execute this
Company Name
affidavit and to certify to the authenticity and accuracy of the records of regularly conducted business activities which are the subject of this certification.

The records produced herewith, and described below, are original documents or are true copies of records of a regularly conducted business activity that:

a) Were made at or near the time of the occurrence of the matters set forth by, or from the information transmitted by, a person having knowledge of those matters;
b) Were kept in the course of the regularly conducted business activity; and
c) Were made as a regular practice in the course of the regularly conducted business activity.

The total number of pages produced are (_____). The records provided are described and identified as follows (please enter any internal reference number or identification information and/or description below):

_____

_____

_____

I declare under the penalty of perjury of the state or country in which this certification is made that the foregoing is true and correct.

_____ _____
Date **Signature of Affiant/Declarant**

Before me, the undersigned authority, personally appeared _____,
Print Name
who, being by me first duly sworn deposes and says that this certification is true and correct. The foregoing instrument was acknowledged under oath before me this _____ day of _____, 20___ , by the individual whose name and signature appear above, and who _____ is personally known to me, or _____ produced the following identification _____ (**ID Type and Number**)

_____
Signature of Notary Public in and for

State of _____

City/County of _

SOUNDING CALENDAR

The purpose of the Sounding Calendar is to ensure that the Trial Calendar runs more efficiently. This is achieved by the proper preparation of each file prior to the Sounding Calendar so that ASAs can decide which cases are ready to go to trial. The Sounding Calendar occurs six (6) days before the Trial Calendar.

While at the Sounding Calendar, the State and Defense announce on the record whether they are either (1) ready for Trial, (2) requesting a State or Defense charged continuance, or (3) the State may announce a Nolle Prosse (KNP). Any case where both the State and Defense announce ready at the Sounding, will be set on the Trial calendar the following week. Typically, the Sounding Calendar will consist of 40-50 cases. Generally speaking, when the Sounding Calendar is completed, there should be no more than 20-30 cases set for trial.

Sounding boxes will be provided to the ASAs by their division's Trial Coordinators at least three (3) weeks prior to the scheduled Sounding date.

At all times, ASAs must perform all required work in advance and remain two (2) weeks ahead on the preparation of their assigned Sounding cases.

ASAs must return ALL of their sounding files to their respective division's Trial Coordinator by 9:00 a.m. on the day before the Sounding Calendar. This must be done in a timely fashion so that each division's Trial Coordinator can finish preparing the calendar by verifying that each case that appears on the setting sheet is present and accounted for the ASAs.

I. SOUNDING CALENDAR PREPARATION:

A. Introduction

1. Approximately two (2) weeks before the Sounding Calendar, the division's Trial Coordinator will place the subpoenas for each case in the ASAs' inbox. After reviewing the subpoenas for accuracy of case-specific information (for example: whether the subpoena is going to the correct address), ASAs should place the subpoenas in the "AVs/Subs/Mail" file folder inside the case file.
2. The division Victim/Witness coordinator will forward the victim/witness availability sheets (AV's) for each case set on a specific Sounding calendar, in the assigned ASA's office one (1) week before the cases are scheduled to appear at Sounding. (See Exhibit SND # 1A and 1B). The availability sheets will contain information regarding the results of telephone calls to victims and witnesses, which were made by the victim/witness coordinators. This information will include details about the availability of your victims, witnesses, and officers for the next Trial setting. ASA's should review the AV's for case specific information, such as Victims that may have changed their mind on prosecuting and testifying at trial (See Exhibit SND #1A and 1B), officers who are essential to a case who are on vacation, or witnesses who are unavailable.
3. It is your responsibility to review the availability sheets and independently determine whether or not the victims, witnesses, and officers are available for trial. However, ASAs should not rely solely on the information contained on the availability sheets, and must make independent efforts to verify the availability of all people in involved in their assigned cases.
4. Review the entire file and its contents.

5. Organize the file by placing any newly received documents or discovery materials in the appropriate file folders. Notate the date of the last attempt made to request the discovery on the front of the file in the discovery box.
6. Review all filed discovery notices.
7. Read through pre-file and pre-trial conferences to verify that any discoverable information is disclosed, as required under Rule 3.220. Please see discovery section for more information.
8. Verify that all discoverable material has been handed over to the defense. If it has not already been turned over, ASAs must prepare and file an appropriate amended discovery notice.
    a. Please be sure to send any late discovery with an email receipt to confirm the material is received.
9. Each of the case information boxes on the front of the file should be properly notated when completing the Sounding preparation. (Jail Cert/Order of Non-Incarceration, PTDE, SAO, EU, Injury, Photos, Observed, Δ Admission). (See Exhibits SND # 2 & 3)
10. Additionally, ALL Discovery check-boxes shall be properly notated (OIR, DVS, 911 tape, Photos, Video, Statements, Injunction, Fire Rescue Reports, Cert. Convictions).
11. When an item has been ordered, the date should be properly notated on the front of the file folder. When an item has been received, a check mark should be notated on the "in" column. When amending discovery, the date the amended discovery is filed should be notated in the "out" column. (See Exhibits SND # 2 & 3).
12. A line shall be drawn through both the "in" and the "out" check boxes for any nonexistent Discovery. For example, if there were no photographs taken in relation to your case, and you don't expect there to be any photographs included within the State's discovery, draw a line through both the "in" and the "out" check boxes. This will allow anyone who picks up the file to know that there were no photographs taken in relation to the case. (See Exhibits SND # 2 & 3).
13. Contact the Victim.
    a. Inform the Victim of the upcoming Trial date, time, and courtroom location. Instruct the Victim to arrive by 8:30 a.m., because late arrival may result in the case being closed if the judge does not give the Victim additional time to arrive after 9:00 a.m. When necessary, offer to set up transportation.
    b. Discuss the strengths and weaknesses of the case.
    c. Discuss possible plea resolutions.
    d. Explain the trial process.
    e. Discuss the significance of the victim's demeanor on the stand and the appropriate way to handle objections.
    f. Discuss the need to wear appropriate courtroom attire.
    g. Ask the Victim about any listed defense witnesses.
    h. Note and document all attempts to contact the Victim in a detailed and legible case note, and place the notes in its appropriate file folder within the case file.
    i. Run the Victims' priors in CJIS.
    j. Place a hardcopy of Victims' and Witnesses' priors in the file, and amend discovery accordingly.
14. Contact the witnesses
    a. Inform the witness of the Trial date. Instruct the witness to arrive by 8:30 a.m., because late arrival may result in the case being closed if the judge does not

give the witness additional time to arrive after 9:00 a.m. When necessary, offer to set up transportation.

b. Discuss the witnesses' involvement in the case as well as what they intend to testify to at trial.
c. Discuss possible plea resolutions.
d. Explain the trial process.
e. Discuss the significance of the witness' demeanor on the stand and the appropriate way to handle objections.
f. Discuss the need to wear appropriate courtroom attire.
g. Ask the witnesses about any listed defense witnesses.
h. Notate and document all attempts to contact the witnesses in a detailed and legible case note, and place the notes in its appropriate file folder within the case file.
i. Run the witnesses' priors on CJIS.
j. Place a hardcopy of witnesses' priors in the file, and amend discovery accordingly.

15. The Trial secretary should have already attached a new flap to the front of the file, when the file is ready for Sounding. The first line should notate the Sounding date and indicate the calendar setting by writing Sounding under the "Setting" section.
16. Make all necessary notations on the "Setting" section of the file flap by including the following information (See Exhibits SND # 2 and 3):
    a. Priors:
        i. Priors should include how many felony convictions (e.g. 3F, 6F), and
        ii. How many previous cases involving the same victim (e.g. SV x 3, SV x 5)
    b. Relationship: indicate the nature of the domestic relationship between the Victim and the Defendant. (e.g., H/W, BF/GF, Brother/Sister, etc.)
    c. 911: indicate whether or not the 911 tape has been received by placing a check mark, or indicate when the 911 tape was ordered from the Records Custodian by writing the word "ordered" and the corresponding date. After listening to the 911 tape, ASAs should indicate if there were any possible excited utterances in this field also by placing the letters "EU" or "SS" next to the check mark. ASAs should always make a notation regarding the value of the contents of the 911 tape.
    d. DVS: indicate whether or not the Domestic Violence Supplement has been received by placing a check mark, or indicate that it has been ordered from the police department by writing the word "ordered" and the corresponding date. After reviewing the Domestic Violence Supplement, indicate the victim's demeanor as it is reported by the Police on the DVS.
    e. Injury: indicate whether or not the victim sustained any injuries and give a description of the injury and its location. (e.g., INJ: √ (bruise / eye)
    f. Photos: indicate whether or not photographs were taken, and if possible give a description of the what the photos actually show (e.g., PHOTOS: √ (bruise on V's face.)
    g. Δ GOA: indicate whether the defendant was gone on Police arrival (e.g., GOA: "yes" or "no.")
    h. VIC: indicate whether you've had Victim contact, the date, and whether the Victim is on board to prosecute the case.
    i. WIT: indicate whether you've had witness contact, the date, and whether the witness is on board to prosecute the case.

j. KO: indicate the State's plea offer.
k. Announcement: On the side of the file flap, indicate in red ink "KR" for all state ready cases, or "KNP" for all cases the state will Nolle Prosse. Indicate in blue ink "KCONT" along with the reason for the continuance for any case where the State will request a continuance at Sounding. If a "KCONT" is being requested, there should be clear notes written on the file flap as to why the State is requesting a "good cause" continuance (e.g., need to obtain additional discovery, need for further investigation, victim/witness/officer not available, need to obtain victim contact, etc.). The mere fact that this is the first time up (1XUP) for a case at Sounding is not an adequate reason to request a continuance. **Any continuance taking the case beyond the speedy trial period (whether natural or demand) must be approved by the Chief or Assistant Chief.**
    i. If the State is announcing a Nolle Prosse (KNP) at Sounding, in addition to the "KNP" notation on the file flap, ASAs must prepare a closing memo explaining the reasons for the Nolle Prosse. The closing memo should be written and turned in to the Division Chief within one week of closing a case.
    ii. On Injunction Violation & SAO Violation cases the following annotations must be included in the "Setting" section:
        - Date Injunction was issued
        - Expiration date of injunction
        - Personal Service date
        - Date of incident

17. Notate the back of the file appropriately.
    a. Be sure the names of all Victims, Witnesses, and Officers involved in the case are indicated.
    b. Notate each person's role in the case.
18. Write down any special issues or notes in the "Trial Comments" section.
19. **Run the Defendant's current priors in CJIS to verify whether there are any additional cases.**
20. Defense Witness list: Review the Defense witness list and if possible prepare a cross examination for each defense witness, including the Defendant based on your knowledge of the case and any discussions with the State's witnesses.
21. Notate if there have been any Defense discovery requests with which you have not complied and an explanation as to why you have not complied (Examples: Defense requested a copy of the OIR; ASA requested OIR on two occasions yet has not received OIR; Defense requested photographs, ASA spoke to the victim or officers and verified that no photographs were taken).
22. Prepare appropriate Secretary Sheet for all Trial Ready and Continuance cases, for the purpose of ordering missing discovery items and requesting personal service subpoenas for pre-trial conferences with Victims, witnesses, and officer who have not come in to give sworn statements about the case.
23. Each ASA shall prepare a Plea Sheet for the Sounding calendar, containing plea offers for all Sounding cases. Three (3) copies should be generated, one for the Judge, one for the Public Defender and one for the State. (See Exhibit SND # 4)

II. SOUNDING CALENDAR PROCEDURE

A. Before the Sounding calendar starts, file any charging documents, amended discovery notices, or motions with the Clerk. There should be three copies. The Court copy will be file stamped. The State and Defense copies should be notated "Filed in Court" with the date on the top right hand corner of the pleading.

B. Once the judge takes the bench, the cases will be called by the Defendant's name.

C. When a case is called, the State announces first. ASAs must advise the court whether the State is Ready (KR), is requesting a State or Defense charged continuance (KCONT or DCONT), or if the State is announcing a Nolle Prosse (KNP).

D. If the State is turning over discovery in-court, the ASA shall announce on the record what discovery is being turned over, and notate such on the file.

E. The Defense will announce second and make oral motions to compel any missing discovery items.

   1. Be prepared to address discovery issues when the evidence requested has already been provided or does not exist.
   2. Some judges may announce "Ready for Trial" on behalf of Private Counsel, even though the attorney is not present and has not provided a written notice advising of the defense's trial posture. This is improper. If a Judge announces "Ready" in the absence of an attorney object, then indicate that the State needs verification from the defense attorney, prior to issuing subpoenas for witnesses to appear at trial.
   3. If the judge will not reconsider, request that the State witnesses be placed on "Stand-by"; this means the witnesses need not be present at the 9:00 a.m. Trial calendar call.
   4. If any witness is on Stand-by, notate the front and back of the file clearly indicating this status for the respective witness (e.g., Witness Name: S/B). Also, be sure to write in red ink the words "stand-by" on the availability sheets next to each witness that has been placed on stand-by. By doing this you are informing your victim / witness coordinator not to send mandatory subpoenas to your victims / witnesses for the next trial setting.
   5. At Trial calendar inform the court that, due to defense counsel's failure to appear at Sounding, the State's witnesses are on stand-by and that the State is "Ready" for trial.
   6. If the Court insists on announcing "Ready" for an absent defense attorney and will not allow the State to place its witnesses on stand-by, notate the file flap accordingly, and contact the division CTA, the Assistant Chief or Division Chief immediately upon the conclusion of Sounding calendar.

F. At Sounding Pro Se defendants should be treated as if they are lawyers.

G. If a Pro se case is called and the defendant has failed to appear, the ASA calling the calendar should request a Bench Warrant be issued. (Most Judges will set the case for report on the Trial calendar to see if the defendant appears before issuing a bench warrant.)

H. If the Court does not issue a bench warrant, request that the State's witnesses be placed on "stand-by". If the request is granted, notate the case file accordingly, and indicate the stand-by status on the respective availability sheet.

I. If there are Mental Health issues that should be explored prior proceeding to trial on a case, the defense should be charged with a continuance, not the State.

J. ASAs must always notate files to accurately reflect what transpired at Sounding calendar pertaining to each case. This includes Motions to Compel, and any reasons why a Defense Continuances was taken.

III. POST-SOUNDING CALENDAR PROCEDURE

A. After Sounding return files to the assigned ASA.

B. ASAs should separate "Ready" cases from Continued cases and Nolle Prossed cases.

C. TRIAL READY CASES

1. Check the "RESULTS" section of the file flap.
2. Within 30 minutes of the end of Sounding calendar, each ASA must prepare a list of Trial Ready cases and e-mail it to the division victim/witnesses coordinator, other division ASAs, division secretaries, Lead Worker, Regina Johnson, Division Chief, and the Assistant Chief (See Exhibit SND # 5).
3. Stand-by status for witnesses must be indicated for each case on the Trial Ready e-mail. Attach a copy of this e-mail to the availability sheets for the Trial Ready cases, and deliver both the division's victim/witness coordinator. This is necessary for subpoenas to be generated in a timely fashion. This task must be completed no later than **1:00 p.m**. on the day of Sounding calendar.
4. If an ASA is unable to send out the "Trial Ready" email because they are presently in court, out of the office, etc., arrangements should be made for another division ASA to send the email out on their behalf.
5. The victim/witnesses coordinator will be responsible for preparing a master division list of all "Trial Ready" cases for each scheduled Trial calendar, and send the list to the respective division.
6. ASAs must then review all Trial ready cases to determine if any last minute issues exist, and take all appropriate steps to be prepared for trial.
7. The victim/witness coordinator will also be responsible for generating subpoenas based on the "Trial Ready" email. (See Exhibit SND # 6 and 7)

D. CONTINUANCE CASES

1. Check the "Results" section of the file flap. Review what discovery is still needed and request those items.
2. Attach all necessary Secretary Sheets to the files, and return the files to the Trial Coordinator no later than **3:00 p.m**. on the day of Sounding calendar.

E. NOLLE PROSSED CASES

1. When preparing Sounding cases ASAs must exercise prosecutorial discretion and determine whether to Nolle Prosse a case. ASAs must prepare Closing Memos for all cases that will be Nolle Prossed at Sounding. A copy of this Closing Memo should be placed standing up in the front of the file for review by the Division Chief. Closing memos must be prepared in a timely fashion according to Unit policies.
2. All Nolle Prossed cases must be forwarded to the Division Secretary upon completion of required Closing Memos.

WITNESS AVAILABILITY LIST

SND #1A

Defendant: NEWELL, APRILLE

Court Case #: M12010788

Police Case #: 120316002

Attorney:

Witness

1. **BELLAMY,KENNEDY** (CIVILIAN) VD **MANDATORY**

1355 SHARAZAD BLVD Apt: B7
OPA LOCKA, FL 33054-

Phone:
Cell: (786) 587-5584
Other:

Availability Comments

T	**5/30/2012**	5/25/12 10:19a-(786) 587-5584 Left victim vm regarding mandatory trial. -kj
T	**5/30/2012**	Availability Updated To: 51 - Pending - Letter Sent By:JACKSOK
T	**5/30/2012**	5/8/12 3:09p- (786) 587-5584 Left victim second vm regarding a/v for trial. Contact letter sent. -kj
T	**5/30/2012**	5/4/12 3:32p-(786) 587-5584 Left victim vm regarding a/v for trial. -kj
A	**4/19/2012**	VFTA (2ND TIME). WR 4/20 2:23PM
A	**4/19/2012**	(786) 587-5584 unavailable or travelled outside the coverage area.WR 4/17
T	**5/9/2012**	4/17/12@12:13p. Return subpoena for trial 5/9 stating attempted not known, ck trfamenu, DAVID, file, call number listed, Sala, CJIS and 411-no new information. Auto track done (tb)
T	**5/9/2012**	Availability Updated To: 41 - Not Available - Refuse to Come In By:JACKSOK
T	**5/9/2012**	4/13/12 2:20p-786-587-5584 Spoke with victim regarding a/v for trial. Not on board and not willing to testify against D. -kj
A	**4/19/2012**	4/4 VFTA RESET 4/19 2:00PM.WR
A	**4/4/2012**	No phone number listed. Contact letter sent. WR 3/28 11:13am.
O		3/16/12 12:03PM NO CONTACT WITH THE V PRIOR TO BONDHEARING. VB

2. **NORD,K** (OFFICER) PO **MANDATORY**

008 00025

Phone:
Cell:
Other:

Availability Comments

T	**5/30/2012**	Availability Updated To: 01 - Available - Will Testify By:JACKSOK
T	**5/9/2012**	Availability Updated To: 01 - Available - Will Testify By:JACKSOK
A	**4/4/2012**	4/4 STMT WAS TAKEN. WR

WITNESS AVAILABILITY LIST

Defendant: NEWELL, APRILLE

Court Case #: M12010788

Police Case #: 120316002

Attorney:

Witness

3. **DONAT,F** (OFFICER) PO **MANDATORY**

008 00028

Phone:
Cell:
Other:

Availability Comments

T **5/30/2012** Availability Updated To: 01 - Available - Will Testify By:JACKSOK

T **5/9/2012** Availability Updated To: 01 - Available - Will Testify By:JACKSOK

A **4/4/2012** 4/4 STMT WAS TAKEN. WR

4. **FERNANDEZ,M** (OFFICER) PO **MANDATORY**

008 00057

Phone:
Cell:
Other:

Availability Comments

T **5/30/2012** Availability Updated To: 01 - Available - Will Testify By:JACKSOK

T **5/9/2012** Availability Updated To: 01 - Available - Will Testify By:JACKSOK

5. **BOSQUE,G** (OFFICER) PO **MANDATORY**

008 00019

Phone:
Cell:
Other:

Availability Comments

T **5/30/2012** Availability Updated To: 01 - Available - Will Testify By:JACKSOK

T **5/9/2012** Availability Updated To: 01 - Available - Will Testify By:JACKSOK

SND #1B

SND #2

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11	N	N	Y	poss per DVS	Y	Y	N	N

DEMAND FILED: _____
DAY 50: _____
NOE FILED: _____
DAY 15: _____

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓	ARR	7/6			
	DV Supplement	✓	ARR	7/6			
Resisting w/o Violence	911 tape	✓	7/25/11	7/6			
	Photos	✓	ARR	7/6			
	Video	----------					
	Statements	✓	7/25/11	7/6			
	Injunction	----------					
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
8/15/2011	SND: 9:30am 2C	JM	
	Priors: ⦸		
	Rel: h/w		
	DVS: crying, fearful		
	911: ✓ Δ admission		
	Injury: Bruising		
	Photos: ✓ Visible bruis		
KR	GOA: ⦸		
	Vic: VOB		
	Wit: ⦸		
	KO: ADJ + 12mrp s/c		
	ATDV +SAAT + MH + SAO		

SND #3

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
JANE DOE	7/1/11	9/29/11	N	N	Y	N	Y	Y	N	N

DEMAND FILED: _____
DAY 50: _____
NOE FILED: _____
DAY 15: _____

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED
DV Injunction Viol	OIR	✓	ARR	7/6
	DV Supplement	✓	ARR	7/6
#11-17705-FC-04	911 tape	✓	7/25/11	7/6
	Photos	✓	ARR	7/6
	Video	----------		
	Statements	✓	ARR	7/6
	Injunction	✓	ARR	
	Fire/Rescue Report	----------		
	Cert. Conviction	----------		
	Miranda Waiver	✓	7/25/11	
	Detective report	✓	7/25/11	

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
8/15/2011	SND: 9:30am 2C		
	Priors: ✓ SV x2		
	Rel: h/w		
	911: Ordered		
	Injunction viol:		
	perm issued: 3/22/11		
	expiration: indefinite		
	served: 4/1/11		
	incident: 7/1/11		
	GOA: ⦸		
	Vic: VOB		
	Wit: Ofc observed		
	KO: Adj + 300 DCJ w/CTS		

SND #4

DIV. 88 SOUNDING 08.01.11
PLEA OFFERS
(LETTERS P-T)

NAME OF DEF.	CASE #	PLEA OFFER
PEREZ, FELIX	M11-40323	ADJ + 200 DCJ W/ ALL CTS
PIERRE, SAMSON	M11-28790	ADJ + MRP ATDV, MANDATORY SAAT & EJRC, MH, SAO
PHILLIPS, KENNETH B.	M11-15149	W/H + 12 MRP, ATDV, SAAT, MH, SAO
RIVERA, ANGEL	B08-36929	ADJ + 12 MRP, ATDV, SAAT, MH, SAO TO RUN CONCURRENT WITH M08-36931
RIVERA, ANGEL	M08-36931	ADJ + 12 MRP, ATDV, SAAT, MH, SAO TO RUN CONCURRENT
TORRES, FREDDY	M08-26667	ADJ + 300 DCJ W/ ALL CTS

SND #5

Suzanne Jackson

From: Annette Rasco
Sent: Thursday, June 07, 2012 12:11 PM
To: Meghan Wood; Cristina Cabrera; Brian Meola; Natasha Rennie; Cinthia Sosa; Myreille Dumas; Alina Cartagena; Jocelyn Davis; Kamilah Ragoo
Cc: Regina Johnson; Suzanne Jackson; Adam Goodman
Subject: RE: Trial Ready Cases Div. 89 (A-E) for 6/11/12

PLEASE BE ADVISED THE FOLLOWING CASES ARE SET ON THE **5/21/12 TRIAL CALENDAR IN DIV. 89 (A-E).** PLEASE SEND OUT MANDATORY SUBPOENAS FOR ALL VICTIMS, WITNESSES (EXCEPT RECORDS CUSTODIANS, TRANSLATORS, ID TECHS, AND EMS PERSONNEL), AND OFFICERS IN THE FOLLOWING CASE UNLESS OTHERWISE NOTED:

NAME	CASE	NOTES.
Everett, Armond	M12-9912	Do not call V -- V strongly not on board
Caballero, Jose	M10-51046	ASA will call V herself

Thanks!

Annette M. Rasco
Assistant State Attorney
Misdemeanor Domestic Violence Unit, Div. 89
Lawson E. Thomas Courthouse Center
175 NW 1st Avenue, Ste. 2500
Miami, Florida 33128
E-mail: AnnetteRasco@MiamiSAO.com
Direct Line: 305-349-5892
Fax: 305-349-6038

AgencyWeb

Appointment Status by Appt. Date Report

Appointment Date	5/30/2012 9:00:00 AM	**Judge's Name**	SPENCER MULTACK
SAO Trial Unit		**Court Case No.**	M12010788
Judge's Section	M088	**Police Case No.**	120316002
Defendant Last Name	NEWELL	**Defendant First Name**	APRILLE

Court ID	Witness Name	Org	Request Type	Document Name	Location	Created Date	Issued Date	Appt. Date	Agency Attorney Name	Contact	Notify Status	Conflict
008-00025	Nord, Kerby	Opalocka Police	Appear	Subpoena - 7102	CHC 250 - 2B	5/4/2012 2:30:18 AM	5/25/2012 2:40:24 AM	5/30/2012 9:00:00 AM			Notified	
008-00028	Donat, Frantz	OpaLocka Police	Appear	Subpoena - 7102	CHC 250 - 2B	5/4/2012 2:30:18 AM	5/25/2012 2:40:24 AM	5/30/2012 9:00:00 AM			Notified	
008-00057	Fernandez, Mario	City of Opa-locka	Appear	Subpoena - 7102	CHC 250 - 2B	5/4/2012 2:30:18 AM	5/25/2012 2:40:24 AM	5/30/2012 9:00:00 AM			Notified	
008-00019	Bosque, German	Opalocka Police	Appear	Subpoena - 7102	CHC 250 - 2B	5/4/2012 2:30:18 AM	5/25/2012 2:40:24 AM	5/30/2012 9:00:00 AM			Notified	

9# CNS

Subpoena

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY
SPECIAL INSTRUCTIONS

TO THE SHERIFFS OF THE STATE OF FLORIDA:
WE COMMAND YOU TO SUMMON THE WITNESS NAMED HEREIN
TO APPEAR AT THE RICHARD E. GERSTEIN JUSTICE BUILDING,
1351 N.W. 12TH STREET, MIAMI, FLORIDA BEFORE

JUDGE: SPENCER MULTACK

STATE OF FLORIDA VS:
APRILLE ALLISON NEWELL

ON: WEDNESDAY, MAY 30 TH, 2012
AT: 9:00 A.M. COURTROOM: 28 FOR TRIAL
YOU ARE TO APPEAR AT THE ALTERNATE LOCATION OF:
LAWSON E. THOMAS CHC, 175 NW 1ST AVENUE, MIAMI,

TO:

IMPORTANT: SEE BOX CHECK BELOW
READ REVERSE SIDE FOR A COMPLETE EXPLANATION

☐ STANDBY DO NOT APPEAR	☒ MANDATORY YOU MUST APPEAR
CALL KRISTEN JACKSON	(305)349-5869

MAUREEN NEWELL
15222 NW 16 AVE
MIAMI GARDENS FL 33054

WITNESS, HARVEY RUVIN, CLERK OF SAID COURT, AND THE SEAL OF SAID COURT AT MIAMI, DADE COUNTY, FLORIDA.
THIS THE 28 TH DAY OF MAY, 2012

BY Harvey Ruvin CLERK

POLICE CASE NO: 120316002
MDPD CASE NO:
COURT CASE NO: M12010788

CIRCUIT AND COUNTY COURTS DADE COUNTY, FLORIDA

ASSISTANT STATE ATTORNEY 006

7103

SND #7

TRIAL CALENDAR

Trial calendar begins at 9:00 a.m. Each ASA shall be in court at least one half-hour early to check in victims, witnesses, and officers.

I. TRIAL CALENDAR PREPARATION

A. Review each case.
B. Be prepared to address and resolve any issues related to the case.
C. Each ASA must bring the Florida Criminal Statute Book, Evidence Book, Motions in Limine, and a Trial Folder, to every Trial calendar. The Trial Folder should contain at a minimum: predicates for introduction of common items of evidence, PTD forms, note pads, pens, and case law for common trial issues. Each division should arrange to bring a tape player to court.
D. Each ASA must prepare new file flaps for all Trial cases as part of the preparation for Trial calendars. Also, the names and contact numbers for all Victims, Witnesses, and Officers should be filled out on the back of the case file for each case rolling to trial.
E. The division CTA should prepare a Trial Matrix listing all division Trial cases prioritized by Speedy Trial dates and the defendant's custody status. The Trial Matrix should be emailed to the Trial Judge, Public Defenders assigned to the division, Division Chief, and Assistant Chief the day after Sounding. (See Exhibit TRIAL # 1).

II. TRIAL CALENDAR PROCEDURE

A. All division ASAs shall be inside the courtroom at least 30 minutes before calendar call.
B. Keep the State's courtroom table organized.
C. CTAs should provide copies of the Trial Matrix to the court and defense.
D. The Victim/Witness coordinators will provide ASAs with a list of any officers that will not appear or are running late.
    1. ASAs should notate the back of respective case files to reflect such information.
    2. These notations should be made in the "Notes" sections next to the corresponding person's name.
E. The Victim/Witness coordinators will also advise ASAs of the victims and witnesses who have already checked in.
    1. ASAs must make the appropriate notations on the file flap.
    2. If the Victim/Witness is present the corresponding box on the back of the file should be checked.
F. During this time, ASAs should check-in officers as they arrive in the courtroom, and notate cellular phone numbers on the back of file.
G. When an officer approaches the table, determine in which case they are involved.
H. Pull the case file, and on the back in the Trial section put a check next to the officer's name, along with the corresponding cellular phone number. (See Exhibit TRIAL # 2).
I. If the officer arrives late, then write the word "late" next to the officer's name and the time of arrival. (See Exhibit TRIAL # 2).
J. As time permits, speak to as many Victims, Witnesses, and Officers as possible. Make all appropriate notations on the file flap and back of the file.
K. The Judge will call the calendar by the defendant's name.

L. Wait to see if the Defendant is present, before announcing which witnesses appeared and whether the State is ready for Trial. If the Defendant fails to appear, ASAs must request a Bench Warrant, for failure to appear upon good and timely notice.
M. If the Defendant is present, the Court will ask the State to "call its case."
N. Calling the case.
O. ASAs must advise the court which witnesses for the State are present, and call out the name of all witnesses who have not checked-in for the Trial calendar.
P. If the Victim is present, announce his/her presence to the court by stating, "Your honor the Victim is present."
Q. If the Victim is not present, even after you have called out to the gallery and received no response, then advise the court. Proceed by placing an X next to the Victim's name on the back of the file. (See Exhibit TRIAL # 2).
R. ASAs must also notate the number of Victims that are present in the file flap.
S. ASAs must follow this procedure for announcing and notating the presence of all witnesses and officers listed for each case. (See Exhibit TRIAL # 3).
T. If any witnesses are on stand-by, the ASA should advise the court of their names and the reason for the stand-by status.
U. After calling all names and notating accordingly, then announce how many of each category of witnesses are present by stating, "1 of 2 Victims, 1 of 3 Witnesses, 4 of 4 Officers."
V. If the State is ready to proceed to Trial with the witnesses who are present or on stand-by, the ASA should announce, "the State is Ready for Trial, please pass the case."
W. If certain witnesses have failed to appear, but the State can proceed with independent evidence and available witnesses, then make the appropriate announcement (e.g., there is a possible Excited Utterance, the State is Ready for Trial pending a EU hearing, please pass the case").
X. Be prepared to make the decision of whether the State is ready to proceed to Trial.
Y. If the State cannot proceed, then request a good cause continuance, if appropriate, or Nolle Prosse the case.
Z. Be prepared to articulate a "good cause" reason for the continuance, if asking for a continuance at Trial Calendar.
    1. If it comes to your attention that a State continuance is necessary based on good cause, every effort should be made prior to Trial calendar to file a written Motion for a Continuance.
    2. If time permits, the ASA should set the case on a Motions calendar to litigate the Motion for Continuance prior to Trial calendar.
    3. Templates for Motions for Continuance may be found in the Forms drive under the folder labeled Motions Orders Responses/Motion for Continuance.dot.
AA. After all cases set on the Trial calendar have been called, the Judge will usually take a recess in order to allow for plea negotiations.
BB. ASAs should use this time to interview all State witnesses who have not given statements to the State or need to clarify issues pertaining to the case. This should be done as quickly and efficiently as possible.
CC. If time permits ASA should interview any defense witnesses who appear at Trial calendar, in order to determine the substance of their testimony and obtain their personal information for the purpose of checking priors.

DD. ASAs should take notes of "hallway" interviews with all witnesses and place the notes in the case files. Always try to have another ASA (not the second chair), Paralegal, or Intern with you, in case you need to impeach a witness.

EE. ASAs should also make efforts to ascertain whether the conveyed plea offers will be accepted or rejected by the defense. This is necessary to determine whether the case will proceed to Trial or will be resolved with a plea offer.

FF. All division ASAs should assist each other with any issues that arise at trial calendar, and if necessary they must consult CTAs, the Assistant Chief, or the Division Chief.

TRIAL CALENDAR RECESS

During the recess ASAs should also take steps to PRE-TRY all witness who are present. However, if the recess does not afford sufficient time, ASAs must make arrangements to pre-try all witnesses prior to the commencement of the Trial (e.g., during the lunch break). ***There is nothing more detrimental to a criminal prosecution than ill-prepared State witnesses.***

When pre-trying a witness, ASAs should prepare the witness to respond to both State and defense questions. Cover the following subjects with all State witnesses before they testify:

A. Get the facts straight. Address any inconsistencies in the facts, evidence, and testimony. Review any evidence materials with the appropriate witnesses.

B. Discuss the effect of any Motions in Limine that will limit the scope of the witness' testimony.

C. Instruct the witness that, when the prosecutor or the defense attorney asks you a question, only answer the question asked.

D. Instruct the witness that, if the prosecutor or the defense attorney ask you a question and the answer is 'I don't know' or 'I'm not sure', respond truthfully. Advise the witness that, there is no right or wrong answer, only the truth as you recall it from memory. Inform the witness that while on the stand, his/her recollection of the events can be refreshed if necessary and legally permissible.

E. Instruct the witness that, if the prosecutor or the defense attorney asks you for approximations, provide an approximation to the best of your ability. If you cannot recall the specific measurements/distance, do not guess. It is appropriate for the witness to indicate that he/she is not certain of a specific fact, than to completely guess at an answer. Witnesses should not respond to a question in any way just because they think that a specific answer is what is expected.

F. Instruct the witnesses that, if you hear the prosecutor or defense say "Objection," you should stop answering the question immediately. The witness must let the attorneys discuss the objection with the Judge, who will then instruct the witness whether to answer the question.

G. Instruct the witness that, if the defense attorney asks, "Isn't it true that you met with the prosecutor in this case prior to trial and that you discussed the facts of this case?"; the witness should not think it is a trick question, and the witness should answer truthfully. It is perfectly ethical and proper for the prosecutors to meet with the witnesses to discuss the case prior to trial. Also, advise that if the defense attorney follows up the question by asking, "and, isn't it true that when you met with the prosecutor you were told exactly what to say at trial. What did he/she tell you to say?"; the witness should answer that the prosecutor did not tell the witness "what to say," but the prosecutor told the witness to "tell the truth." (ASA should object to Hearsay).

H. Whether or not the "Rule" has been invoked prior to the commencement of trial, make sure you instruct all witnesses not to discuss the facts of the case or their respective testimony

amongst themselves. You should instruct the witnesses not to sit together in order to avoid the appearance of impropriety.

I. The prosecutor can discuss the case with a witness during the trial as long as that witness is off the stand and will not be called for further testimony.

J. Instruct the witnesses that while they wait to testify, they may see people around the courthouse and outside the courtrooms, but the witnesses should not to talk to anyone they do not know. This is because the witnesses may inadvertently talk to a juror, and thereby raise cause for a mistrial.

K. Explain the Trial process. The State will ask questions of the witnesses, then the defense. The Jury will be sitting inside the courtroom in the Jury box. When a question is asked, the witness should look to the Jury and answer to them. Witnesses should always keep in mind that the members of the Jury are the fact finders in the case. Instruct the witness that if he or she feels uncomfortable looking at the Jury or at the Defendant, then he or she should look at the Judge or the prosecutor when testifying. The witness should never look down or away when responding to questions inside the courtroom.

L. Instruct the witnesses to dress appropriately. However, never tell witnesses to dress completely out of the ordinary for themselves. Indicate to the witness that it is important for the Jury to have a positive view of the witness, and this perception involves proper attire for a courtroom. Also tell witnesses that although they need to dress appropriately, they should also wear clothing that is comfortable for them.

M. Refresh the witness' memory if necessary. Make copies of depositions, reports, written statements, recorded recollections, etc., and let the witnesses review them prior to testifying at Trial. Explain to the witnesses the process of impeachment by prior inconsistent statements, especially with testimony from depositions. Tell the witnesses that if you ask them a question and they do not recall the answer, and you then ask, "would anything refresh your recollection?"; then the witness may answer that a particular document may help them recollect the facts involved.

N. Reassure them not to worry about forgetting, because the prosecutor will bring their attention to the salient facts by asking the witnesses the appropriate questions on the stand.

O. Inform the witnesses that there will come a time during the Trial that they will be asked to identify the defendant. Tell them that you will be asking them "Do you see (name of Defendant) here in court today?" "Can you point him/her out and identify an item of clothing he/she is wearing?" Although it may seem strange within a domestic violence context, many witnesses fail to understand this question when they are on the stand, because they are nervous. In cases involving violent crimes witnesses may be scared of even looking at the defendant, therefore ASAs must be sensitive to the witnesses' sensibilities. Tell witnesses that the in-court identification is the only time that they have to look at the defendant and point him out during the Trial; thereafter, they may choose to look only at the Jury, the Judge, and prosecutor if they choose.

P. Children witnesses: Be sensitive. Remember that even though it is not the preferred practice to have young children testify against their relatives, it may be necessary in order to present the State's case and prove the commission of a crime beyond a reasonable doubt. During mandatory trial review sessions with the Assistant Chief or Division Chief, ASAs must discuss whether to have children testify at a trial. However, if a child will testify, ASAs must dedicate ample time for pre-trying the child witness.

    a. First, establish whether the child is legally competent to testify by asking the legally formulated competence questions. Explain the questions that you may ask during

testimony, as well as the process that the child will go through at the trial. Explain to the child that the Defendant (possible relative) will be in the courtroom during testimony. And reassure the child that you and everyone else in the room will protect him/her. Prior to trial take the child witness to the courtroom, sit the witness on the stand, and explain where everyone involved will be seated. Ask the child some fun questions while sitting on the stand to make him/her feel at ease. Then, go a step further, sit on the stand and ask the child to ask you some questions. This makes the witnesses feel that if you can do it so can they.

b. Do not lie to children or their guardian about the trial process, and always be honest and sensitive with them.

POST RECESS PROCEDURE

When the Judge comes back from recess, ASAs must be fully prepared to address all cases that were passed for Trial as follows:

A. **Nolle Prosses -** ASAs shall first notify the court of which cases will be Nolle Prossed and make the appropriate announcement and annotation.

B. **Pleas –** ASAs shall notify the court of which cases will be resolved with a plea offer.
   1. If the defendant is going to accept a plea, do not excuse your witnesses until the defendant has completed the plea colloquy.
   2. ASAs should first inform the court of the complete terms of the plea offer.
   3. ASAs should review the rights waiver form that has been completed by the defendant and his or her attorney, in order to ensure that it accurately reflects the negotiated plea.
   4. Prepare all appropriate sections of the Order Placing Defendant on Probation as described the Plea Guidelines Section.
   5. The judge will then colloquy the defendant regarding the intelligent, knowing, and voluntary waiver of Constitutional rights and the acceptance of the plea offer.
   6. Always make sure that the judge announces a finding on the record that there is a factual basis for the accepted plea. The State stipulates to a factual basis according to the Arrest Form and Information for each case.

C. **Hearings/Motions**
   1. ASAs must be prepared to litigate any State or defense motions at trial calendar by conducting the appropriate hearing.
   2. Some of the most common hearings at trial involve:
      a. Motions to Admit Excited Utterances
      b. Motions to Suppress Evidence (statements or physical evidence)
      c. Motions to Admit Williams Rule Evidence
      d. Richardson Violations
      e. Motions to Sever
      f. Motions to Admit Intertwined Evidence
      g. Motions to Establish Corpus Delicti
      h. Motions in Limine

D. **Trial**
   1. ASAs shall inform the judge of the proposed trial order for all cases not resolved after the recess. When formulating a trial order ASAs should refer to the Trial Matrix.
   2. Prior to commencing any trial, ASAs must ask the judge to colloquy the Defendant on the record as to whether defense counsel conveyed the State's current plea offer, and whether the Defendant has actually rejected the plea offer. If the court fails to conduct

this colloquy, the case could be remanded on appeal based on a claim of ineffective assistance by defense counsel. See Morales v. State, 731 So.2d 91 (Fla. 4th DCA 1999); see also Rule 3.171(c)(2)(A).

3. ASAs shall verify that all necessary witnesses are present or available to testify prior to beginning jury selection.
4. ASAs must make sure that all physical evidence that will be introduced at trial is in the courtroom.
5. At this point the judge will inform the State and defense of the trial order.
6. ASAs shall ask the clerk to mark the evidence for the case that is set for trial first.
7. ASAs shall file and litigate Motions in Limine for the trial case.
8. Before any Trial begins, ASAs must consult with their respective CTAs, the Assistant Chief, and the Division Chief.

E. **Motions in Limine:**

The State should file an appropriate Motion in Limine in each case prior to the commencement of a trial. Motions in Limine should be filed in writing, rather than made orally in the record. Below is a list of some of the standard Motions in Limine. This list is not exhaustive and ASAs shall always tailor Motions in Limine to the specific factual and legal issues involved in each case. (See Exhibit TRIAL # 4 & 4A).

1. Prevent defense counsel from arguing "Jury Nullification." See Harding v. State, 736 So.2d 1230 (Fla. App. 2 Dist 1999).
2. No mention of Defendant's lack of prior criminal record to prove good character. See McCartney v. State, 510 So.2d 1157 (Fla. 3d DCA 1987) (this also applies to victims and witnesses).
3. No mention of the State's failure to call witnesses equally accessible to the defense. See Haliburton v. State, 561 So.2d 248 (Fla. 1990).
4. No mention of the possible sentence upon conviction. Be aware that even though defense counsel cannot mention possible sentences, most Judges will allow reference to a "loss of liberty." See Kocsis v. State, 467 So.2d 384 (Fla. 5th DCA 1985); Coleman v. State, 484 So.2d 624 (Fla. 1st DCA 1986).
5. No mention of Defendant's "self-serving" hearsay statements: If the defendant makes exculpatory statements (e.g., "I did not do it" or "I only pushed her after she pushed me."), the statement should be excluded because it is a self-serving statement, which is not admissible under any exception to the hearsay rule. The rationale is that if the Defendant's statements are introduced through a witness (e.g., officer), the Defendant is essentially allowed to testify through another witness, without becoming subject to cross-examination by the State. Even if the defendant testifies to his out of court hearsay statement, ASAs should object on the basis that these statements are hearsay and not subject to a legally recognized exception. See Moore v. State, 530 So.2d 61 (Fla. 1st DCA 1988).
6. Limit any attempt by the defense to impeach a witness by referring to questions and answers provided in a hallway interview prior to trial. See Marrero v. State, 478 So.2d 1155 (Fla. 3d DCA 1985).
7. No mention of anything that relates to inadmissible "character evidence" as proscribed by Fla. Stat. § 90.404 & 90.405. (e.g., the Victim or witness is a drug addict, stripper, alcoholic, etc.) Such character evidence is irrelevant to prove or disprove a material fact, is more prejudicial than probative under Fla. Stat. § 90.403,

and should be excluded unless defense counsel can establish relevancy and admissibility.

8. No cross-examination of the Victim regarding specific acts of violence directed toward the Defendant or any mention of the Victim's reputation for violence should be permitted before, and unless, the proper predicates are established by showing some overt act at or about the time of the incident which reasonably indicated to the Defendant a need to act in self-defense. See Berrios v. State, 781 So.2d 455, (Fla. 4th DCA 2001).
9. No mention of a Police Officer's departmental reprimands. The defense may seek to introduce these items as impeachment evidence. Note that a witness may only be impeached via inconsistent statements or prior convictions. Reprimands are not legally recognized as convictions. See Jackson v. State, 545 So.2d 260 (Fla. 1989). However, if the officer has departmental reprimands that the prosecution knows about regarding falsifying information (e.g., reports), the ASA must consult the Assistant Chief or Division Chief to discuss the issue.
10. The defense cannot impeach a victim based on a crimes compensation claim: "In light of this statutory provision, we hold that the trial court correctly sustained the objection to testimony regarding the existence of a claim under the Crimes Compensation Act. The existence or nonexistence of such a claim was irrelevant to any issue at trial. The Crimes Compensation Act was carefully drafted to have no bearing on any criminal proceeding. Certainly the legislature did not intend the Crimes Compensation Act could be used as a means of attacking the credibility of victims who testify at trial." Lyons v. State, 384 So. 2d 982, 982 (Fla. 2d DCA 1980).
11. Address any factual or legal issue that is relevant to the trial case, by filing an appropriate Motion in Limine and researching all applicable case law.

III. DIVISION IN TRIAL PROCEDURE

A. If division attorneys are in Trial, the division CTA will notify the Assistant Chief or Division Chief.
   1. If you need to contact the Assistant Chief or Division Chief from a courtroom during Trial, be sure to indicate the courtroom number.
   2. If you have an emergency during Trial, enter the courtroom number followed by "911". The "911" code shall only be used in emergency circumstances, such as when an ASA is about to be held in contempt, when an ASA is arrested, when an ASA is alone in court and too ill to proceed with the Trial, or when an ASA is in physical danger. These are the **only** circumstances under which the "911" code should be used when contacting the Assistant Chief or Division Chief.

B. If an ASA is not participating in Trial, but division prosecutors are, then the ASA should assist them. This includes the following:
   1. Running the jury panel's priors.
   2. Researching any legal issues.
   3. Moreover, it is in every ASA's best interest to observe division trials. Remember, if the division is in trial, it is likely that the Public Defenders assigned to the division are trying the case. The more an ASA observes the division in trial, the more the ASA learns about the division's PDs and their trial performance and strategies.

C. After participating in a Trial wherein the defendant is found guilty, ASAs must be prepared to address Sentencing. This requires that the ASA have the following information:
   1. Defendant's current priors
   2. Applicable Certified Convictions
   3. Current court orders such as active Injunctions
   4. Victim Impact Statement. Victims of crimes have a right to address the court regarding the sentencing of the Defendant (See Fla. Stat. § 960.001(g)(1)(d), (k) and § 921.143).

D. After participating in a Trial, ASAs should complete a Trial Statistics Memo and forward it to the Division Chief via email. The case file should also be provided to the Chief.

IV. DIVISION NOT IN TRIAL PROCEDURE

A. If there are no trials in the division, all case files must be reviewed immediately upon returning to the office. All necessary Closing Memos should be prepared, and the files should be returned to the division secretary.

B. Nasty Grams should be sent out if appropriate.
   1. Each attorney should assess whether a Nasty Gram is appropriate when an officer fails to appear.
   2. If an officer failed to appear and the State could have gone forward to Trial but for the officer's absence, a Nasty Gram should be sent.
   3. A "Nasty Gram" is a memo indicating to the officer's superiors that the officer failed to appear for a mandatory appearance on a criminal case. If a Nasty Gram is appropriate, the attorney shall attach a copy of the served subpoena pertaining to the scheduled date during which the officer failed to appear.
   4. If an officer has failed to appear, check the case file to see if and when a Mandatory Subpoena was issued and received by the respective Court Liaison office.
   5. Before any Nasty Gram is sent it must be reviewed by the Assistant Chief or Division Chief.
   6. The determination and completion of paperwork for sending a Nasty Gram must be completed by the ASA, within 48 hours of the officer's failure to appear.

RESULT	DEFENDANT	CASE NO.	CHARGE	SPEEDY/ LAST DAY TRIABLE	ARREST DATE	DIC?	PA/PD	Likely?	PLEA	ASA	NOTES
	Nelson, Eddie J	M13-50935	Battery	2/3/2014	11/4/2014	Y	PD	N	ADJ + 200 days DCJ w/ CTS	JW	No visible injury; VOB NRC; V needs transportation
	Fernandez, Osmany	M13-53525	Battery	3/12/2014	12/12/2013	N	PD	N	WH ADJ + 12 MRP + 26 wk BIP + MH + SAAT + SAO	TBA	Saftey Roll
	Calderon, Jose	M14-65	Battery	4/1/2014	1/1/2014	N	PD	N	ADJ + 250 days DCJ w/ CTS	TBA	Saftey Roll. NRVC but previous VOB.
	Avila, Carlos	M14-592	Battery	4/5/2014	1/5/2014	Y	PD	Y	ADJ + 12 MRP + 26 wk BIP + MH + SAAT + SAO	TBA	VOB
	Castillo, Marlene	M14-574	Assault	4/5/2014	1/5/2014	Y	PD	N	ADJ + 250 days DCJ w/ CTS	TBA	Saftey Roll. Vic may come
	Hunt, Donta	M14-1001	Battery	4/8/2014	1/8/2014	Y	PD	N	ADJ + 12 MRP + 26 wk BIP + MH + Psych Eval + MSAAT w/ DVDC + SAO	JD	VON; No Witness; photos w/ visible injury to V lip.
	Harrison, Jeffery	M13-44022	Battery	Waived	10/11/2013	Y	PA	Y	ADJ + 200 DCJ W/CTS	JD	VOB; no Witness; no photos
	Garcia, Jorge	M13-18504	Battery	Waived	3/31/2013	N	PD	N	WH ADJ + 12 MRP + 10 wk AM + MH + MSAAT w/ DVDC + SAO	JD	Both V and W on board. Photos injuries to both.
	Jomarron Gonzalez, Sergio	M13-31353	Battery	Waived	7/20/2013	N	PD	Y	ADJ + 180 days DCJ w/ CTS to run concurrent w/ F13-26314	JD	VOB; WNOB; D not in custody for this case; D held in custody for different case

TRIAL #1

TRIAL #2

NAME	PHONE/BEEPER	NOTES	TRIAL	TRIAL	TRIAL	TRIAL
			8/7/11			
VICTIMS						
JANE DOE	305-545-0102	Needs transportation	X			
WITNESSES						
Mary Simpson	305-649-1250	Witnessed incident	✓			
Barbara Delgado		911 custodian	s/b			
OFFICERS						
Detective Oscar Suarez	786-444-0688	Arresting officer	✓			
Officer John Taylor	305-349-1247	Initial responder	✓			
Officer Anne Scott	786-665-5700	Took photos	arrived late			

TRIAL COMMENTS:

NAME	PHONE/BEEPER	NOTES	PVH	PVH	PVH	PVH

PVH COMMENTS:

TRIAL #3

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-12345
	Police case#:	PD0902458
STATE OF FLORIDA	Division#:	M89
v.	ASA:	SJ
DOE, JOHN	Δ Attorney:	PD

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admissi
JANE DOE	7/1/2011	9/29/2011		N						

DEMAND FILED: _____
DAY 50: _____
NOE FILED: _____
DAY 15: _____

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED
DV Injxn Violation	OIR	✓	ARR	7/6
	DV Supplement	✓	ARR	7/6
	911 tape	✓	7/25/11	7/6
	Photos	✓	ARR	7/6
	Video	----------		
	Statements	✓	ARR	7/6
	Injunction	✓	ARR	7/6
	Fire/Rescue Report	----------		
	Cert. Conviction	✓	7/25/11	
	Miranda Waiver	✓	7/25/11	
	Detective Report	✓	7/25/11	

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
8/15/2011	TRIAL: 9:00AM 2C	CC	Δ_____
	Priors: ✓ SV x 2		V: 1 / 1
	Rel: h/w		W: 2 / 2
	911: Order		O: 3 / 4
	Injunction Violation:		
	perm issued: 3/22/11		KR/ΔR
	exp: indef		
	served: 4/1/11		
	incident: 7/1/11		
	GOA: ⦸		
	Vic: VOB		
	Wit: Ofcr observed		
	KO: Adj = 300 dcj w/CTS		

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No. M12-16907
Judge MULTACK

STATE OF FLORIDA,

Plaintiff,

v.

BRANDON DAVIS,

Defendant.

TRIAL #4A

MOTION FOR ORDER IN LIMINE

COMES NOW KATHERINE FERNANDEZ RUNDLE, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and moves this Honorable Court for an Order in Limine instructing the Attorney for the Defendant to refrain from making any direct or indirect mention whatsoever at trial before the jury of the matters hereinafter set forth, without first obtaining permission from the Court outside the presence and/or hearing of the jury, on the grounds that the said matters are incompetent, irrelevant, or immaterial to the issues involved herein, and will serve only to unfairly prejudice the jurors against the State. The State requests that the Court prohibit the following:

1. On the authority of *Haliburton v. State*, 561 So. 2d 248, 250 (Fla. 1990), the State moves for an order prohibiting the defense from commenting on the State's failure to call witnesses when such witnesses are equally available to both parties. The very fact that the uncalled witness was equally accessible to both parties, yet called by neither, demonstrates the misleading ambiguity of such comment. *See also Lena v. State*, 901 So.2d 227, 232-33 (Fla. 3d DCA 2005). ("[T]he *Haliburton* rule provides that when a witness is not called by either side, and the witness is equally available to both parties, then one side cannot comment on the other side's failure to call that witness"). Pursuant to this holding, no mention shall be made by the defense as to the witnesses that he or she expects the State to call at trial, including any or all victims.
2. The defense is prohibited from making any characterization of the injunction violation that minimizes the tangible effect of the Defendant's violation. The Defendant is charged with a violation of Fla. Stat. § 741.31(4)(A). The injunction prohibits the Defendant's presence at or within 500 feet of the victim's motor vehicle; it does not require that the Defendant cause any injury, harm, or damage to any person or property during such presence. Therefore, to permit the defense to elicit testimony or to argue that the Defendant's violation was "harmless" would be irrelevant or otherwise unduly misleading to the jury, which are impermissible under Fla. Stat. §§ 90.401 and 90.403.
3. In addition, the State makes the following affirmative requests:
4. The State moves the Court to take compulsory judicial notice of the Final Judgment of Injunction for Protection against Domestic Violence for Case No. 11-26721-FC-04, with service stamp, issued on September 15, 2012.

5. The injunction service officer may testify to the routine practice of his agency, the Miami-Dade Police Department Court Services Bureau, in serving domestic violence injunctions. "Evidence of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is admissible to prove that the conduct of the organization on a particular occasion was in conformity with the routine practice." Fla. R. Evid. § 406; *see Shands Teaching Hosp. & Clinics, Inc. v. Dunn*, 977 So. 2d 594, 599 (Fla. 1st DCA 2007) (reversible error for trial court to exclude testimony by a nurse that her hospital's routine practice is to have two nurses present for the injection of drugs into a patient, one to administer the dosage and the other to ensure the dosage was correct); *Nationwide Mut. Ins. Co. v. Jones*, 414 So. 2d 1169, 1170-71 (Fla. 5th DCA 1982) (affirming trial court admission into evidence testimony by insurance agent that it was the unfailing practice of his business to offer the required uninsured motorist limits). Therefore, the injunction service officer may testify that the routine practice of his agency in serving domestic violence injunctions is to take the certified copies of an injunction provided by court clerks, identify the respondent to be served by being directed by the petitioner or other person of knowledge, and verify the respondent's identity by means of an official identification provided by the respondent or other means. Service is then effected by reading to the respondent the relevant portions of the injunction; if the respondent speaks a language other than English, the officer translates or uses a third-party translator in that language. The officer concludes by marking a service stamp on the front of each certified copy of the injunction, giving one to the respondent and returning one to the clerks. Evidence of this routine practice is then admissible to show that the injunction service officer in this case followed this practice when serving this defendant.
6. The injunction service officer may also testify to his own routine practice in serving injunctions. *See State v. Wadsworth*, 210 So.2d 4, 5-7 (Fla. 1968) (affirming conviction for manslaughter by an intoxicated motorist where the State introduced of habit evidence from a liquor store sales clerk that the defendant came to the store twice or thrice a week for over two years prior to the incident date to purchase miniature bottles of vodka; evidence of "prior intemperate habits of a person is relevant to . . . the question of whether such person was intoxicated at any given time and place, when intoxication at such time and place is a material issue in the case"); *see also State v. Kately*, 637 A.2d 214, 218 (N.J. Super. Ct. App. Div. 1994) ("Since the fatal motor vehicle accident occurred at night, after this same group of friends gathered together for at least a few hours, the trial court properly admitted evidence of [the defendant's] regularly becoming intoxicated on the night that he left his home and ran his truck off the road, causing [the victim's] death.") (citing *Wadsworth*, 210 So. 2d at 6-7). The injunction service officer may, therefore, testify whether he follows his agency's routine practice as proffered *supra* in Paragraph 8 and may testify to his certainty that he must have followed it when he served this defendant. *See Nationwide Mut. Ins. Co.*, 414 So. 2d at 1170-71 (allowing testimony by insurance agent where he "emphatically stated that he always followed [the company] procedure with each customer, and that he was certain that he had followed that procedure in this case" even though "he could not recall the exact language of a conversation that took place more than three years prior to trial").
7. The State reserves the right to offer the statement(s) made by the Victim to Officer Armenteros (001/0097) as non-testimonial statements admissible under the excited utterance exception to the hearsay rule, Florida Statute § 90.803(2). The statements were made as the Victim was standing in the middle of the road, frantic and screaming. The Victim told the Officer that a male in a vehicle had just beat her up and kicked her out of the car. The Victim told the Officer where the Defendant

was heading with her vehicle. This determination may be made by the presiding judge prior to trial and outside the presence of the jury, and the State accordingly requests an Excited Utterance Hearing.

8. The State reserves the right to offer the statement(s) made by Officer Armenteros (001/0097) during his call to dispatch. Such statement are admissible under the spontaneous statement exception to the hearsay rule, Florida Statute § 90.803(1). The statements were made by the Officer as he was perceiving the event described during the call. The State requests that the presiding judge made a determination as to the admissibility of the statement prior to trial and outside the presence of the jury.
9. The State reserves the right to offer the Victim's vehicle registration under the Public Records exception to hearsay, Florida Statute § 90.803(8). Public Records are admissible as an exception to hearsay when they set forth the activities of the office or agency. Under Florida Statute § 320.05(2), the Department of Highway Safety and Motor Vehicles has a statutory duty to register motor vehicles upon receipt of an application for registration. A public record may be admitted without calling a custodian when the record is self-authenticating under Florida Statute § 90.902. The document the State seeks to enter here is self-authenticating as it bears the signature of the Chief of the Department of Highway Safety and Motor Vehicle's Division of Motorist Services' Bureau of Records. Under Florida Statute § 90.902(2), extrinsic evidence of authenticity as a condition precedent to admissibility is not required where the document bears the signature of an officer or employee of the Department. Additionally, although the document is a copy, under Florida Statute § 320.05(2), a copy of registration records reproduced by the Department shall have the same force and effect as the originals thereof and shall be treated as originals for the purpose of their admissibility into evidence.
10. The State hereby requests that all witnesses be excluded from the court proceeding so that they cannot hear the testimony of other witnesses pursuant to Florida Statutes section 90.616.

Respectfully submitted,

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

BY: _____

ELENA DOYLE
Assistant State Attorney
Florida Bar #: 91025
Lawson E. Thomas Courthouse Center Building
175 NW 1st Avenue, Suite 2500
Miami, Florida 33128
(305) 349-5830

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above was furnished to Defense Counsel, The Public Defender, 175 NW 1st Ave., Ste. 2400, Miami, FL, 33128, on this _____ day of _____, 2012.

_____

ELENA DOYLE
Assistant State Attorney

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No. M12-13524
Judge Multack

STATE OF FLORIDA,

Plaintiff,

v.

PAULA BERRIOS,

Defendant.

TRIAL #4B

MOTION FOR ORDER IN LIMINE

COMES NOW KATHERINE FERNANDEZ RUNDLE, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and moves this Honorable Court for an Order in Limine instructing the Attorney for the Defendant to refrain from making any direct or indirect mention whatsoever at trial before the jury of the matters hereinafter set forth, without first obtaining permission from the Court outside the presence and/or hearing of the jury, on the grounds that the said matters are incompetent, irrelevant, or immaterial to the issues involved herein, and will serve only to unfairly prejudice the jurors against the State. The State requests that the Court prohibit the following:

1. Any attempt by the defense to impeach a State witness by referring to questions and answers provided by a hallway interview prior to trial shall be prohibited. "The law of evidence does not provide— and never has— that a party may attack the credibility of a witness simply by insinuating through his or her questions to the witness that the witness in fact has made statements which are inconsistent with the witness's present testimony, and then treating the insinuating questions as if they were impeaching evidence." *Marrero v. State*, 478 So.2d 1155, 1156 (Fla. 3d DCA 1985). Therefore, unless another witness, other than counsel for the Defendant, is called to testify such questioning is in bad faith and thereby improper. *See Id.* at 1157.
2. The defense shall be prohibited from making any or all of the following defenses: voluntary intoxication or alibi. Fla. Stat. § 775.051; Fla. R. Crim. P. 3.200, 3.216 (2000); *Chesnut v. State*, 538 So.2d 820, 821 (Fla. 1989).
3. The defense shall be prohibited from introducing evidence of the defendant's mental health or abnormal mental condition to suggest that the crime charged was not committed. The mental state or health of a defendant in a criminal case is not admissible in the absence of a plea of not guilty by reason of insanity to show the defendant lacked the specific intent to commit an offense. "Evidence of an abnormal mental condition not constituting legal insanity [is not] admissible for the purpose of proving either that the accused could not or did not entertain the specific intent or state of mind essential to proof of the offense, in order to determine whether the crime charged, or a lesser degree thereof, was in fact committed." *Chesnut v. State*, 538 So.2d 820, 820 (Fla. 1989). *See* Fla.R.Crim.P. Rule 3.216; Fla. R. Crim. P. 3.200.
4. The defense should be prohibited from making any characterization of the battery that minimizes the impact. The Defendant is charged with a violation of Fla. Stat. 784.03. The statute does not require that the touch, strike, or bodily injury be of any particular quantum or quality; it need only have

happened at the time charged in the information. Therefore, to permit the defense to elicit testimony or to argue that the touch or strike was insignificant would be to mislead the jury, which is impermissible under Fla. Stat. § 90.403.

5. The defense shall be precluded from making any comment that the Defendant has maintained his innocence to the attorney. These comments are hearsay and trigger no exception. Fla. Stat. 90.803. Furthermore, any comment by the defense that the Defendant said, and has always said, he is "not guilty" is irrelevant.

In addition, the State makes the following affirmative requests:

1. The State reserves the right to offer the statement(s) contained in the recording of the 911 call placed by David Dozier, Linda Dozier, and Paulette Carter as non-testimonial statements admissible under the excited utterance exception to the hearsay rule, Florida Statute § 90.803(2). This determination may be made by the presiding judge prior to trial and outside the presence of the jury, and the State accordingly requests an Excited Utterance Hearing.
2. The State hereby requests that all witnesses be excluded from the court proceeding so that they cannot hear the testimony of other witnesses pursuant to Fla. Stat. § 90.616.
3. The State requests that the Defendant make all suppression motions before commencement of trial.
4. The State hereby reserves the right to bring to the court's attention any additional motions as may arise throughout the course of the trial.

Respectfully submitted,
KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

BY:_____

ELENA DOYLE
Assistant State Attorney
Florida Bar #: 91025
Lawson E. Thomas Courthouse Center Building
175 NW 1st Avenue, Suite 2500
Miami, Florida 33128
(305) 349-5860

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above was furnished in Open Court to the Defendant on this _____ day of _____

_____
ELENA DOYLE
Assistant State Attorney

MENTAL HEALTH CALENDAR

Preparing Mental Health Cases: The Domestic Violence Court has a Mental Health calendar, which is designed to help Defendants with diagnosed mental health issues resolve their cases outside the normal Trial process. The Mental Health calendar involves referring Defendants to appropriate doctors for diagnosis, evaluation, stabilization, and treatment. In addition, the Mental Health calendar aims to ensure that Defendants continuously comply with prescribed treatment and medication regiments, as well as find appropriate housing. Once Defendants are stabilized, diagnosed, and are legally willing and able to resolve their criminal cases, the State can formulate specific Mental Health PTD or Probation plea offers.

I. Whenever a case is placed on the Mental Health calendar following the initial Bond hearing, the State must always request a specific Arraignment date for the case separate from any future Mental Health calendar setting. The Arraignment setting is necessary to ensure that the State has sufficient time to conduct a pre-file investigation in the normal course.

II. Moreover, whenever the defense actively chooses to place a case on the Mental Health calendar without proceeding to Sounding and Trial in the normal course, the State must ask the court to charge a Defense Continuance as of the date that the case was placed on the Mental Health track and diverted out of regular trial proceedings. Additionally, request that the Judge cancel the sounding and trial dates. This is necessary to avoid Speedy Trial problems.

III. If the defense refuses to accept a Defense Continuance, even though a case is on the Mental Health calendar, the State must request specific Sounding and Trial dates within the Speedy Trial period, in addition to any additional Mental Health calendar dates.

IV. Whenever a case is taken out of the normal Trial track and set on the Mental Health calendar due to a Defendant's mental health issues, the assigned ASA must immediately send an email to the SAO Mental Health ASA, the Assistant Chief, and the Division Chief, providing all pertinent information regarding the case. A copy of the email must be included in the case file.

   A. The Mental Health calendar takes place on Thursday mornings. Designated SAO Mental Health ASAs will handle this calendar, with the assistance of an assigned CTA.
   B. Nonetheless, unit ASAs are responsible for preparing, investigating, and prosecuting cases all cases that are placed on the Mental Health calendar in accordance with all Unit policies (including taking PFCs and requesting police reports, 911 calls, making a filing decision, etc.).

V. When preparing Mental Health cases for the Mental Health Calendar, ASAs must:

A. Verify whether an Information has been filed and notate with RED ink the date of filing under the "Charges" section on the front of the case file as follows: INFO FILED: (DATE).

B. If an Information has not been filed and the 30th or 33rd day is upcoming, the ASA must have the Clerks set the case for that division's next Arraignment calendar and inform the assigned ASA of the case number and the arraignment date.

The assigned ASA must bring the file to the Assistant Chief or Division Chief for further instructions.

C. **If an Information has not been filed and it is past the 33rd day since the date of arrest, the ASA must consult the Assistant Chief or Division Chief immediately.**

D. Review the file and, specifically, the procedural history of the case in order to determine the purpose of the court hearing. For example, MH cases are commonly set on calendar for:

1. Initial Mental Health assessment, in light of indications that the Defendant has mental health issues.
2. Review of an evaluation previously ordered by the court.
3. Verification that the Defendant has been stabilized after being sent to a Crisis unit.
4. Verification that the Defendant qualifies for benefits (e.g., Social Security, Medicaid, Veteran's Administration, etc.).
5. Verification that the Defendant has found adequate housing.
6. Verification that the Defendant is compliant with prescribed medications and treatment.
7. Verification that the Defendant is willing to accept a Mental Health plea offer to resolve the case.
8. Periodic monitoring of Defendants who have already accepted Mental Health plea offers.
9. Addressing any matters pertaining to a Defendant's mental health issues.

E. **ASAs shall not request/order any type of Mental Health evaluation without first consulting the Assistant Chief, Division Chief, or the SAO Mental Health ASA. This includes requesting competency, psychological, or psychiatric evaluations on any case.**

1. The court or the defense may request/order such evaluations, but ASA must unequivocally advise the presiding judge that the State is not making the request and will not pay for the costs of the evaluations. In addition, the ASA must request that the case be reset for a Friday Mental Health calendar, to allow the SAO Mental Health ASA to advise the court of the State's position regarding the evaluation.
2. If evaluations are ordered by the court or the defense without the input of the SAO Mental Health ASA, the in-court ASA must notate the file flap accordingly and indicate the type of evaluation that was ordered, the party who requested the evaluation, and the doctor(s) who were appointed to conduct the evaluation. The ASA must immediately bring this matter to the

attention of the SAO Mental Health ASA, the Assistant Chief, or the Division Chief.

3. If a Competency Evaluation concludes that the Defendant is competent to proceed to trial, the State will generally stipulate to the evaluation (remember the State never stipulates to the defendant's competency, only to the contents of the doctor's report).
    - ASAs must consult the SAO Mental Health ASA, the Assistant Chief, or the Division Chief prior to stipulating to a Competency Evaluation.
4. If a Competency Evaluation concludes that the Defendant is not competent, ASAs must consult the SAO Mental Health ASA, the Assistant Chief, or the Division Chief prior to taking any actions on the case.
    - If a case is set for a Competency Hearing, the ASA must immediately consult the supervisors listed above.

VI. A Social Worker from the Public Defender's Office may be present at the Mental Health calendar to make recommendations regarding the available treatment, benefits, and housing for qualifying Defendants. ASAs must review all recommendations with the SAO Mental Health ASA, the Assistant Chief, or the Division Chief prior to taking any actions on the case.

VII. A representative from the Mental Health department of the Administrative Office of the Court (AOC) may also be present at the Mental Health calendar. The AOC representative works for the Courts and is there to give the court unbiased recommendations regarding available treatment for qualifying Defendants.

Post-Mental Health Calendar Procedures:

A. Following the calendar, the assigned ASA shall prepare an email for the entire Unit to be sent before close of business on the date of the Mental Health calendar. This email shall contain a division breakdown of all the cases where the following occurred:

> (a) Speedy trial demand, (b) Notice of Expiration of Speedy Trial, (c) an Information was filed by the State, (d) arraignment from the A-Form, (e) a plea was conveyed (along with whether the plea was accepted), (f) a new arraignment date, (g) new sounding/trial dates, and (h) continuances taken (either State or Defense charged). (<u>See</u> Exhibit MH #1)

B. Review all cases that went to calendar that day and decide whether any action or follow up needs to take place. This may include formulating a plea and filling out the necessary paperwork for the next calendar date, calculating an NPT (non pro tunc) date, calculating a probation end date, contacting the Victim in the case, contacting Felony Mental Health ASAs, following up with requests by the judge or any other follow up deemed appropriate.

MH #1

Thu 8/9/2018 12:08 PM

JP

Jeffrey Pierce

RE: Mental Health Recap 8/2/2018

To Nicole James; Alexander DeFilippo; Erica Steinmiller-Perdomo; Yaneth Baez; Latravious Johnson

Cc Kristina Mills; Jeevan Rampersad; Maria Gomez; Taminka Robertson

Action Items + Get more add-

Good afternoon everyone! Below is a brief (and I mean BRIEF) recap from today's MH calendar.

Please review carefully the notes below for cases that pertain to you, paying specific attention to information in ***BOLD*** as it required your utmost and (at times) immediate attention.

If you have any questions please let me know. All cases are being returned to Taminka.

DIVISION 87		
Hall, Cassuas	M18-20293	D is screened and compliant, just awaiting placement at Camillus; ***Keep 8/13 ARR; R/S on Div 87 Trial Calendar 8/14 for Status***
DIVISION 88		
Otero, Julio	M18-12026	D tested positive for THC and Cocaine and taken into custody; D found ITP by one doctor and will be evaluated by another while in custody (D is very likely to be found ITP by the other Dr); D is a high risk danger to himself and to his mom (the vic); D has open felony case and a felony hold was placed on him (ASA reached out to felony ASA); R/S on MH 8/16
DIVISION 89		
None		
PVH		
NONE		

PROBATION VIOLATION HEARING CALENDAR

Open Case Life:

Beginning:

Police Officer/Detective is alerted of a law violation; finds probable cause fills out an Arrest Affidavit

Detective tells the State of the Probable Cause and State requests the Judge to issue an Arrest Warrant. (Or Police make an arrest off the a-form.) *An a-form is a charging document like an information.*

1st Appearance: Bond Hearing

Δ taken into custody, a bond is issued (most times). Δ released or held if necessary.

Probation: Case Life:

Beginning:

Advocate /Probation Officer is alerted of a violation; fills out an Probation Affidavit Advocate ("PVA").

Defendant is re-arrested on new charges &/or Advocate tells the State of the allegations (during JRC/Drug Court) and the State requests the Judge to issue a Probation Warrant. *A PVA is a charging document like an information but for PVH.*

1st Appearance: DVDC/JRC

Δ taken into custody, a bond is issued (most times). Δ can be taken into custody at JRC/DVDC.

ASA works the case up more, conduct conferences with witnesses, turns over disco timely.

Arraignment:

Δ is informed of the allegations, discovery given, and plea conveyed.
The case is set for Sounding.

"1ST x up" / Arraignment:

Δ is informed of the allegations, discovery given, and plea conveyed.
The case is set for a status.

ASA works the case up more, conduct conferences with witnesses, turns over disco timely.

Sounding:

State asks for a continuance

KR for trial

Status/Sounding:

State asks for a continuance

KR for Final Hearing

Trial:
Beyond a Reasonable Doubt Standard

Final Hearing/Trial:
Preponderance of the Evidence Standard

I. INTRODUCTION

When a Defendant is sentenced to serve a term of probation as a result of a negotiated plea or a sentence imposed by the Court after a conviction at trial, the Defendant is legally responsible for complying with all the conditions of the probation sentence. If a Defendant fails to comply with the conditions of probation, the State will prosecute the Defendant for violating probation.

If the defendant fails to comply with one or more of the terms of probation, the probation officer will file a Probation Violation Affidavit (PVA). The PVA is a sworn document that states the specific manner in which a defendant has violated probation. A PVA may be filed in court while the defendant is present, or it can be filed with the clerk by the probation officer outside of court. ASAs should never draft, sign, or file PVAs themselves; that task resides solely with the probation officer that has been assigned to the defendant's case by the Advocate Program.

Once a PVA is filed, an Arrest Warrant or Probation Warrant must be issued for the Defendant's arrest and to preserve jurisdiction. If the PVA is filed while the defendant is present in court, the State must request that a Probation Warrant be issued and for the defendant to be taken into custody. If a PVA is filed when the defendant is not in court, the State must request that an Arrest Warrant be issued. The "tolling" clock does not begin until the *issuance* of an Arrest or Probation Warrant, so this request must be made at the earliest possible opportunity once a PVA is filed. The warrant itself will contain a monetary amount that will be converted to a bond upon the defendant being "served" with the warrant.

There are two types of probation violation cases:

A. **Technical Violations:** These cases involve charges that the Defendant has violated probation by failing to comply with specific conditions of the probation sentence (e.g., violating the Stay Away Order, failing to appear for intake, failing to report to the probation officer, testing positive for controlled substances, failing to attend required classes, and failing to pay court ordered restitution, etc.).
B. **Substantive Violations:** These cases involve charges that the Defendant has violated probation by committing and being arrested for a new law violation.
    1. If the substantive violation is based on a pending Misdemeanor or Felony case in any jurisdiction, ASAs must consult with the ASA assigned to the open case prior to the PVH date.
    2. ASAs shall never proceed on a Probation Violation case involving a substantive Felony case, without first speaking to the Felony ASA and the Assistant Chief or Division Chief.
    3. Before proceeding on a Probation Violation case involving a Substantive Violation, ASAs must ensure that the incident which was the basis for the Substantive Violation occurred while the Defendant was on probation, and that they dates and alleged violations are accurately stated on the PVA(s).
    4. When a defendant is arrested for committing a new *crime* (ie. Battery) upon the same victim in the case he/she is on probation for, that serves as both a technical and substantive violation.

Probation violation cases may involve a combination of technical and substantive violations. ASAs are responsible for properly identifying the nature of the alleged violation of probation in each case, in order to properly prepare for the prosecution of the violation.

II. PVH CALENDAR PREPARATION

A. A "Lead" ASA will be assigned for every Probation Violation calendar and will be assisted by the PVH CTA.
   1. The Lead ASA is assigned in order to facilitate the distribution of PVH cases, and to ensure that all PVH files are obtained in a timely fashion. Additionally, this ASA will insure follow-up is complete on each file, prior to it being returned to the PVH secretary.

B. **Deadlines and Due Dates:**

1. **Friday, 7 Days before PVH**
   a. PVH CTA will send out the distribution list and arrange your files for pick up by 3PM.
   b. ASA's have until 5 PM to pick up their cases. No reminder will be sent.
   c. ASA's will look through their cases, pull out any Discovery, sign it and leave it in the PVH mail tray in the PVH Secretary's desk area.
2. **Monday, 4 Days before PVH**
   a. ASA's must submit any pre-hearing Secretary Sheets to PVH Sec. for processing by noon.
   b. ASA's should have signed and distributed their Compulsory Judicial Notices by noon.
   c. ASA's must have signed and returned any outstanding Discovery to PVH Sec. by noon.
   d. No reminders will be sent.
3. **Tuesday, 3 Days before PVH**
   a. All pleas should be e-mailed to the Lead ASA and PVH CTA by noon.
   b. No reminders will be sent.
4. **Wednesday, 2 days before PVH**
   a. ASA's must deposit ALL PVH cases in the designated drop-off area in the PVH CTA's office before leaving for the day, even if they are not done working on the cases.
   b. No reminder will be sent.
   c. ***PVH Sec. cannot complete the calendar without all cases.***
5. **Thursday, Day before PVH**
   a. PVH Sec. will process the calendar in the morning.
   b. Once the PVH Sec. completes the calendar, an e-mail will be sent out notifying ASA's that the cases are ready for pick-up and review by the bottom of the stairs.
6. **Friday, Day of PVH**
   a. ASA's have until 3:00 pm to complete post work and return their cases to the bottom of the stairs.
   b. Please leave any Secretary Sheets standing up in the file for completion.

C. ASAs shall review their assigned PVH cases within one (1) week of receiving the files.
D. ASAs shall first review and organize all available PVH documents into folders labeled as following (A print out of the defendant's most recent CJIS priors should be placed in the front of the file. (See Exhibit PVH# 5)
    a. **"PVH Documents"**
    Documents to be included in the PVH Documents folder include:
        i. Probation Violation Affidavit (PVA) filed by Advocate pertaining to the current violation of probation (See Exhibit PVH # 1)
        ii. Probation Warrant issued by the court when PVA was filed (See Exhibit PVH # 3)
        iii. Probation Order issued by Court when Defendant was placed on probation (See Exhibit PVH# 2)
        iv. CJIS Booking Information (See Exhibit PVH #6)
    b. "PVH Evidence (Technical)"
    This folder should contain any and all documents relating to alleged technical violations of probation, including but not limited to:
        i. Advocate Log-in Sheet
        ii. Advocate Case Summary
        iii. Progress Reports from treatment providers
        iv. Termination Memos from treatment providers
        v. Letters/Notices to Defendant from Advocate and/or treatment providers
        vi. Drug Test Results and their corresponding Business Record Certifications
    c. "PVH Evidence [Substantive Case Number]"
    This folder should only be created if a Defendant picks up a substantive violation of probation by getting arrested for a new criminal act. The folder should be labeled with the case number of the new arrest. For example, if the Defendant is arrested for case F10-13938 while on probation in your case, the label should read "PVH F10-13938." This folder should include all documents relating to the substantive violation, including:
        i. A-Forms, police reports, 911 copies, photos, and all other relevant discovery material for Defendant's new arrest
        ii. Witness list for Defendant's new arrest
        iii. Certified Conviction for Defendant's new substantive case (if Defendant took a plea on the new case)
        iv. E-mail correspondence between the ASA handling the probation violation case and the ASA handling the substantive case which serves as the basis for the violation.
    d. "PVH Miscellaneous"
        i. Current CJIS Docket Printout for particular case (See Exhibit PVH# 4)
        ii. Defendant Priors
        iii. Any e-mail correspondence between ASAs regarding the probation violation case
        iv. Printouts of Hydra case notes pertaining to the PVH
        v. Requests for documents placed by the PVH Secretary.

2. ASAs must next review the contents of the PVH documents to determine how to proceed with the case.
    a. Review the files to ensure that all of the necessary documents are present. If any documents are missing—such as the PVA, Probation Warrant, Order of Probation—the ASA should retrieve copies of the documents from the court file (which is available upon request from the Clerk's office on the first floor of CHC, Room 142).
    b. Review the PVA and confirm that it is complete and correct. The date of the alleged violations listed in the PVA must be accurate (i.e., for a substantive new law violation, the incident date, and not the arrest date, should be listed as the date that the Defendant committed the alleged violation). Additionally, ASAs must ensure that all violations are listed in the PVA (i.e., if the Defendant missed court, his failure to appear in court should be listed as a violation in the PVA; if the Defendant was arrested for committing a crime against the same Victim, the PVA should include both the substantive new law violation for the new case, as well as the technical violation for violating the Stay Away Order).
3. ASAs shall proceed to determine whether the State has captured jurisdiction to prosecute the alleged probation violation.
        a. The State has **captured jurisdiction** if three (3) conditions are met**.**
            i. The alleged violation of probation took place prior to the expiration of the Defendant's probationary period; ***and***
            ii. A PVA was filed prior to the expiration of the Defendant's probationary period; ***and***
            iii. The court issued a Probation Warrant for the Defendant prior to the expiration of the probationary period.
                a) Pursuant to Fla. Stat. § 948.06(1)(d), upon the filing of a PVA and the issuance of a probation warrant, the probationary period is **tolled** until the court enters a ruling on the violation.
            iv. In Fee Only cases a Notice to Appear should be sent to the Defendant in order to toll jurisdiction.
            v. Thus, the date when the Probation Warrant is issued, determines when the State captures jurisdiction for the prosecution of probation violations. A warrant is considered issued on the date the judge *signs* the warrant.
        b. ASAs shall review the following items to determine whether the State has captured jurisdiction.
            i. CJIS Docket Printout for the case
            ii. File flaps on State's file
            iii. PVH documents
                a) Probation Order
                b) PVA
                c) Probation Warrant
        c. When reviewing these items, ASAs must identify the following dates:
            i. When Defendant was placed on probation (Waiver of Rights)
            ii. When PVA was filed with court
            iii. When court issued (not served) the Probation Warrant

iv. If and when Defense Counsel (either the PD, Reg. Counsel or Private Attorney) were re-appointed for the probation violation. This will avoid having to reset the case at PVH when the court realizes that Defense Counsel was never re-appointed.

d. ASAs must calculate the total amount of time that the Defendant served in jail (Credit for Time Served or CTS). Calculating the total **CTS** is important for purposes of formulating appropriate plea offers on PVH cases. To calculate the defendant's CTS, you must do the following:
   i. Print out the summary of the defendant's booking dates from CJIS (acjsmenu > 15 > 10 > enter case number > F10 > File > Print Screen) (See Exhibit PVH # 6).
   ii. Add the amount of days that elapsed between each separate booking date and each release date listed. Make sure to include the dates that the defendant entered and was released in your calculations (ie., if defendant was booked on May 1st and released May 5th, he gets credit for 5 days).
   iii. Call Corrections Records Department or House Arrest to determine if the Defendant was ever on GPS during the booking dates.
      1. Corrections Records Department: 786-263-5388
      2. House Arrest: 786-263-4899
   iv. It is not uncommon for Defendants to be booked and released more than once on the same case, thus increasing the amount of CTS on the case.

4. ASAs shall then calculate the amount of **available probation time** on the case. The amount of **available probation time** depends on the total time on probation that the Defendant successfully completed before jurisdiction was tolled, as well as the total amount of time the Defendant served in custody on the case (CTS).
   a. ASAs shall identify the date when the Defendant was sentenced to probation (Waiver of Rights).
   b. ASAs shall identify the date when the Probation Violation Affidavit was filed. Where an amended PVA was filed after the initial PVA, the ASA should use the date when the initial PVA was filed in determining available probation time.
   c. ASAs shall identify the date when jurisdiction tolled by identifying the date the Probation Warrant was issued by the Court or the date the Notice to Appear was sent to the Defendant.
   d. ASAs shall calculate the amount of time that elapsed between the Waiver of Rights and the date when the Probation Warrant was issued.
      i. The resulting number represents the amount of **probation time lost**.
      ii. **Probation time lost** must be **added** to the defendant's **total CTS** and then **subtracted** from the total amount of months the Defendant was originally ordered to serve on probation, to figure out the **available probation time**. The formula should look like this:

      Original probation period – (Probation time lost + CTS)

iii. **EX:** Defendant is sentenced to 12 months of probation on January 1, 2013. A PVA and PVW are filed on November 1, 2013. The defendant has 30 days total CTS. The proper calculation would be: 12 months – (10 months completed probation + 1 month CTS) = 1 month available probation time.

e. Calculating the **available probation time** is important for purposes of formulating appropriate plea offers on PVH cases.

f. **If after careful review of the case, ASAs determine that the State may not have jurisdiction to prosecute an alleged probation violation, ASAs must consult the Assistant Chief or Division Chief.**

5. ASAs shall then prepare the file flaps for the PVH cases, by annotating the following information. (See Exhibit PVH # 7)
   a. **Original Probation:** length of Defendant's probation sentence (e.g., 12 months)
   b. **Waiver:** date when Defendant was originally placed on probation
   c. **PVA**: date when the initial PVA was filed with the court
   d. **AW:** date when the court issued the Probation Warrant
   e. **CTS:** Total CTS the defendant has acquired throughout the life of the case
      i. **Pre-Toll CTS:** any CTS prior to the filing of the PVA & AW
      ii. **Post-Toll CTS:** CTS accumulated after the PVA & AW were filed
   g. **Avail. Prob. Time:** the difference between the total amount of months the Defendant was sentenced to serve on probation and the amount of probation time lost prior to the capture of jurisdiction
   h. **Violation**: indicate whether the charged violation of probation is Technical, Substantive or a combination of both, and provide brief description of the violation. For example:
      i. Technical: Δ FTA for DV assessment
      ii. Substantive: Δ picked up new case F16-23456
   i. **KO:** indicate the PVH plea offer for the case
6. Just as on a normal calendar, the ASA should annotate the posture of the case on the left hand side of the file flap. Also indicate how preferred r/s date (See PVH #7):
   a. Ex 1st line: 1st x up, Status for:____ , or Final Hearing (FH).
   b. Ex 2nd line: R/S for 2 Weeks
7. On any substantive violation, ASAs must contact the ASA handling the substantive case as soon as possible. For substantive violations where the defendant picked up a felony case and there has not yet been a felony ASA assigned to the case, reset the PVH case past the scheduled arraignment date for that felony case.
   a. Coordinate with the Substantive Violation's assigned ASA about the possibility of a global resolution or any special instructions.
8. ASAs shall then contact any witnesses who may be necessary to prosecute the violation of probation charge, such as
   a. Police Officers involved in Defendant's substantive case
   b. Civilian Victims and Witnesses involved in Defendant's substantive case
   c. Probation Officer
   d. Personnel from treatment providers

i. If the Defendant was receiving treatment through an agency other than the Advocate Program and the violation is technical in nature, ASAs must contact the treatment provider in order to ascertain who is the appropriate representative who can testify as to the Defendant's failure to comply with treatment (e.g. Raul Vidal from Families in Action).
ii. The treatment provider's custodian of records
iii. The Defendant's treatment counselor
iv. Any person who has personal knowledge of the Defendant's failure to comply with required treatment

9. ASAs shall then prepare a Secretary Sheet addressed to the PVH secretary, in order to obtain outstanding documents/ evidence that will be needed at PVH. (See Exhibit PVH # 9)
10. ASAs shall also send an e-mail to the Advocate requesting any specific outstanding discovery. This e-mail shall be sent to Jael Curbelo, Lead Probation Officer for the Advocate Program (e-mail address: jaelm@advocateprogram.com) and Virginia Lopez, Domestic Violence Specialist (e-mail address: virginial@advocateprogram.com).
11. ASAs shall request copies of any and all documents that will be necessary to prosecute the alleged probation violation, including but not limited to:
    a. Police Reports for substantive cases, photos, 911 calls;
    b. Documents from Advocate and treatment providers regarding Defendant's compliance with conditions of probation (e.g. probation logs, class attendance logs, courtroom audio, etc.).
    c. ASAs shall amend Discovery to list all witnesses who will be necessary to prosecute the probation violation.
        i. ASAs shall list the name of all witnesses on the back of the case file under the PVH Witness section.
        ii. ASAs shall request Mandatory subpoenas for all witnesses who will be called to testify at the probation violation hearing.
        iii. Subpoenas must be sent out **at least fourteen (14)** days prior to the court date.
        iv. For PVH cases that are received one or two days prior to the PVH date, ASAs will not be able to send out subpoenas due to lack of time for service of the subpoenas. ASAs should seek continuances for these cases at PVH calendar and reset the hearing in three (3) weeks, and submit a request for the necessary subpoenas and any necessary discovery.
    d. ASAs shall amend Discovery to provide the defense with all documents and evidence pertaining to the charged violations.
12. ASAs shall file a Request for Compulsory Judicial Notice. In this request ASAs shall request the court take judicial notice of the Judgment, Sentence, and Order of Probation.

E. ASAs must complete preparing assigned PVH cases before leaving the office on the Wednesday (e.g., at least 24 hours) prior to the scheduled PVH date.
F. ASAs must review all cases with Technical Violations with a CTA or Assistant Chief prior to PVH calendar. All cases with Substantive Violations must be reviewed with the Division Chief or Assistant Chief prior to PVH calendar.

III. CALCULATING CTS ON PROBATION VIOLATION CASES

A. CTS should be divided into "Pre-Toll" vs. "Post-Toll"
   1. Pre-Toll: any CTS prior to the filing of the PV & AW
   2. Post-Toll: CTS accumulated after the PVA & AW were filed

B. CTS accumulated after/as a result of the PVA & AW being filed does not count against the amount of available probation the defendant has left to complete if re-enrolled or modified. However, if revoked and sentenced to jail to close out the case, the defendant should receive credit for all CTS, including any accumulated after the PVA & AW were filed.

C. Therefore, when offering a RE-ENROLL/MODIFY at PVH, if:
   1. **Pre-Toll CTS factored into original plea**: No CTS should be factored into the calculation of Available Probation time (already factored in).
   2. **Pre-Toll CTS was not factored into original plea**: Pre-Toll CTS should be subtracted from Available Probation time (not already factored), but not Post-Toll.
      a. Helpful Tips on finding CTS:
         i. Log into CJIS
         ii. 15 (Inquiry), 10 (Docket),
         iii. Enter Case number
         iv. F10
            a. Beware this may include time on GPS. If you have to call Dept. of Correction (House Arrest 786-263-4899) for them to give exact dates in custody v. on GPS.
            b. GPS does not count towards CTS for PVH purposes.
         v. Useful site to calculate duration between dates: https://www.timeanddate.com/date/durationresult.html?m1=9&d1=19&y1=2015&m2=9&d2=25&y2=2015&ti=on

IV. SENTENCING FOR PROBATION VIOLATION CASES

A. Fla. Stat. § 948.06(2)(b) provides in part that, "[i]f probation or community control is revoked the court shall…impose any sentence which it might have originally imposed before placing the probation or community control."
   1. Thus a Defendant who violates probation may be sentenced to serve a period of incarceration up to the maximum amount of time for the original crime charged.
      a. 364 days in Dade county jail for first degree misdemeanors.
      b. 60 days in Dade county jail for second degree misdemeanors.
   2. Moreover, pursuant to Fla. Stat. § 948.06(3), "[n]o part of the time that the Defendant is on probation or community control shall be considered as any part of the time that he or she shall be **sentenced to serve**."
      a. This means that Defendants who violate probation are not entitled to receive credit for time they spent on probation against any **incarceration** sentence imposed when their probation is revoked. State v. Summers, 642 So.2d 742 (Fla. 1994); see also Meader v. State, 665 So.2d 344 (Fla. 4th DCA 1995); Gonzalez v. State, 658 So.2d 1091 (Fla. 4th DCA 1995).
      b. For example, if a Defendant completes 10 months of probation but violates before the end of the 12 months probationary period, then the Defendant can be sentenced to serve 364 DCJ without receiving any credit for the 10 months of probation that were completed prior to the violation.

c. However, the Defendant is still entitled to receive credit for any jail time served in custody (pre-toll and post-toll) prior to the revocation of probation and the imposition of the 364 DCJ sentence.

B. Conversely, governing case law provides that when a Defendant violates probation and the court revokes the Defendant's original probation, **and imposes new sanctions involving a split sentence of jail time and probation**, the combination of the original probation sentence and the new sanctions cannot not exceed the statutory maximum for the underlying offense. Waters v. State, 662 So.2d 332 (Fla. 1995).

This means that if the court includes any amount of probation as a new sanction when the Defendant's probation is revoked, then the court must give the Defendant credit for any time previously spent on probation **if the new period of probation together with other sanctions (including jail credit) and the time previously spent on probation total more than the statutory maximum for the original charge.** Bragg v. State, 644 So.2d 586 (Fla. 4th DCA 1994).

C. Plea offers for Probation Violation cases must comport with the Plea Guidelines Section of this manual.

1. When formulating plea offers for Probation Violation cases, ASAs must consider the following factors:
    a. Nature of violation of probation
    b. Defendant's priors
    c. Facts of original crime(s) charged
    d. Whether Defendant has previously violated probation on the instant case or other unrelated cases
    e. Total amount of credit for time served in custody
    f. Total amount of available probation time
2. Plea offers that involved re-enrolling the Defendant into probation must be approved by the PVH CTA, Assistant Chief or the Division Chief.
3. Similarly, plea offers that involve sentences of incarceration time below 180 days in county jail must be approved by the Assistant Chief or the Division Chief.
4. Plea offers for Probation Violation cases must include language indicating that the Defendant is admitting to the charged violation and that the Defendant is being revoked from probation (or re-enrolled with prior approval) along with the specific terms of the sentence. For example:
    a. KO: Admit + Revoke + 200 DCJ with all CTS as of last booking date.
    b. KO: Admit + Modify + 9 MRP + 26 BIP + Mandatory DVDC + 1 AA/week upon completion of SAAT + 90 CSH @ 10 hours/month + MH + SAO.
5. Pursuant to Fla. Stat. § 948.06(2)(b)&(e), if probation is revoked, a Defendant **must be adjudicated guilty** of the original charge as well as the probation violation.
    a. This means that if a Defendant received a Withhold of Adjudication to the original charge, the court must enter an order adjudicating the Defendant guilty of the original offense (e.g., conviction).
    b. The same applies when a defendant is re-enrolled to probation. Under special circumstances, a defendant may be permitted keep his/her Withhold after accepting a re-enroll. This decision is at the discretion of the State, and must be approved by a Chief prior to conveying the offer.

V. PVH CALENDAR PROCEDURE

A. All ASAs assigned to cover PVH calendar must be in court 30 minutes prior to the beginning of the calendar.
    1. The files must be boxed and organized in alphabetical order.
    2. ASAs shall provide a copy of the external plea distribution list for the defense and to the court.

B. The Judge will call the PVH cases by the Defendant's name.
    1. If the Defendant is not present in court when the case is called, then ASAs must ask the court to issue an Arrest Warrant whenever good and timely notice was issued to the Defendant to appear.
    2. If bad notice was issued to the Defendant, ASAs must ask the court to reset the case for PVH in two (2) weeks with notice to Defendant from the Clerk's office.
    3. If the Defendant is present in court when the judge calls the case, then ASAs must announce whether or not the "State is Ready" for a PVH, whether the case will be resolved with a plea offer, or whether the State needs to reset the case. If the case involves technical and substantive charges, be sure to state on the record which charges the State is "Ready" to proceed on to hearing (e.g., the State is ready on the technical violation of Failure to Appear for Intake, but will not proceed on the substantive violation at this time).
    4. If there is no jurisdiction on the case because the period of probation expired prior to the filing of a PVA and issuance of a Probation Warrant, ASAs must inform the court and request that the Defendant's probation be terminated unsuccessfully. The court has authority to unsuccessfully terminate a Defendant's probation if the Defendant did not fully comply with the conditions of probation, even though the State may not have captured jurisdiction in order to prosecute an alleged violation of probation.
    5. If the State is seeking a continuance on a PVH case, ASAs must request a two to three week continuance when the case is first called and advise the court of the basis for the continuance, as well as the type of reset (for status or for final hearing).
    6. If a PVA has been filed on a case, but a Probation Warrant was never issued, then the State has not captured jurisdiction and the probationary time has not been tolled.
        a. If the Defendant is present in court, ASAs must inform the court of this situation.
        b. ASAs must ask the court to take the following actions:
            i. Issue a Probation Warrant based on the PVA that has been filed, so that jurisdiction may be captured and the probation period is tolled.
            ii. Take the Defendant into custody immediately based on the PVA and Probation Warrant. (Sometimes the judge will issue the warrant and "set aside" the warrant at the same time. Jurisdiction is still tolled so long as the judge "set aside the warrant.
                1. Note often times the clerks enter "Quashed" because they believe it means the same thing. Properly annotate the file in case this becomes an issue down the line.

iii. Request an appropriate bond or no bond as appropriate for the Defendant.
iv. Request a new PVH date in three (3) weeks and give in-court notice to the Defendant.

c. If the Defendant is not present, ASAs must ask the court to issue a Probation Warrant based on the PVA.

The case will be set before the court once the Defendant is picked up on the Probation Warrant (at which time the Defendant will appear on Bond Calendar).

d. The judge will pass cases that are announced "Ready for Final Hearing."
e. The judge will then call cases that will be resolved with a plea offer. *For all cases involving re-enrolls into probation, ASAs must complete all Orders Placing Defendant on Probation, as described in the Plea Guidelines Section of this manual.*
f. The judge will conduct the appropriate plea colloquy.
g. ASAs must annotate the file flap with the specific details of the plea offer.
h. The judge will usually take a recess for a brief period of time to allow negotiation with defense counsel.

Note: Plea offers are sent to the Public Defender's Office two days **prior** to PVH. ASA's are expected to negotiate offers **prior** to the PVH calendar.

i. Defense counsel will approach the State to negotiate pleas.
j. ASAs should not undercut an existing plea offer of another ASA without seeking their approval or speaking with the Assistant Chief or Division Chief.
k. When the court recess is over, the judge will ask the State and defense whether any cases are ready to be resolved.
l. ASAs must advise the court of the following
   i. Which cases will be resolved with a plea offer
   ii. Which cases will require continuances
   iii. Which cases will require a hearing
m. The judge will recall cases on which plea offers have been accepted and cases for which a party has decided to request a continuance.

For cases that are not resolved with a plea offer or continued for a future PVH date, the judge will conduct a probation violation hearing (See PVH predicates infra).

VI. POST-PVH CALENDAR PREPARATION

At the conclusion of the PVH calendar, ASAs must review the cases that were not resolved in order to ascertain if additional work is needed to prepare the cases for the next PVH date.

A. ASA's must complete Secretary Sheets in order to request any missing Discovery or documents from Police, the Advocate, treatment providers, etc.
B. ASAs must complete Secretary Sheets to request that Mandatory subpoenas instructing all necessary witnesses to appear at the next PVH date.

C. ASA's whose cases remain open, following completion of the calendar, must meet with the PVH CTA to determine the next steps required on their cases prior to returning the case to the PVH secretary.
D. ASA's must return all PVH files along with Secretary Sheets stapled to the front of the files, to the PVH secretary by 3:00 PM on the day of the PVH calendar.
    a. Note: The division meeting normally begins at 2:30 PM the day of the PVH calendar, therefore ASA's should have all PVH post-work done **before** the unit meeting.

STATE'S BURDEN OF PROOF AT PROBATION VIOLATION HEARINGS

For a court to revoke a defendant's probation based on a violation of a condition of probation, the State must establish by **a preponderance of the evidence that the defendant's violation was willful and substantial**. Francois v. State, 923 So.2d 1219 (Fla. 3rd DCA 2006); See also Clark v. State, 579 So.2d 109 (Fla. 1991). Willfulness may be proven by circumstantial evidence. Id.

NEW LAW VIOLATIONS

A Defendant's probation may be revoked solely on the basis of a conviction for criminal conduct, which occurred during the probationary term. Dearing v. State, 388 So.2d 296 (Fla. 3d DCA 1980); Franklin v. State, 356 So.2d 1352 (Fla. 2d DCA 1978); Thomas v. State, 350 So.2d 568 (Fla. 3d DCA 1977).

The Florida Supreme Court stated in Maselli v. State, 446 So.2d 1079 (Fla. 1984), that when a probationer is before the court accused of violating probation by committing an unlawful act, the judge may revoke probation upon finding that such unlawful act was committed by the probationer; it is not necessary that there be a conviction of the unlawful act. The judge may rely on the conviction even if it was imposed pursuant to a plea of nolo contendere. Id.

The State can prove a substantive criminal violation by entering into evidence a certified copy of a judgment of conviction. McPherson v. State, 530 So.2d 1095 (Fla. 1st DCA 1988). However, an un-counseled plea to a misdemeanor offense cannot be used to violate Defendant's probation. State v. Rock, 605 So.2d 456 (Fla. 1992).

ADMISSIBILITY AND SUFFICIENCY OF HEARSAY

Hearsay is admissible at a probation violation hearing. However, the Defendant's probation cannot be violated solely based on hearsay evidence. Bass v. State, 473 So.2d 1367 (Fla. 1st DCA 1985).

So long as there exists some other evidence in addition to the elicited hearsay, there is sufficient evidence to violate the Defendant's probation (or community control). See Russell v. State, 982 So.2d 642 (Fla. 2008) ("[…] the statements of the victim and the probationer, the type of injury, the demeanors of the victim and the probationer, and the credibility of the witnesses all factor into the trial court's weighing of evidence."); McNeely v. State, 186 So.2d 520 (Fla. 2d DCA 1966); Crossin v. State, 244 So.2d 142, 144 (Fla. 4th DCA 1971), which states in relevant part:

> "revocation will stand even though hearsay has been introduced provided there is other evidence on which the trial judge can base his decision."

Revocation of probation may be based solely upon hearsay evidence that falls within an exception to the hearsay rule Thomas v. State, 711 So.2d 96 (Fla. 4th DCA 1998). Although probation cannot be revoked based solely on hearsay evidence which would be inadmissible in a criminal trial, revocation can be grounded on a combination of that type of evidence and evidence which is admissible as an exception to the hearsay rule. McPherson v. State, 530 So.2d 1095 (Fla. 1st DCA 1988) (court could revoke probation based on hearsay held inadmissible at a trial combined with appellant's statement to probation officer).

The question is not whether all of the evidence is generally defined as hearsay, but rather whether there is some evidence to support revocation that would be admissible at a criminal trial. For example, testimony by an officer who states the victim in a new substantive violation identified the Defendant as the attacker shortly after the incident, together with testimony by the same officer that the Defendant stated during transport "I didn't hit her I just pushed her," would be sufficient evidence to violate a Defendant for a substantive violation of probation.

FAILURE TO COMPLY WITH CONDITIONS OF PROBATION

Where special conditions of probation require a Defendant to successfully complete a treatment program, proper evaluation is a condition precedent to any obligation of the Defendant to participate in a treatment program. See Archer v. State, 604 So.2d 561, 563 (Fla. 1st DCA 1992).

In order to revoke a Defendant's probation for noncompliance with a treatment program, the court must find that Defendant **willfully** and **substantially** violated the condition. Id.

In light of governing case law on this issue, all probation pleas shall specifically state the rate at which the Defendant is to complete the classes during the term of probation (e.g., "The Defendant is to complete the Domestic Intervention Program at a rate of 3 classes per month.").

Similarly, in Muthra v. State, 777 So.2d 1067 (Fla. 3d DCA 2001), the court reversed the probation revocation where the probation order did not impose a schedule for performing the special conditions of restitution and community service, and there was more than sufficient time remaining in the probationary period to perform the special conditions.

Thus, all probation pleas shall specify an exact schedule for completion of community services hours and payment of restitution (e.g. 90 CSH at a rate of 10/month).

Lastly, failure to submit one written monthly report, however, can be the basis for a violation of probation, if the court determines that the violation was willful and substantial. See Carter v State, 835 So.2d 259 (Fla. 2002).

CONSTITUTIONAL ISSUES

Because the probationer is in a peculiar status, there has been some litigation about the extent to which certain constitutional guarantees apply in probation (or community control) violation proceedings.

Courts have held that when a Defendant enters into a period of probation (or community control), the Defendant's probation officer may inquire into the facts of any subsequent offense without the

necessity of the giving the "Miranda" warnings. See Nettles v. State, 248 So.2d 259 (Fla. 2d DCA 1971).

Probationer's Fourth Amendment Rights: However, a different standard has developed as applied to Fourth Amendment rights, and two important cases have created full Fourth Amendment rights for probationers and have held that the probationer has a right to have illegally seized physical evidence excluded from any subsequent probation violation hearing. See State v. Cross, 487 So.2d 1056 (Fla. 1986). Even if the probationer has agreed in his/her probation order to waive his Fourth Amendment rights, this agreement will not be enforced. Croteau v. State, 334 So.2d 577 (Fla. 1976); and Grubbs v. State, 373 So.2d 905 (Fla. 1979). However, these cases both contain certain language that indicates the probation officer may have an inherent ability to enter a probationer's home or business and make use of evidence seen in plain view without the necessity of any reference to a specific condition allowing such entry in a probation order. Both of these cases also state that the mere fact that the Defendant is on probation may be considered by the judge in the issuance of a search warrant or in determining the reasonableness of a search.

Probationer's Fifth Amendment Rights: A probationer may not refuse to answer a question, just because the answer would disclose a probation violation. His or her agreement to accept the terms of probation effectively waives a Fifth Amendment privilege with regard to this information. **The 5th Amendment privilege against self-incrimination is only applicable to conduct and circumstances concerning a separate criminal offense.** Perry v. State, 778 So.2d 1072 (Fla. 5th DCA 2001); Minnesota v. Murphy, 465 U.S. 420, 104 S. Ct. 1136 (1984) (If a truthful response may reveal that a Defendant has violated a condition of probation but would not subject him to criminal prosecution, the State may insist that he respond and may penalize the Defendant for refusing to do so). State v. Heath, 343 So.2d 13 (Fla. 1977); Holmes v. State, 311 So.2d 780 (Fla. 3d DCA 1975).

Crawford Issues: the Crawford ruling proscribing the introduction of unconfronted testimonial evidence at trial does not apply to community control or probation violation hearings. See Russell v. State, 982 So.2d 642 (Fla. 2008) (Crawford does not apply to revocation of probation proceedings); Peters v. State, 984 So. 2d 1227 (Fla. 2008) (holding that probation revocation proceedings could not be equated to a criminal prosecution for Sixth Amendment confrontation clause purposes).

FEE ONLY CASES

The fact that the Defendant made bona fide efforts to acquire resources to pay monetary conditions of probation requires a court to consider a sanction other than imprisonment for failure to comply with monetary conditions. The State must show that the violation was willful. Once a willful violation by the Defendant is shown, the burden shifts to the probationer to show by clear and convincing evidence that he or she did not have the ability to pay. Green v. State, 620 So.2d 1126 (Fla. 1st DCA 1993). ASA's should request the defendant's financial affidavit from the court file in order to prove the defendant's ability to pay.

Additionally, under Brown v. State, 537 So.2d 180 (Fla. 3d DCA 1989), a Defendant's probation cannot be revoked based upon his failure to pay supervisory costs, absent a finding by the court that the Defendant had the ability to pay. Once the State has made an initial showing that the

Defendant has failed to pay the aforementioned costs, the burden shifts to the Defendant to prove inability to pay by clear and convincing evidence. Fla. Stat. § 948.06(5); *Guardado v. State, 562 So.2d 696 (Fla. 3d DCA 1990); McQuitter v. State, 622 So.2d 590 (Fla. 1st DCA 1993).

> *But: See Del Valle v. State, 80 So.3d 999 (Fla. 2011) (disapproving of Guardado, holding that the statute requiring a probationer to prove inability to pay by the heightened standard of clear and convincing evidence is unconstitutional under due process principles, because the heightened standard of proof requires the probationer to bear a greater risk of an erroneous decision resulting in imprisonment for debt, despite an explicit protection in the state Constitution against imprisonment for debt.

Florida Statute § 938.30(2) allows a court to convert court costs to community service hours after examining a Defendant under oath and determining their inability to pay. The State's recommendation for conversion is $5.00 per 1 community service hour (e.g. $50.00 = 10 CSH).

ASAs shall never agree to waive program fees, unless the Advocate agrees to the waiver of these fees on the record.

LAB REPORTS

Courts have found insufficient evidence to revoke probation based on a charge of Trafficking in Heroin, where no expert testimony or lab reports are introduced in evidence at the PVH establishing that the substance sold by the Defendant is in fact heroin. Chavous v. State, 597 So.2d 943 (Fla. 2d DCA 1992); L.R. v. State, 557 So.2d 121 (Fla. 3d DCA 1990); Weaver v. State, 543 So.2d 443 (Fla. 3d DCA 1989); Arnold v. State, 497 So.2d 1356 (Fla. 4th DCA 1986). Thus, the State must introduce evidence to establish that particular substance is a controlled substance as charged in the Probation Violation Affidavit.

PROBATION VIOLATION HEARING PREDICATES

In all PVH cases that go to a hearing, ASAs must request that the court take Judicial Notice of the court file for the Defendant's case number, pursuant to Fla. Stat. § 90.202(6) and § 90.203. In addition, ASAs must request that the following information be Judicially Noticed:

(a) The Judgment and Sentence wherein the Defendant was placed on the current probation sentence,
(b) The Probation Order placing the Defendant on probation, ***and***
(c) The PVA which was timely filed alleging the current violation of Probation.

After the Court takes Judicial Notice, ASAs must request that these specific documents be moved into evidence.

The predicates below represent an outline to be used at a PVH during the questioning of the State's witnesses. ASAs have an obligation to formulate all appropriate examination questions for their assigned PVH cases and pre-try all witnesses prior to a hearing. The following Predicates are to be used as a guide only.

TO COURT:

1. At this time, the State asks the Court to take Judicial Notice of the court file M09-11111; specifically the following 3 things: The judgment and sentence wherein the Defendant was placed on probation; The Probation Order; and the Probation Violation Affidavit.

SUBSTANTIVE VIOLATION PREDICATES

PROBATION OFFICER:

1. The State calls (Advocate Representative) to the stand.
2. Please state your name and spell your last name for the record.
3. Where are you employed?
4. What is your occupation?
5. How long have you been so employed?
6. Were you so employed on "X" date?
7. What are your duties there?
8. In the course of your duties at the Advocate Program, did you have occasion to come into contact with a person who became known to you as (Defendant's name)?

   (a) If the Representative knows the Defendant personally,
   - Do you see the Defendant who was placed on probation under case #_____in the courtroom?
   - Could you point him/her out and describe an article of clothing he/she is wearing? Let the record reflect that the witness has identified the Defendant.

(b) If the Representative does not know the Defendant personally, prior to calling the Representative, call the Defendant. The Defendant has no right to remain silent at a PVH. The State can call a Defendant as a witness in his own PVH and question him about technical violations of probation. The Defendant may still invoke his Fifth Amendment Right as to any new crime for which charges are pending. Perry v State, 778 So.2d 1072 (Fla. 5th DCA 2001). The Defendant's refusal to discuss his compliance or non-compliance with the terms of probation can be used against him and can be the basis for violating probation. Manigault v State, 534 So.2d 856 (Fla. 1st DCA 1988). While on the stand, the Defendant should be asked if he/she is on probation under this case number for an act of Domestic Violence, and whether he/she was on probation the date the substantive violation occurred.

9. Are you the records custodian for the Advocate Program?
10. Is it the regular practice of the Advocate Program to keep records of Defendants that are on probation?
11. Are those records kept in the regular course of business?
12. Are those records made at or near the time by or from information provided by persons who have knowledge of the facts that are put into those records?
13. Are those accurate records of the Defendant's probation status?
14. According to your records, was the Defendant advised of the terms of his probation?
15. How do you know?
16. I am showing you what has been marked as State's Exhibit #1 for identification (PROBATION ORDER), do you recognize it? How do you recognize it? What is it? (INTRODUCE "PROBATION ORDER") Does the Order indicate the Defendant's acknowledgment? How? (Defendant's signature and date)
17. Who advised the Defendant of the terms of probation (if you know)?
18. When was the Defendant advised, per the Order, of the terms of probation? (This usually occurs during intake).
19. Did the Defendant violate any of those terms?
20. How did the Defendant violate? (Arrested under PCN "X")
21. What was done when the Advocate Program became aware that the Defendant failed to abide by the terms of his/her probation by getting arrested? (Affidavit filed)

POLICE OFFICER:

1. The State next calls Officer (Officer's name).
2. Please state your name for the record.
3. Where are you employed?
4. How long have you been so employed?
5. Were you so employed as a police officer on (date of arrest)?
6. Were you on duty at approximately (time of arrest)?
7. Did you have an occasion to come into contact with a person who later became known to you as (Defendant's name) and who was arrested under police case #_____?
8. Do you see that person in court today?

9. Could you please point him/her out and identify him/her by an item of clothing (ID)? Let the record reflect that the witness has identified the Defendant
10. Did that contact occur in Miami-Dade County (VENUE)?
11. What circumstances brought you into contact with the Defendant on that date?

Always ask the Officer to provide testimony regarding each element of the crime at issue.

FAILED TO APPEAR FOR INTAKE PREDICATES

For these predicates to apply, the plea colloquy must have contained a specific instruction from the sentencing judge directing the Defendant that he must report to probation within 24 hours of accepting the plea and his/her failure to do so would result in a violation of probation.

The ASA should obtain a copy of the transcript of the plea colloquy from the appropriate court report firm prior to the PVH.

PROBATION OFFICER:

1. The State calls (Advocate Representative) to the stand.
2. Please state your name and spell your last name for the record.
3. Where are you employed?
4. What is your occupation?
5. How long have you been so employed?
6. Were you so employed on "X" date?
7. What are your duties there?
8. In the course of your duties at the Advocate Program, did you have occasion to come into contact with a person who became known to you as (Defendant's name)?

(a) If the Representative knows the Defendant personally:

- Do you see the Defendant who was placed on probation under case #_____in the courtroom?
- Could you point him/her out and describe an article of clothing he/she is wearing? Let the record reflect that the witness has identified the Defendant.

(b) If the Representative does not know the Defendant personally,
Prior to calling the Representative, call the Defendant. The Defendant has no right to remain silent at a PVH. The State can call a Defendant as a witness in his own PVH and question him about technical violations of probation. The Defendant may still invoke his Fifth Amendment Right as to any new crime for which charges are pending. Perry v. State, 778 So.2d 1072. The Defendant's refusal to discuss his compliance or non-compliance with terms of probation can be used against him and can be the basis for violating probation. Manigault v. State, 534 So.2d 856. While on the stand, the Defendant should be asked if he/she is on probation, under "X"

case number for an act of Domestic Violence; and whether he/she was on probation the date the substantive violation occurred.

9. Are you the records custodian for the Advocate Program?
10. Is it the regular practice of the Advocate Program to keep records for Defendants on probation?
11. Are those records kept in the regular course of business?
12. Are those records made by persons who have knowledge of the facts put into those records?
13. Are those records made at or about the time of that person having obtained the requisite knowledge?
14. Are those accurate records of the Defendant's probation status?
15. According to your records, was the Defendant advised of the terms of his probation?
16. How do you know?
17. I am showing you what has been marked as State's Exhibit #1 for identification (PROBATION ORDER), do you recognize it? How do you recognize it? What is it? INTRODUCE "PROBATION ORDER" Does the Order indicate the Defendant's acknowledgment? How? (Defendant's signature and date)
18. Who advised the Defendant of the terms of probation (if known)?
19. When was the Defendant advised, per the Order, of the terms of probation?
20. Did the Defendant violate any of those terms?
21. How did the Defendant violate those terms? (failed to appear for intake)
22. According to your records on what day was the Defendant supposed to appear for intake?
23. Did the Defendant appear for intake on that date?
24. How do you know? (Review of records)
25. Is it common practice to annotate the Defendant's records if and when they appear for intake or otherwise (phone/visit)? Does it reflect anywhere in your records that the Defendant had or attempted to have any contact with the Advocate Program?
26. If a Defendant fails to appear for intake, what measures, if any, does the Advocate Program take to attempt to contact the Defendant? (Notice of intent to revoke letter) I am showing you what has been marked as State's Exhibit #2 for Identification. Do you recognize it? How do you recognize it? (INTRODUCE "NOTICE OF INTENT TO REVOKE" LETTER) What is it? Ask Representative to read letter into the record.
27. How long does it usually take between the time that the Notice is sent to the time when the Defendant is in violation? (21 days) So, the Advocate Program does not revoke a Defendant right away even though the Defendant is instructed to appear for intake within 24 hours?
28. Does anything in your records indicate that the Defendant had or attempted contact with the Advocate Program within those 21 days?
29. What address for the Defendant is reflected in the "Notice of Revocation Letter"?
30. Is that the same address as reflected in the Probation Order? (ask if applicable)
31. Was there ever any notice of a change of address reported? (ask if applicable)
32. Is there anything in your records to reflect that the Defendant had provided a "bad address"? (ask if applicable)
33. In such a case, does Advocate take any further steps to try to locate the Defendant?
34. Was that done in this case?

35. What did Advocate do once aware that the Defendant failed to abide by the terms of his/her probation by failing to appear for intake? (PVA filed)
36. Did all of this occur in Miami-Dade County? (VENUE)

FAILED TO COMPLETE CLASSES PREDICATES

A Defendant's failure to enroll in a counseling program or undergo treatment cannot serve as a basis for a violation of probation, if the sentencing court did not specify a deadline for compliance and the Defendant still has time to satisfy conditions. See Williams v. State, 787 So.2d 180 (Fla. 2nd DCA 2001); Haynes v State, 571 So.2d 1380 (Fla. 2nd DCA 1990).

For these predicates to apply, the plea colloquy must have contained a specific instruction from the sentencing judge directing the Defendant to "enter and complete" the required counseling and treatment at a specified rate (e.g., 3 classes per month with 7 months to complete all classes); or the Defendant must not have ample time to complete the required classes within the time remaining on probation.

In order for ASAs to properly determine how to proceed in PVH cases involving these circumstances, a transcript of the plea colloquy should be ordered prior to the PVH.

PROBATION OFFICER:
Use predicates 1- 18 above, then continue as follows:

1. In what way? (failed to complete classes)
2. How do you know? (Reviewed records)
3. According to your records how many counseling sessions did the Defendant miss?
4. If a Defendant misses a number of counseling sessions, as here, what measures, if any, does Advocate take to attempt to contact the Defendant? (Notice of Intent to Revoke letter) I am showing you what has been marked as State's Exhibit #2 for identification? Do you recognize it? How do you recognize it? (INTRODUCE "NOTICE OF INTENT TO REVOKE" LETTER) What is it? Ask Representative to read letter into the record.
5. How long does it usually take between the time the Notice is sent to the time when the Defendant is in violation? (21 days) So, the Advocate Program does not revoke a Defendant immediately?
6. Does anything in your records indicate that the Defendant had or attempted contact with the Advocate Program within those 21 days?
7. What address for the Defendant is reflected in the "Notice of Revocation Letter"?
8. Is that the same address as reflected in the Probation Order? (ask if applicable)
9. Was there ever any notice of change of address reported? ask if applicable)
10. Is there anything in your records to reflect that the Defendant had provided a "bad address"? ask if applicable)
11. In such a case, does the Advocate Program take any further steps to try to locate the Defendant?
12. Was that done in this case?

13. What did the Advocate Program do once it was aware that the Defendant failed to abide by the terms of his/her probation by missing counseling sessions? (PVA filed)
14. Did all of this occur in Miami Dade County? (VENUE)

CLOSING ARGUMENT

1. The State has proven that the Defendant's probation violation was willful and substantial by a preponderance of the evidence.
2. The State has shown that the Defendant in case # _____ was placed on probation on (date).
3. The evidence has shown that the Defendant knew that a requirement of his probation was that he/she _____, and he/she knowingly and willfully violated these conditions by_____.
4. The Defendant failed to abide by the conditions of probation as required as shown by the testimony of the State's witnesses and the evidence that was introduced at the hearing (proceed to discuss each witness' testimony and evidence, and describe how they prove the violation of probation by a preponderance of the evidence).

PVH CHECKLIST

SUBSTANTIVE CASES

- ☐ Prepare File Folders
  - PVH Documents & Evidence
  - PVH Miscellaneous
  - PVH Substantive Case
- ☐ Copy of the PVA in file?
- ☐ Copy of Order of Probation in file?
- ☐ File Judicial Notice for Judgment, Sentence, PVA and Order of Probation (see manual)
- ☐ Double check defendant's priors—make sure there are not additional violations
- ☐ Order Discovery from PVH Secretary requesting:
  - A-Form of the new substantive case Defendant picked up
  - OIR from new substantive case Defendant picked up
  - DVS from new substantive case
  - Photos from new substantive case
- ☐ Subpoena witnesses for the new substantive case (insure you have permission from the felony ASA if the substantive case is a felony)
  - Officers
  - Fire Rescue
  - Victim
  - Other Witnesses
  - Jael Curbelo/Virginia Lopez (Advocate)
  - Probation Officer
- ☐ Contact victim and witnesses & explain PVH to them
- ☐ File flap with jurisdiction requirements
- ☐ Review the discovery packet prepared by the secretary (insure attachments are actually attached)
- ☐ Prepare Offer
- ☐ Have predicates prepared in the event of hearing

TECHNICAL CASES

- ☐ Prepare File Folders
  - PVH Documents & Evidence
  - PVH Miscellaneous
  - PVH Substantive Case
- ☐ Copy of the PVA in file?
- ☐ Copy of Order of Probation in file?
- ☐ File Judicial Notice for Judgment, Sentence, PVA and Order of Probation (see manual)
- ☐ Double check defendant's priors—make sure there are not additional violations
- ☐ Order Discovery from PVH Secretary requesting
  - Logs on date defendant failed to appear for intake
  - Logs where defendant appeared
  - Logs where defendant failed to appear
  - Logs/notes from probation officer indicating defendant's violations
  - Logs/notes from counseling program director/probation officer indicating defendant's violations
- ☐ Make sure the PVH Secretary has included the following:
  - Witness: Jael Curbelo (Advocate)
  - Witness: Probation Officer
  - Witness: Program Director/Officer from which defendant was revoked
  - PVA as discovery and attached an actual copy of the PVA
- ☐ Prepare file flap with Jurisdiction requirements
- ☐ Prepare Offer
- ☐ Have predicates prepared in case you have an actual hearing

PVH #1

the Advocate ap Program PDV/REV

DOMESTIC VIOLENCE COURT

STATE OF FLORIDA } JAY FLORES

: VS.

COUNTY OF MIAMI DADE } M15-19313 / DEBORAH WHITE-LABORA

Whereas , states as true, that JAY FLORES hereinafter referred to as the Defendant, was on Monday, August 10, 2015, placed on probation for the criminal offense of BATTERY in the County Court of Miami-Dade, for the term of 12 months in accordance with the provisions of Chapter 948, Florida Statutes;

further states that JAY FLORES has not conducted himself/herself, but has violated the conditions of his/her probation in a material respect by:

The defendant was assigned the following special conditions:

Referred To	Due	Status
ACTT EVALUATION	6/26/2016	PENDING
CLIENT REPORTING (0 / 11)	6/26/2016	PENDING
TREATMENT	6/26/2016	PENDING

The defendant has an outstanding balance on the folowing contributions :

Organization	Amount	Paid	Balance

The defendant has an outstanding court cost balance of$0.00

The $700.00 balance of the defendant's fee is/was due on [8/25/2015].

THE DEFENDANT HAS VIOLATED PROBATION DUE TO THE FOLLOWING:

ON OR ABOUT 08/13/2015, IN MIAMI-DADE COUNTY, FL., DEFENDANT ALLEGEDLY COMMITTED OFFENSE, RESIST OFF W/O VIOL, TRES/OCC/STR/CON/AT, WITH CASE NUMBER M15-26418, CONTRARY TO 843.02, 810.08(2)(B).

No. of warnings sent. [0]

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE.

Counselor Date 8/25/15

COPY

Sworn and subscribed before me this 25 day of August, 20 15

6/4/18
Expiration

JERALDINE SANTANA
MY COMMISSION #FF123279
EXPIRES: JUN 04, 2018
Bonded through 1st State Insurance

Notary Public

✓ Personally Known I.D.

PVH #1

the Advocate ap Program

PDV/REV

DOMESTIC VIOLENCE COURT

AMENDED

STATE OF FLORIDA } JAY FLORES
: VS.
COUNTY OF MIAMI DADE } M15-19313 / DEBORAH WHITE-LABORA

Whereas ANGELICA BUSTAMANTE, states as true, that JAY FLORES hereinafter referred to as the Defendant, was on Aug 10, 2015, placed on probation for the criminal offense of BATTERY in the County Court of Miami-Dade, for the term of 12 months in accordance with the provisions of Chapter 948, Florida Statutes;

ANGELICA BUSTAMANTE further states that JAY FLORES has not conducted himself/herself, but has violated the conditions of his/her probation in a material respect by:

The defendant was assigned the following special conditions:

Referred To	Due	Status
ACTT EVALUATION	6/26/2016	Pending
TREATMENT	6/26/2016	Pending
CLIENT REPORTING (0 / 11)	6/26/2016	Pending

The defendant has an outstanding balance on the folowing contributions :

Organization	Amount	Paid	Balance

The defendant has an outstanding court cost balance of $0.00

The $700.00 balance of the defendant's fee is/was due on [Jan 28, 2016].

DEFENDANT ALLEGEDLY COMMITTED OFFENSE, RESIST OFF W/O VIOL, TRES/OCC/STR/CON/AT, WITH CASE NUMBER M15-26418, CONTRARY TO 843.02, 810.08(2)(B).
(AMENDED) ON OR ABOUT 09/30/2015, IN MIAMI-DADE COUNTY, FL., DEFENDANT ALLEGEDLY COMMITTED OFFENSE, RESIST OFF W/O VIOL, WITH CASE NUMBER M15-32011, CONTRARY TO 843.02
(AMENDED)ON OR ABOUT 02/08/2016, IN MIAMI-DADE COUNTY, FL., DEFENDANT ALLEGEDLY COMMITTED OFFENSE, BATTER/AGG/PREGNAN, WITH CASE NUMBER F16-2646, CONTRARY TO 784.045(1)(B). (SAME VICTIM)

No. of warnings sent. [ ]

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE.

Date 3/3/16

ANGELICA BUSTAMANTE
Counselor

Sworn and subscribed before me this 03 day of March, 2016

COPY

Expiration

CARLA VALDEZ
MY COMMISSION #FF917554
EXPIRES: SEP 13, 2019
Bonded through 1st State Insurance

Notary Public

Personally Known I.D.

THE STATE OF FLORIDA,

Vs

Defendant

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DOMESTIC VIOLENCE DIVISION
CASE No. M15-19313

ORDER PLACING DEFENDANT ON PROBATION

THIS CAUSE came to be heard on this day by the Court, and named the Defendant being present and having

( ) Entered a plea of guilty to
( ) Entered a plea of nolo contender to
( ) Been found guilty by jury verdict of
( ) Been found guilty by the court trying the case without a jury of

the offense (s) of _____ OR the Defendant having

( ) Admitted violating probation
( ) Been found in violation of probation by the following acts or omissions: _____

the Court hereby finds the defendant guilty and

( ) Adjudicates the defendants guilty of the underlying offense(s)
( ) Withholds adjudication of guilt on the offense(s)

It appearing to the satisfaction of the Court that the ends of justice and welfare of society do not require that the defendant should suffer the maximum penalty, it is hereby **ORDERED AND ADJUDGED** that the defendant is placed on probation for a period of _____ months under the supervision of The Advocate Program, Inc. It is further **ORDERED** that the defendant shall comply with the following general and special conditions of probation during the probationary period (General Conditions listed on the back of the Defendant's copy):

Special Conditions of Probation

(All special conditions of probation shall be completed at least 30 days before your probation is scheduled to end.)

A. You must pay for and complete the Domestic Violence Batterer's Assessment, and Batterer's Intervention Treatment Program or _____. If substance abuse treatment and/or Mental health treatment are deemed necessary upon assessment, you must pay for and successfully complete said treatment(s). You must attend a minimum of one group per week and pay required program fees as they are due weekly. You have one opportunity to appear for your probation intake appointment, complete the process of signing-up for probation, and complete the treatment program successfully. (Failure to do so may result in revocation of your probation, even if time remains within your probation period to complete the program. You must follow the directions of your probation officer and treatment provider regarding attendance at schedule appointments). If, after assessment, it is determined you qualify for enhanced judicial monitoring based on the use of substances, please understand you may have more frequent court appearances to address your status / progress within the program and you may be subject to more frequent urinalysis testing. If you test positive on any urinalysis screenings, you will be notified by the provider and / or your Advocate Probation Officer of the next Enhanced Judicial Review Calendar which you MUST attend.

B. You shall successfully complete_____hours of community service, at a rate of_____hours per week.

C. You shall pay for and complete a Parenting Course. You must attend a minimum of one group per week and pay required program fees as they are due weekly.

D. You shall pay court cost in the amount of $ _____.

E. You shall pay fines in the amount of $_____.

F. You shall stay away from _____. You will have no contact with said person, directly or indirectly, in person, in writing, by phone, pager, fax, or through third persons. You must stay at least 500 feet away from said person's home, place of employment or school and parked car at all times.

G. The protected party is a spouse, former spouse, a person who (cohabitates) cohabits or has cohabited with the Defendant, a parent of a common child, a child of that person, or a child of the Defendant.

H. You must immediately surrender all firearms, ammunition and concealed weapons permits to the nearest police station, obtain a receipt, and turn it in to your probation officer. Additionally, you are prohibited from using, owning, purchasing, possessing or carrying a firearm, ammunition or concealed weapons permits during the term of your probation.

I. You are allowed to have contact with _____, but are prohibited from being physically threatening or violent in any manner whatsoever.

J. You shall pay restitution to _____ in the amount of $ _____

K. You shall pay a public Defender's Lien in the amount of $_____, pursuant to the Final Judgement entered in this case.

L. You must pay for and complete the following program(s) or other conditions (s) through The Advocate Program, Inc. _____

M. You must serve _____ days in the County Jail with credit for _____, commencing _____, as a special condition of probation.

N. You shall pay a minimum of $ _____ per month towards assessed court costs and/or Public Defender's Lien.

O. 1) You must attend any court appearances as directed by your probation officer and/or court notice. 2) You must pay all probation cost according to the payment schedule set forth by your probation officer.

P. You have one opportunity to complete all terms and conditions of probation, including payment of treatment program fees as due, by the following date: _____

Q. Other: _____

WHITE (Court) **YELLOW** (Advocate Program) **PINK** (Defendant) **GOLD** (State) **GREEN** (Defense Counsel) CS415(A) (Rev. 06/08)

PVH #2

APPLICABLE TO ALL PROBATIONERS

You are hereby placed on notice that if you violate any of the conditions of your probation, you may be arrested and the Court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence, including incarceration, which it might have been imposed before placing you on probation.

It is further ordered that the Clerk of this Court file this order in the Clerk's Office, and provide copies to The Probation Officer for use in compliance with the requirements of law.

DONE AND ORDERED in Miami-Dade County, Florida this _____ day of MAY 15 2012, _____.

Victoria del Pino
Acting Circuit Court Judge

County Court Judge

I acknowledge receipt of a copy of both pages of this order. All the conditions have been explained to me. I understand each of the conditions and agree to abide by them.

Description

Race: W Sex: M

D.O.B.: 5/24/1

Height: 5'10" Weight: 191

Hair: BRO Eyes: BRO

SS#: N/A

Probationer Richard Kimble
Signature Date

Printed Name RICHARD KIMBLE

Address 123 BISCAYNE BLVD

MIAMI, FL

Telephone 305-555-5432

Defense Counsel Danielle Melnick
Signature

Printed Name DANIELLE MELNICK

YOU MUST REPORT WITHIN 24 HOURS OF THE DATE OF THIS ORDER OR YOUR RELEASE FROM JAIL TO:

THE ADVOCATE PROGRAM
1901 S.W. 1st Street, 3rd Floor
Miami, Florida 33135
(305) 704-0200

MON. TUES, THURS & FRI: 8:30 am to 4:30 pm
WED: 8:30 am to 7:30 pm

YOU MUST BRING PROOF OF INCOME OR SUPPORT (I.E. PAY STUB, TAX RETURN, W-4 FORM) WITH YOU TO THE ADVOCATE PROGRAM. IF YO DO NOT HAVE PROOF OF INCOME, YOU MUST BRING A LETTER INDICATING YOUR SOURCE OF FINANCIAL SUPPORT, WRITTEN AND SIGNED BY THE PERSON SUPPORTING YOU. YOU MAY BE HELD IN CONTEMPT OF COURT FOR FAILURE TO PROVIDE THIS INFORMATION. YOU MUST BRING A PHOTO I.D.

WHITE (Court) **GREEN** (Defendant Counsel) **YELLOW** (Advocate Program) **PINK** (Defendant) **GOLD** (State)

CS415(B) Rev. 01/09

PVH #3

POH
1-29-16 9:15
A/O 1-29-16

WLABORA
M89

☐ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
☑ IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DIVISION	PROBATION WARRANT FOR VIOLATION OF PROBATION	CASE NUMBER
☑ CRIMINAL ☐ TRAFFIC ☐ OTHER		M15-19313

FEB 01 2016

THE STATE OF FLORIDA VS. Jay Flores	CLOCK IN
PLAINTIFF PROBATIONER	

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA. You are hereby commanded to take into custody

219 NW 10 Ave, #3, Miami, Fl. 33128
(Probationer's Name and Address)

and place him/her in the Dade County Jail until (s)he may be brought before one of the Judges of the Criminal Division of the County Court at the next schedule Bond Hearing (if (s)he may not be brought before said Court immediately) to answer for a violation of probation in the above entitled cause and to receive what sanctions this Court shall consider and adjudge.

ALL HAVE YOU THEN AND THERE this Warrant.

BOND INFORMATION

Appearance Bond fixed at $ 9,000.00

DONE AND ORDERED at Miami, Miami-Dade County, Florida, this 29 2016 day of _____, _____.

D.V. JOSEPH I. DAVIS, JR.
County Court Judge

JUDGE

DESCRIPTION

RACE White SEX Male
D/O/B 1/30/95
HEIGHT 5'2 WEIGHT 145
HAIR Blk EYES Bro

FEB -1 AM 8:52

CS 425 DV

WHITE - COURT CANARY - STATE ATTORNEY PINK - PUBLIC DEFENDER GOLD - ADVOCATE

PVH #4

CIRCUIT CRIMINAL DIVISION
PRINTED DOCKET - MISDEMEANOR
CASE ACTION SUMMARY

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR DADE COUNTY

BURKETH

CASE NO: M15019313 IDS: 2110761 CIN: 0975261 POLICE CASE NO: 160209039685
STATE CSE: 132015MM0193130001XX FILE LOC: 24 CASE PROCESS BOX#
DEFENDANT: FLORES JAY
ADDRESS: 1810 NW 47TH ST MIAMI FL 331424045
PERSONAL INFORMATION IMPORTANT DATES
DOB: 01/30/1995 RACE: W SEX: M ARRST/CIT: 06/10/2015 ARR: 02/09/2016
EYES: BRO HEIGHT: 501 FILED: 06/11/2015 TRIAL: 08/10/2015
HAIR: BLK WEIGHT: 150 INFO: 07/07/2015 CLOSED: 08/10/2015
JUDGE: GONZALEZ-PAULSON MICHAELLE BOOKED: 02/09/2016
SECTION: M089 COL: C AMEND INFO DT: SPEEDY REQ: 00/00/0000
ATTORNEY: PUBLIC DEFENDER APPOINTMENT ASSIGNED ATTY TYPE: PDEF
WARRANT: ISSUED: ARR/CIT-OFCR: 1- 28400
COURTROOM: 2B LOCATION: CHC FUTURE HEARING: 05/20/2016 TYPE: R OTH HRG: N

CHARGES	T	D	DESCRIPTION	DISPOSITION	DATE	PL	TL
784.03	M	1	BATTERY	WH ADJ-PROB SP COND	08/10/2015	NB	B
948.061	Z	0	PROBATION VIOLATION			D	B

SEQ	DATE	PROGRESS OF CASE
120	05/09/2016	NOTICE ISSUED TO: DEFN/ATTY/BNDM HRG DATE 05/20/2016 REPORT
119	05/06/2016	REPORT RE: PROB/COM CONTROL VIOL SET FOR 05/20/2016 AT 09:15
118	05/06/2016	NOTICE OF CHANGE OF ADDRESS 1810 NW 47TH STREET, MIAMI, FL 33142
117	05/06/2016	DEFN STREET CHANGED BY FINALIST PURSUANT TO CLERK
116	04/18/2016	NOTICE ISSUED TO: DEFN/ATTY/BNDM HRG DATE 05/06/2016 REPORT
115	04/15/2016	REPORT RE: PROB/COM CONTROL VIOL SET FOR 05/06/2016 AT 09:15
114	04/04/2016	NOTICE ISSUED TO: DEFN/ATTY/BNDM HRG DATE 04/15/2016 REPORT
113	04/01/2016	REPORT RE: PROB/COM CONTROL VIOL SET FOR 04/15/2016 AT 09:15
112	04/01/2016	MOTION FOR CONTINUANCE FILED 04/01/2016 ORAL SET FOR 04/01/2016 AT 09:15 GRANTED STIP
111	03/28/2016	DISCOVERY RE: PROBATION VIOLATION HEARING
110	03/23/2016	BOND RECEIVED POWER/RECEIPT# AS15427862
109	03/18/2016	NOTICE ISSUED TO: BNDM HRG DATE 04/01/2016 REPORT
108	03/17/2016	08742 HUGGINS, MCKASEY K AUS AMT/ 2000 ISSUED 03/17/2016 POWER/AS15427862
107	03/17/2016	DISCHARGE CERTIFICATE ISSUED AS25243037
106	03/16/2016	KEEP 4/1/16 PVH DATE
105	03/16/2016	08500 THOMAS, KENT K AUS AMT/ 7500 DISCHARGED 03/16/2016 POWER/AS25243037
104	03/16/2016	08500 THOMAS, KENT K AUS AMT/ 7500 VACATED 03/16/2016 POWER/AS25243037

* * * CONTINUED ON NEXT PAGE * * *

PVH #4

103	03/16/2016	ORDER: GRANTING MOTION TO SET ASIDE BOND ESTREATURE & DISCHARGE SURETY
102	03/16/2016	BOND REDUCED TO $2000 + GPS ROAMING @ $1 A DAY
101	03/16/2016	MOTION TO REDUCE BOND FILED 03/16/2016 ORAL SET FOR 03/16/2016 AT 11:23 GRANTED
100	03/10/2016	NOTICE ISSUED TO: DEFN/ATTY HRG DATE 03/16/2016 MOTION
99	03/09/2016	MOTION TO SET ASIDE BOND ESTR/DISCHARGE SURETY FILED 03/08/2016 SET FOR 03/16/2016 AT 10:30 GRANTED
67	03/09/2016	MOTION TO SET ASIDE BENCH WARRANT FILED 10/27/2015 SET FOR 11/04/2015 AT 10:30 GRANTED
98	03/08/2016	MOTION TO/FOR: SET ASIDE ESTREATURE AND TO BE DISCHARGED FROM BOND
97	03/07/2016	NOTICE ISSUED TO: DEFN/ATTY HRG DATE 04/01/2016 REPORT
96	03/04/2016	REPORT RE: PROBATION SET FOR 04/01/2016 AT 09:15
95	03/04/2016	AMENDED AFFIDAVIT OF VIOLATION OF PROBATION
94	02/26/2016	NOTICE ISSUED TO: DEFN/ATTY HRG DATE 03/04/2016 REPORT
93	02/25/2016	BOND $10,000
92	02/25/2016	REPORT RE: PROB/COM CONTROL VIOL SET FOR 03/04/2016 AT 09:15
91	02/19/2016	NOTICE ISSUED TO: DEFN/ATTY HRG DATE 02/25/2016 REPORT
90	02/18/2016	REPORT RE: STATUS SET FOR 02/25/2016 AT 09:00
89	02/12/2016	NOTICE ISSUED TO: DEFN/ATTY HRG DATE 02/18/2016 REPORT
88	02/11/2016	REPORT RE: STATUS SET FOR 02/18/2016 AT 09:00
87	02/10/2016	ALTERNATE JUDGE RUBENSTEIN, JUDITH
86	02/10/2016	REPORT RE: STATUS SET FOR 02/11/2016 AT 09:00
83	02/09/2016	ARREST WARRANT ISSUED: 01/29/2016 SERVED 02/09/2016
82	02/01/2016	SURETY NOTIFIED POWER/AS25243037
81	01/29/2016	08500 THOMAS, KENT K AUS AMT/ 7500 ESTREATED 01/29/2016 POWER/AS25243037
80	01/11/2016	NOTICE ISSUED TO: DEFN/ATTY/BNDM HRG DATE 01/29/2016 REPORT
79	01/08/2016	DISCOVERY RE: PROBATION VIOLATION HEARING
78	01/08/2016	REPORT RE: PROB/COM CONTROL VIOL SET FOR 01/29/2016 AT 09:15
77	12/21/2015	NOTICE ISSUED TO: DEFN/ATTY/BNDM HRG DATE 01/08/2016 REPORT
76	12/18/2015	REPORT RE: STATUS SET FOR 01/08/2016 AT 09:15
75	11/20/2015	NOTICE ISSUED TO: DEFN/ATTY/BNDM HRG DATE 12/18/2015 REPORT
74	11/06/2015	REPORT RE: PROB/COM CONTROL VIOL SET FOR 12/18/2015 AT 09:15
73	11/05/2015	BOND RECEIVED POWER/RECEIPT# AS25243037
71	11/04/2015	REPORT RE: STATUS SET FOR 11/06/2015 AT 09:15
84	11/03/2015	BOOKING DATE
72	11/03/2015	08500 THOMAS, KENT K AUS AMT/ 7500 ISSUED 11/03/2015 POWER/AS25243037

* * * CONTINUED ON NEXT PAGE * * *

PVH #4

69	11/03/2015	ARREST WARRANT ISSUED: 10/23/2015 SERVED 11/03/2015
68	10/29/2015	NOTICE ISSUED TO: DEFN/ATTY HRG DATE 11/04/2015 MOTION
66	10/27/2015	MOTION TO/FOR: SET ASIDE BENCH WARRANT
65	10/26/2015	SURETY NOTIFIED POWER/FCS51565701
64	10/23/2015	06434 CHIUZ, EDGARDO R FCS AMT/ 4500 ESTREATED 10/23/2015 POWER/FCS51565701
63	10/23/2015	AMENDED AFFIDAVIT OF VIOLATION OF PROBATION
62	10/13/2015	DISCOVERY PROBATION VIOLATION HEARING
61	10/13/2015	REQUEST FOR COMPULSORY JUDICIAL NOTICE
60	10/13/2015	NOTICE ISSUED TO: DEFN/ATTY/BNDM HRG DATE 10/23/2015 REPORT
59	10/09/2015	REPORT RE: PROB/COM CONTROL VIOL SET FOR 10/23/2015 AT 09:15
58	10/05/2015	BOND RECEIVED POWER/RECEIPT# FCS51565701
56	10/05/2015	NOTICE ISSUED TO: DEFN/ATTY/BNDM HRG DATE 10/09/2015 REPORT
57	10/02/2015	06434 CHIUZ, EDGARDO R FCS AMT/ 4500 ISSUED 10/02/2015 POWER/FCS51565701
54	10/02/2015	REPORT RE: PROB/COM CONTROL VIOL SET FOR 10/09/2015 AT 09:15
53	10/02/2015	BOND SET @ $4500
52	10/02/2015	MOTION TO REDUCE BOND FILED 10/02/2015 ORAL SET FOR 10/02/2015 AT 11:31 GRANTED
51	10/01/2015	DEFN ZIP CODE CHANGED BY FINALIST PURSUANT TO CLERK
50	10/01/2015	AFFIDAVIT FOR INDIGENT STATUS - INDIGENT
49	10/01/2015	NO BOND SET
48	10/01/2015	REPORT RE: PROB/COM CONTROL VIOL SET FOR 10/02/2015 AT 09:15
47	09/30/2015	ARREST WARRANT ISSUED: 08/31/2015 SERVED 09/30/2015
45	09/30/2015	BOOKING DATE
44	09/10/2015	KEEP AW - OFF CALENDAR
43	08/31/2015	VIOLATION OF PROBATION AFFIDAVIT FILED
42	08/31/2015	NOTICE ISSUED TO: DEFN/ATTY HRG DATE 09/10/2015 REPORT
41	08/28/2015	REPORT RE: REVIEW BY COURT SET FOR 09/10/2015 AT 14:30
38	08/11/2015	DISCHARGE CERTIFICATE ISSUED 2015AA011600
40	08/10/2015	FINDING OF GUILT/ORDER W/H ADJUDICATION & SPECIAL CONDITIONS WH 12MRP BOOK 29750 PAGE 4636
39	08/10/2015	ORDER OF PROBATION - ADVOCATE PROGRAM WH 12MRP 26BIP BOOK 29750 PAGE 4616
36	08/10/2015	STAY DUE DATE CHANGED BY CLERK FINC 00/00/0000 TO 7/10/2016
35	08/10/2015	STAY GRANTED - DUE 07/10/2016
34	08/10/2015	MEMORANDUM OF COSTS AMOUNT 1076.00
33	08/10/2015	05921 MARTINEZ, PARRISH J LNI AMT/ 3000 DISCHARGED 08/10/2015 POWER/2015AA011600
32	08/10/2015	RESET JRC 30 DAYS

* * * CONTINUED ON NEXT PAGE * * *

PVH #5

JOB-NUM: J950199
PROGRAM: CJSB088

M I A M I - D A D E C O U N T Y
CRIMINAL JUSTICE INFORMATION SYSTEM
JAIL ARRAIGNMENT LOCAL HISTORY PRIORS
COUNTY COURT

PAGE: 1
DATE: 05/09/2016

IDS: 2110761 CIN: 0975261 POLICE CASE: 160209039685 DEPT: 001 ARREST DATE: 02/08/2016 JAIL: 160125592
JUDGE: MICHARLLE GONZALEZ-PAULSON SECT: M089 HEARING DATE: 07/08/2015 TIME: 09:00 TYPE: A COURTROOM: 3-49
NAME: FLORES, JAY RACE: W SEX: M DOB: 01/30/1995 RELEASE DATE:

CURRENT CHARGES

CASE	DOM	TYPE	DEG	STATUTE NUMBER	INT	VER	DESCRIPTION	BONDAMT	WARTYPE	WARRANT NO.	
M15019313								9,000	AW		(SEE CASE BELOW

DADE COUNTY HISTORY INFORMATION

OPEN CASES

CASE NUMBER	DOM	HEARING DATE	HEARING TYPE	TYPE	DEG	CHARGE	JUDGE	SECT	AKA NAME
M15019313	Y	05/20/2016	REPORT	M	1	BATTERY	368	M089	
	Y	05/20/2016	REPORT	Z	0	PROBATION VIOLATION	368	M089	
M15032011		06/06/2016	TRIAL	M	1	RESIST OFF W/O VIOL	267	M100	

CLOSED CASES

CASE NUMBER	D	CLERK'S FILE DATE	T	D	CHARGE	DISPOSITION	CLOSED DATE	SENT	NEXT CASE	SECT	PROBATION PROB	PROBATION END DATE	AKA NAME
M15019313	Y	06/11/2015	M	1	BATTERY	WH ADJ-PROB SP CON	08/10/2015			M089	12M	08/09/2016	
	Y	06/11/2015	Z	0	PROBATION VIOLATIO	INVALID DISPOSTITI	08/10/2015			M089	12M	08/09/2016	
F16002646	Y	02/09/2016	F	2	BATTERY/AGG/PREGNA	NO ACTION	03/15/2016			F019			FLORES, J
M14040077		10/09/2014	M	2	DISORDERLY INTOX	WH ADJ W/FINE & CO	04/10/2015			M007			FLORES, J
M15026418		08/13/2015	M	1	RESIST OFF W/O VIO	NOLLE PROS	01/06/2016			M005			FLORES, J
		08/13/2015	M	1	TRES/OCC/STR/CON/A	NOLLE PROS	01/06/2016			M005			FLORES, J

PVH #6

Date: 8/3/2016 Time: 6:38:39 PM

DATE: **08/03/2016** **CRIMINAL JUSTICE INFORMATION SYSTEM** CJSMRCDV
TIME: **06:38** BOOKING INFORMATION FOR CASE NUMBER

CASE NO: M15019313 NAME: FLORES JAY

JAIL NUMBER	BOOKING DATE	RELEASE DATE
160125592	02/09/2016	
150153930	11/03/2015	11/04/2015
150148977	09/30/2015	10/03/2015
150132900	06/11/2015	06/11/2015

PF1 HELP **PF2** EXIT **PF3** PM **PFK:**
RCDV-PM-2, PRESS CLEAR TO RETURN TO PREVIOUS TRANSACTION.

PVH #7

MIAMI-DADE COUNTY, FLORIDA	Case#	M11-48670
	Police case#:	PD120515184784
STATE OF FLORIDA	Division#:	M88
v.	ASA:	ED
Joseph, Geraldine	Δ Attorney:	PD

Victim (s)	Arrest Date	Speedy Date	Jail Cert.	PTDE	SAO	EU	Injury	Photos / Video	Obsvd	Δ Admission
Joseph, Geraldine	11/07/11	2/06/12	N	N	Y	N	Y	Y	N	N
	DEMAND FILED: _____									
	DAY 50: _____									
	NOE FILED: _____									
	DAY 15: _____									

CHARGES:	DISCOVERY	IN	OUT	DATE ORDERED			
Battery	OIR	✓	ARR	12/6			
	DV Supplement	✓	ARR	12/6			
Cannabis Posn/0-20	911 tape	✓	7/25/11	12/6			
	Photos	✓	ARR	12/6			
	Video	----------					
	Statements	✓	ARR	12/6			
	Injunction	✓	ARR				
	Fire/Rescue Report	----------					
	Cert. Conviction	----------					
	Miranda Waiver	✓	12/12/11				
	Detective report	✓	12/12/11				

REPORTS AND TRIAL DATES

DATE	SETTING	ASA	RESULTS
6/29/2012	PVH 9:00am 2B		
	Original Probation: 12 mos		
	Waiver: 01/11/12		
	PVA: 3/30/12		
	AW: 05/15/12		
	CTS: 90 days		
	Avail Probation time:		
	9 months		
	Violation: (1) Technical		
	Δ failed to appear/intake		
	Substantive: New case		
	F12-12345		
	KO: Admit + Revoke + 300dcj		
	with all CTS		

PVH # 8

PVH Date: 6/17/16

Lead ASA: Vallejo

ASSIGNED ASA	Disco	DEFENDANT	CASE	VIOLATION TYPE	Offer	Reset Notes + Dates
Vallejo	N	West, Shameka	M13-52576	Tech/Sub B15-5253	Admit + Revoke + 180 DCJ + CTS	Set for FINAL HEARING
	Y	Leyva, Jason	M16-4202 M16-1236	Pending PVA	Admit + Revoke + 364 DCJ + CTS (concurrent on both cases)	Reset 3 weeks for final hearing
	N	Gispert, Daniel	M13-48727	Technical	Admit + Modify + 8MRP + random drug testing + 30 days to pay Advocate	Set for FINAL HEARING
	Y	Hall, Andre	M14-48239	Technical	ADMIT + REVOKE + 180 DCJ + CTS	Reset 3 weeks for final hearing
	Y	Brown, John	M14-36358	Technical	Late Add On (Day Before)	
Rampersad	Y	Delgado-Hernandez, Luis	M15-40115	Substantive B16-6110 B16-11830	Admit + Revoke + 180DCJ + CTS	R/S 3 weeks for Final Hearing
Mittone	Y	Reyes, Kevin	M15-27450 M15-27452	Substantive F16-5758	Admit + Modify + 7MRP + 26BIP + S/C + Gun Safety Course + Parenting	Negotiating with PA about possible
Sacks	Y	Carmona, Alina	M14-40271	Tech/Sub B15-29196	Admit + Revoke + 180 DCJ + CTS	Reset for status 3 weeks
Rudolf	N	Peralta, Francisco	M15-9383	Tech/Sub B15-29205	Admit + Revoke + 180 DCJ + CTS	Set for sentencing

Current Case Load

PVH Date	Cases Already Set	Max # of Cases	Final Hearings
6/17/2016	6	15	2
6/24/2016	15	15	3
7/1/2016	5	15	2
7/8/2016	0	15	

PVH # 9

OFFICE OF THE STATE ATTORNEY
ELEVENTH JUDICIAL CIRCUIT

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

INTEROFFICE MEMORANDUM

TO: ***PVH SECRETARY***

FROM: **STEFANO MITTONE**
ASSISTANT STATE ATTORNEY

DATE:
DEFT NAME:
CASE NO:
POLICE CASE #:
RE:

SECRETARY

☐ PVH ON

PLEASE ORDER

☐ ORDER OF PROBATION
☐ PVA
☐ AW
☐ NOTES FROM PROBATION OFFICER OF DEFENDANT'S VIOLATIONS
☐ LOGS DEFENDANT FTA FOR INTAKE
☐ LOGS DEFENDANT APPEARED
☐ LOGS DEFENDANT FTA
☐ NOTES OF COUNSELING DIRECTOR OF DEFENDANT'S VIOLATIONS

PLEASE SUBPOENA

☐ PROBATION OFFICER
☐ PROGRAM DIRECTOR OF _____
☐ OFFICERS: _____
☐ SERVICE OFFICER
☐ CUSTODIAN OF RECORDS
☐ VICTIM

PLEASE SEND

☐ DISCO
☐ PVH DISCO
☐ AMEND DISCO

TO:
☐ PUBLIC DEFENDER
☐ PRIVATE ATTORNEY

☐ PLEASE ADD WITNESS, AMEND DISCO & SEND SUBPOENA FOR: PVH

RVD 08/06

Please Recycle

JUDICIAL REVIEW CALENDAR AND DOMESTIC VIOLENCE DRUG COURT

In all domestic violence cases in which the Defendant has accepted Pre-Trial Diversion (PTD) or has been placed on probation, the court will monitor the Defendant's progress at the Judicial Review Calendar (JRC). The JRC was designed to ensure that all Defendants enrolled in PTD or probation are actively complying with all terms and conditions of the plea they accepted.

The Domestic Violence Drug Court Calendar (DVDC) was designed to monitor Defendants who are required to enter and successfully complete mandatory substance abuse treatment, in addition to the Batterers' Intervention Program. A defendant is placed on DVDC as a condition of Pre-Trial Diversion or probation if any of the following apply: (1) the Defendant's criminal record includes numerous alcohol or drug related cases; (2) the facts of the DV case indicate that the Defendant was under the influence of alcohol or drugs during the incident; (3) the Victim of the DV case advises the State that the Defendant has a substance abuse problem; or (4) the Advocate conducts an assessment of the Defendant and identifies a substance abuse issue.

I. **JRC/DVDC CALENDAR PREPARATION**: The JRC/DVDC secretary will inform the assigned ASAs when the JRC and DVDC files are ready for the scheduled hearing date. These files will be organized in alphabetical order and sorted according to calendar dates and times. The assigned ASAs are responsible for reviewing the files prior to the beginning of calendar, to determine if the Defendant has picked up any new cases. The file flap should be annotated appropriately.

II. **JRC/DVDC CALENDAR PROCEDURE**: The Judge will call each case by the Defendant's name.

An Advocate Program representative will be present in Court and will announce the status of the Defendant's participation in the program. (Example – the defendant has completed 12 of 26 BIP classes, 10 of 50 community service hours, owes $220 dollars to the Advocate program, $962 in court costs, and $150 PD Lien).

While listening to the Advocate's progress report, ASAs must annotate the "Results" section of the file flap to indicate whether the Defendant is present, and whether the case is in PTD or probation status. The ASA should also notate all the information provided by the Advocate on the file flap.

The judge will make an assessment as to the Defendant's participation. ASAs should encourage the judge to adequately evaluate the Defendant's compliance. Request that the judge speak with the Defendant and engage the Defendant about any apparent issues that affect compliance.

After a case is fully addressed, a new review date will be assigned. ASAs should annotate the file to reflect the next scheduled review date. Defendants who are actively participating are given longer periods between review sessions.

ASAs must request appropriate warrants for any case in which the Defendant is not present at JRC/DVDC and there are issues with compliance with the conditions of PTD or probation.

ASAs must be ready to handle any motions made by Defendants at JRC/DVDC. These motions often times request modifications of conditions, counseling, and supervision of PTD and probation. Thus, ASAs must consult with CTAs, the Assistant Chief, or the Division Chief, prior to litigating defense motions made at the review calendar. If necessary, JRC/DVDC cases with pending defense motions should be reset for one (1) week to allow for a thorough review; especially if the defense has provided documents along with the motion.

Defendants who are not in compliance with their respective PTD or probation conditions may be revoked from the program or have their probation sentences violated.

The following are some scenarios that ASAs usually confront at the JRC and DVDC calendars:

(1) Defendant enrolled in PTD and is present in court:
If during the review calendar a PTD Defendant tests positive for drugs or alcohol, but he has not tested positive before, an ASA may exercise prosecutorial discretion to modify the conditions of PTD. The ASA should offer the Defendant and opportunity to complete additional conditions or be revoked from PTD and proceed to Trial. Additional conditions may included community service hours, coupled with alcoholics anonymous classes (A/A) or narcotics anonymous (N/A) classes.

If a Defendant on PTD tests positive for drugs or alcohol a second time, then the ASA must announce that the Defendant is being revoked from PTD effective immediately.

Whenever a Defendant is revoked from PTD, the case should then be set for Arraignment, and the Defendant should receive in-court notice to appear at the hearing. Arraignment at JRC or DVDC is not sufficient, because the State will need time to file a Motion to Set Bond to reverse the termination of Pre-trial Release Conditions that occurred upon the acceptance of PTD. The litigation of this motion will require the Defendant's presence after a written motion and proper notice is given by the State.

(2) Defendant Revoked from PTD but is NOT present in court:
If the Advocate announces a revocation from PTD, but the Defendant is not present in court, the ASA must request a bench warrant, especially if the Defendant has failed to appear at past review calendars.

(3) Defendant on Probation and present in court:
If a Defendant violates conditions of probation the Advocate will file a Probation Violation of Affidavit (PVA).

When a PVA is filed and the Defendant is present in court, the State should advise the court that probation has been violated effective immediately. The ASA must request the issuance of Probation Arrest Warrant forthwith, and ask the judge to take the Defendant into custody in court. The judge should then set an appropriate Bond pending a Probation Violation hearing. If appropriate based on the circumstances of a case, the State must request an elevated bond.

Upon the filing of a PVA and arrest of the Defendant, the court may arraign the Defendant on the Affidavit.

If the judge refuses to take a Defendant into custody even after a PVA is filed, then the ASA must object based on the need to protect the community and ensure the Defendant's appearance at a Probation Violation hearing. The ASA should advise the judge that the issuance of the Probation Warrant is necessary for the probation term to be tolled based on a pending violation, pursuant to Fla. Stat. Sec. 948.06. Judges who still refuse to take the Defendant into custody, should at least issue the necessary warrant so it can be reflected in the case history and case docket, then quash the warrant immediately thereafter.

All Defendants with pending violations, who are not taken into custody, must receive in-court notice to appear at the scheduled Probation Violation hearing.

ASAs must notate the file flap accordingly to reflect the filing of the PVA, issuance of the Probation Warrant, whether or not the Defendant was taken into custody, and the PVH date.

(4) Defendant on Probation but NOT present in court:
If a PVA is filed for a probation case, but the Defendant is not present in court, the ASA must request the issuance of a Probation Violation Warrant as discussed above.

(5) Defendant Successfully Completed PTD:
If the Advocate announces that a Defendant has successfully completed all classes and paid all fees required for PTD, the ASA must first verify with the Advocate and court to which specific case the announcement pertains.

Upon receiving verification of the case number, the Defendant's name, and PTD case status, ASAs should review the file flaps, recent priors and case notes. This is necessary to ensure that there are no pending issues, prior to the ASA announcing that the case is being closed (e.g., In case #### the State announces a Nolle Prosse based on successful completion of PTD).

After making this announcement, ASAs should notate the file "Completed and Paid PTD" and [KNP] on the Results section of the file flap.

(6) Defendant Successfully Completes Probation:
If a Defendant is on probation and completes all conditions, paid all fees, and the probation period has ended, then State will ask the judge to enter a "Successful Termination" of probation. The ASA should note the file flap "Successful Completion of Probation."

ASAs shall not agree to modify the conditions of probation or terminate probation early, without prior approval from the Assistant Chief or the Division Chief. ASAs must request a one (1) week reset for all cases involving motions to terminate probation early.

At JRC and DVDC, ASAs must accurately notate all information regarding Defendants compliance with PTD and probation for all cases. (<u>See</u> Exhibit JRC# 1.)

III. <u>POST-JRC PROCEDURE</u>

ASAs must return all files to the JRC/DVDC secretary after the conclusion of the JRC/DVDC Calendar.

If there are any cases with issues or motions that require review, ASAs must consult the Assistant Chief or Division Chief immediately following JRC/DVDC.

Excited Utterances

A Hearsay Exception

Misdemeanor Domestic Violence Unit
Office of the State Attorney, Eleventh Judicial Circuit of Florida

EXCITED UTTERANCES (A HEARSAY EXCEPTION)

In the prosecution of Domestic Violence you will face special challenges that are unique to these types of cases. Often, the Victim will fail to appear or refuse to appear due to threats by the Defendant that should the Victim testify, he/she will suffer further abuse. Additionally, the victim may not cooperate with the prosecution for a number of other reasons, such as financial and/or emotional dependence.

Victims who appear will often recant their statements made to police, or minimize the incident, because they do not want the defendant(s) to be punished or go to jail. Therefore, in the prosecution of Domestic Violence cases the prosecutor will often have to assess cases considering that the victim will either fail to appear, recant, or change his/her testimony. Even though a victim recants at trial, her 911 call, written statement to the police, physical injuries, and a defendant's admission can be sufficient to support a domestic battery conviction. See State v. Bagley, 697 So.2d 1246 (Fla. 5th DCA 1997).

In determining whether to proceed with an Excited Utterance hearing, assess your case by speaking to Officers, Witnesses, and listening to 911 tapes and evaluating all evidence before the date of trial.

Pursuant to the established procedure by the Domestic Violence Court Judges, Excited Utterance hearings are conducted pre-trial.

DEFINITION OF AN EXCITED UTTERANCE

As a prosecutor of Domestic Violence cases the use of excited utterances will be important, especially in the prosecution of victimless cases. An Excited Utterance, is a statement or utterance relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition. See Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354 (2004); State v. Jano, 524 So.2d 660 (Fla. 1988). Additionally, an excited utterance is a firmly rooted hearsay exception, often confused with spontaneous statement.

Note: Non-disclosure of a possible "EU" is NOT a Discovery Violation

An excited utterance is an exception to the hearsay rule. Rule 3.220 governs Discovery and does not require the State to disclose the specific content of the statement.

Issues relating to Crawford v. Washington, 541 U.S.36 (2004).

Recently there have been challenges to the admission of statements made to the police on 911 calls and at the crime scene. The United States Supreme Court ruled that, "out-of-court statements made by witnesses that are testimonial are barred, under the Confrontation Clause, unless the witnesses are available and the Defendant has had prior opportunity to cross-examine witnesses, regardless of whether such statements are deemed reliable by court. See Crawford v. Washington, 541 U.S. 36 (2004), abrogating Ohio v. Roberts, 448 U.S. 56, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980) (which formerly held that confrontation clause challenges could be won simply by showing that an out-of-

court statement of the absent witness fit a "firmly rooted" hearsay exception or demonstrated "particular guarantees of trustworthiness.")

The Confrontation Clause, providing that an accused has the right to confront and cross examine witnesses against him, applies not only to in-court testimony, but also to out of court statements introduced at trial, regardless of the admissibility of statements under the law of evidence. Crawford v. Washington, 541 U.S. 36 (2004).

Crawford stands for the proposition that the right to confrontation turns on whether the statement being introduced is "testimonial." Testimonial statements require confrontation; non-testimonial statements do not. The Supreme Court did not specifically define "testimonial" in this case and stated, "We leave for another day any effort to spell out a comprehensive definition of testimonial." Crawford v. Washington, 541 U.S. 36, 68 (2004). However, the Supreme Court gave various formulations of the core class of testimonial statements, which are:

1. Ex-parte in court testimony or its functional equivalent – that is material such as affidavits, custodial examinations, prior testimony that the Defendant was unable to cross examine, or similar pre-trial statements that declarants would reasonably expect to be used for purposes of prosecution.
2. Extrajudicial statements contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions.
3. Statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. Id.

This in turn left the task of defining testimonial statements to the lower courts. In State v. Lopez, 974 So.2d 340 (Fla. 2008), the Florida Supreme Court applied the analysis used by the United State's Supreme Court in the companion cases of Davis v. Washington and Hammon v. Indiana, 126 S.Ct. 2266 (2006) to determine whether or not a statement is testimonial, and thus susceptible to the Crawford analysis. Specifically, the Court in Lopez held that the ultimate question in determining whether a statement is testimonial is to establish whether or not the statements were made while there was an "on going emergency." State v. Lopez, 974 So.2d 340, 347 (Fla. 2008). If the circumstances indicate that the statement made by the declarant was made while there was an ongoing emergency, then the statement is more likely not testimonial. However, if the circumstances indicate that the statement made by the declarant was made while there was no ongoing emergency, then the statement is more likely testimonial, in which case the Crawford analysis applies.

During an Excited Utterance hearing it is important to differentiate for the court non-testimonial statements from testimonial statements. Therefore, an argument should be made that the witness was under the stress and the excitement of the event and made the statements under circumstances that would lead an objective witness to reasonably believe that the statement **would not be used for trial.** If there are potential Crawford issues, additional questions must be asked.

DEFINING TESTIMONIAL EVIDENCE

The following is a list of circumstances that may be presented to the court during an EU hearing in order to argue that an excited utterance can withstand a Crawford challenge.

1. **When the victim testifies for the defense**.
    a. Because Crawford requires that the Defendant have the right to confrontation of the witness, if the victim testifies on the behalf of the defendant or recants while testifying in the State's case-in-chief, the requirements of the Confrontation Clause are satisfied because the witness was available for cross-examination. See State v. Courney, 682 N.W. 2d 185, 2004 Minn. App. (Minn. Ct. of Ap. 2004); People v. Hunter, 2004 Cal. App. Unpub. LEXIS 5548 (2004).

Moreover, in Davis v. Washington and companion case Hammon v. Indiana, 126 S. Ct. 2266 (2006), the United States Supreme Court clarified how Crawford applies to 911 communications, police interrogations at crime scenes, as well as when the defendant's illegal conduct causes the unavailability of witnesses.

2. **911 Calls**.
    a. The United States Supreme Court held in the Davis portion of the opinion that a Victim's statements in response to a 911 operator's interrogation were not testimonial, and therefore, were not subject to Confrontation Clause. A 911 call, or at least the initial interrogation conducted in connection with a 911 call, is ordinarily not designed primarily to "establish or prove" some past fact, but to describe current circumstances requiring police assistance. Davis v. Washington, 126 S. Ct. 2266, 2277 (2006).
    b. The Supreme Court concluded that the circumstances objectively indicated that the interrogation's primary purpose (on a 911 call) was to enable police assistance to meet an ongoing emergency. That is true even if the operator's effort is to establish the identity of the assailant, so that dispatched officers might know whether they would be encountering a violent felon. (citing Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty. 159 L.Ed.2d 292 (2004).
    c. However, the Supreme Court noted "that is not to say that a conversation which begins as an interrogation to determine the need for emergency assistance cannot evolve into testimonial statements."
    d. In addition the Court stated that through in limine procedure, the trial courts should redact or exclude portions of any statements that have become testimonial as they do, for example, with unduly prejudicial portions of otherwise admissible evidence…." Davis v. Washington, 126 S. Ct. 2266, 2277 (2006).
    e. In Lopez, the Florida Supreme Court held that statements made to a police officer by a victim six to eight minutes after the crime had been reported and at a time when the Victim and Defendant were standing in a parking lot about twenty-five yards from each other were more like the statements in Hammon than in Davis, and therefore were testimonial. Consequently, the Court found that these circumstances did not reveal an ongoing emergency, and the statements made by the victim to the officer were testimonial and subject to the Crawford analysis.

3. **Certain statements made to police**.
    a. In the Hammon section of the opinion, the United States Supreme Court held that statements taken by police officers in the course of interrogation (specifically a domestic battery victim's written statements in an affidavit given to a police officer) are testimonial, and subject to the Confrontation Clause, when circumstances objectively indicate that there is no ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. Davis v. Washington, 126 S. Ct. 2266, 2278 (2006).
    b. The Supreme Court specifically found that the statements involved in Hammon were indistinguishable from the statements in Crawford. The Court ruled that the statements were testimonial based upon the following facts: the interrogation was part of an investigation into possible prior criminal conduct, there was no emergency in progress, the interrogation took place some time after the events were over and objectively viewed, the primary, if not sole, purpose of the investigation was to investigate a possible crime. See Davis v. Washington, 126 S. Ct. 2266, 2278 (2006).
    c. The Supreme Court, did however indicate it has previously observed that in domestic disputes officers called to investigate need to know whom they are dealing with in order to assess the situation, the threat to their own safety and possible danger to the potential victim; and that such exigencies may often mean that initial inquiries produce non-testimonial statements. See Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty. 159 L.Ed.2d 292 (2004).
    d. However, in a case like Hammon where the victim's statements were not a cry for help nor the provision of information enabling officers immediately to end a threatening situation, the fact that they were given at an initial crime scene and were "initial inquiries" is immaterial.

4. **Forfeiture by Wrongdoing**.
    a. A second issue raised by the Hammon portion of the opinion was the notion that when the defendants seek to undermine the judicial process by procuring or coercing silence from witnesses and victims, the Sixth Amendment does not require courts to acquiesce.
    b. The Supreme Court reiterated what it said in Crawford, that the rule of forfeiture by wrongdoing extinguishes confrontation claims on essentially equitable grounds. That is one who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation. See Davis v. Washington, 126 S. Ct. 2266, 2280 (2006).
    c. The Supreme Court took no position on the standards necessary to demonstrate such forfeiture but stated that federal as well as state courts seem to follow the preponderance of the evidence standard, see, e.g. United States v. Scott, 284 F.3d 758, 762 (C.A.7 2002), Commonwealth v. Edwards, 444 Mass. 526, 542, 830 N.E.2d 158, 172 (2005).

5. **Giles v. California & Forfeiture by Wrongdoing:** On June 25, 2008, the U.S. Supreme Court issued an opinion in the case of Giles v. California, 554 U.S. 353 (2008), which held the following regarding the issue of Forfeiture by Wrongdoing:
    a. The California Supreme Court's theory of forfeiture by wrongdoing is not an exception to the Sixth Amendment's confrontation requirement because it was not an exception established at the founding. Id., at 2682 - 2691; 2692 - 2693.
    b. Common-law courts allowed the introduction of statements by an absent witness who was "detained" or "kept away" by "means or procurement" of the Defendant. Cases and treatises indicate that this rule applied only when the Defendant engaged in conduct **designed** to prevent the witness from testifying. Id., at 2682 - 2684.
    c. The manner in which this forfeiture rule was applied makes plain that unconfronted testimony would not be admitted without a showing that the defendant intended to prevent a witness from testifying. In cases where the evidence suggested that the defendant wrongfully caused the absence of a witness, but had not done so to prevent the witness from testifying, unconfronted testimony was excluded unless it fell within the separate common-law exception to the confrontation requirement for statements made by speakers who were both on the brink of death and aware that they were dying. Id., at 2684 - 2687.
    d. Not only was California's proposed exception to the confrontation right plainly not an "exception established at the time of the founding," Crawford, at 54, 124 S.Ct. 1354; it is not established in American jurisprudence since the founding. No case before 1985 applied forfeiture to admit statements outside the context of conduct designed to prevent a witness from testifying. The view that the exception applies only when the defendant intends to make a witness unavailable is also supported by modern authorities, such as , which "codifies the forfeiture doctrine," Davis v. Washington, 547 U.S. 813, 833, 126 S.Ct. 2266, 165 L.Ed.2d 224; Giles, at 2686 - 2688.
    e. The dissent's contention that no testimony would come in at common law under a forfeiture theory unless it was confronted is not supported by the cases. In any event, if the dissent's theory were true, it would not support a broader forfeiture exception but would eliminate the forfeiture exception entirely. Previously confronted testimony by an unavailable witness is always admissible, wrongful procurement or not. See Crawford, at 68, 124 S.Ct. 1354; Giles, at 2688 - 2691.
    f. Acts of domestic violence are often intended to dissuade a victim from resorting to outside help. A Defendant's prior abuse, or threats of abuse, intended to dissuade a victim from resorting to outside help would be highly relevant to determining the intent of a defendant's subsequent act causing the witness's absence, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify. Here, the state courts did not consider Giles' intent, which they found irrelevant under their interpretation of the forfeiture doctrine. They are free to consider intent on remand. Id., at 2693.

INTRODUCING 911 TAPES

The prosecutor must carefully assess the verbal content of each 911 tape. The prosecutor should consider whether the tape contains the following:

(1) Defendant's identification;
(2) Victim's identification;
(3) Relationship of the parties;
(4) Location/scene/address;
(5) The act(s) that constitutes the basis of the charge(s) and whether the statement is consistent with the injury.

If the prosecutor intends to proceed with an Excited Utterance contained on a 911 tape, the Custodian of Records should be added to the list of witnesses on Discovery.

Before a 911 tape can be introduced into evidence, there are two factors to consider:

1) ADMISSIBILITY and,

2) AUTHENTICATION

I. ADMISSIBILITY

As a general rule, any relevant taped recording, and specifically any 911 tapes, are out of court statements offered for the truth of the matter asserted (i.e., the defendant committed the crime of which he is accused). Therefore, you must overcome a hearsay objection.

Generally, 911 calls are admissible under excited utterance or spontaneous statement exceptions to the hearsay rule.

(1) **Spontaneous Statement.** A spontaneous statement describing or explaining an event or condition made while the declarant perceived the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

(2) **Excited Utterance.** A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." State v. Skolar, 692 So.2d 309 (Fla. 5DCA 1997), See also, Ware v. State, 596 So.2d 1200 (Fla. 3d DCA 1992); Fla. Stat. §90.803(2); State v Jano, 524 So.2d 660 (Fla. 1988).

An admission may also allow for the admissibility of the tape. If a Defendant gets on the phone during a 911 call and says, "I hit her, she deserved it", this statement should come in as an admission. Remember Miranda is invoked only when the Defendant is in police custody. You should also consider whether the Defendant's statement contains self-serving hearsay and approach the introduction of the tape accordingly. A statement may need to be redacted to reflect only a Defendant's admission. A prosecutor must establish the corpus delicti by independent prima facie evidence before a statement or confession by the Defendant is admissible. Burks v. State, 613 So.2d 441 (Fla. 1993)(holding that, before the statement of the Defendant is admissible, all of the elements of the crime must first be established). Therefore an admission by itself is not enough.

When analyzing a case for trial, remember that if you are proceeding to trial with an Excited Utterance, each element of the crime must be contained within that statement if the Victim is not testifying. Specifically, you need to consider Identification. The Third DCA held in Rodriguez v State, 696 So.2d 533 (Fla. 3 DCA 1997), that evidence admissible under the excited utterance exception to the hearsay rule, that the Victim had identified the Defendant as the perpetrator to investigating officer, was itself sufficient to support conviction. One caveat, however, is that identification must be adequate (e.g. – the Defendant must be present during identification; while pointing at the Defendant the victim states, "He hit me and caused this bruise"; the statement "Juan Gonzalez hit me" will not be sufficient if the Defendant is not present; "My boyfriend hit me," also is lacking specificity with respect to identification without the Defendant present). Be prepared to argue that the 911 tape should be admitted as an Excited Utterance, because a 911 call is not testimonial based on the "urgent desire of a citizen to be rescued from immediate peril. See People v. Moscat, 777 N.Y.S.2d 875 (N.Y. Sup. Ct. 2004).

Irrespective of the legal basis of admissibility, you must always consider authentication. Authentication, in large part, is tied to the notion of a Defendant's Sixth Amendment constitutional right to confront the witnesses against him/her. It is the content of the 911 tape that is at issue here. That content must be authenticated.

II. **AUTHENTICATION**

The threshold question with respect to authenticity is: "Is it what it purports to be?" (Is this the 911 call from the incident in question?). A 911 tape may be authenticated in two ways: 1) Voice Identification or 2) Records Custodian

1) Voice Identification - Caller Testifying

Before 911 tapes or other evidence of oral communications are admissible, the evidence must show the identity of the person who is speaking. A communication may be authenticated by testimony that the witness recognizes a person's voice (Weinshenker v. State, 223 So.2d 561(Fla. 3DCA 1969)).

Before trial, review the 911 tape with the Witness, have him/her sign and date the tape, and have the 911 tape marked for identification.

At Trial, once the Witness testifies that they called 911, use the following predicate outline:

1. Mr/Ms _____ (Witness name), I am showing you what has previously been marked for identification as State's Exhibit _____. Do you recognize it?

2. How do you recognize it?

3. Have you had an opportunity to listen to this tape before today? (*You will have reviewed 911 tape with Witness before Trial in all cases*)

4. Do you recognize the voices on this tape? Who are they? (*Establish how Witness knows the speaker*)

5. What were you thinking when you made this call? What was your demeanor or condition when you made the call? (*These questions, in large part, go toward admissibility; upset, crying, hysterical = EU*)

6. How long after (the incident – i.e., your boyfriend/girlfriend hit you) did you call 911? (*Again, in large part, admissibility – establish the time frame between the incident and the 911 call; spontaneous statement/EU*)

7. Is the 911 call that is recorded on this tape a fair and accurate recording of the call you made on (date and time of incident)?

8. Your Honor, at this time the State moves to introduce into evidence what has previously been marked as State's Exhibit _____ for identification.

9. (*Once the 911 tape is admitted and marked into Evidence*) Your Honor, may I publish the tape to the jury? (*Play 911 tape – You may consider a transcription of the tape if the call is in English. This is for demonstrative purpose only; it is not evidence and does not go to jury room. If in Spanish, the transcription should be under Court seal and should be moved into evidence. If necessary call the translator to the stand (who should be listed at the time the transcript is received) to establish the translation is fair and accurate.*

2) Records Custodian – Caller not testifying

If the 911 caller will not be testifying for the State, you must establish authentication through the records custodian. Remember, the reliability of the content of the tape is generally established through a "firmly rooted" exception to the hearsay rule (Excited utterance is a firmly rooted exception, *See* Williams v. State, 714 So2d 462 (Fla. 3 DCA 1998)).

Before Trial, review the 911 tape with the Witness and have the 911 tape marked for identification (be sure the tape marked for identification is the copy the record custodian sent – with their initials – if you are calling the custodian to authenticate).

At Trial, once the Officer has testified that he/she responded to a 911 call, call to the stand the appropriate records custodian: Use the following predicate outline:

1. Please state your name and spell your last name for the record.

2. What is your occupation?

3. How long have you been so employed with _____ Police Department?

4. Were you so employed on (date)?

5. Please explain to the jury what your duties are as Records Custodian for _____ Police Department.

6. Please explain to the jury (you may want to use "us" rather than "the jury") how 911 calls are recorded and logged?

7. Do you personally supervise this procedure?

8. Are the 911 calls recorded at or about the time they are made?

9. How are these 911 calls identified or logged?

10. How accurate are the recordings of these calls? Are they recorded fully from the moment the call is answered by the 911 operators?

11. Are these 911 calls received in the normal course of business by the _____ Police Department?

12. Are these 911 calls kept in the regular course of business by the _____ Police Department?

13. Please explain to the jury what is the procedure for retrieving a copy of the 911 call in this particular case?

14. Mr/Ms _____, I am showing you what has been marked for identification as State's Exhibit _____. Do you recognize it?

15. How do you recognize it? Did you yourself make a copy of the 911 call in this case?

16. Whose initials are on the tape? Are there any other markings? Please explain to the jury any markings?

17. Have you had the opportunity to listen to this tape before today?

18. Is the 911 call recorded on this tape a fair and accurate recording of the 911 call that was received on (date/time) in connection with police case number _____.

19. Your Honor, at this time the State moves to introduce into evidence what has previously been marked as State's Exhibit _____ for identification.

20. (*Once the 911 tape is admitted and marked into Evidence*) Your Honor, may I publish the tape to the jury? (*Play 911 tape – You may consider a transcription of the tape, if the call was in English, this is for demonstrative purpose only; it is not evidence and does not go to jury room. If in Spanish, the transcription should be under Court seal and should be moved into evidence; if necessary call the translator to the stand to establish the translation is fair and accurate. The translator should be listed as a witness upon receipt of the translation*)

"The fact that a call is placed on a 911 line does not, standing alone, qualify it for admission under § 90.803. The statement must still meet the requisites of the statute." State v Skolar, 692 So2d 309, 311 (Fla. 5DCA 1997). An anonymous 911 call is not admissible solely under the business record exception.

EXCITED UTTERANCE – OFFICER TESTIFYING, VICTIM NOT TESTIFYING

As with the 911 tape, a prosecutor must carefully assess the verbal content of a Victim's statement. The prosecutor should consider whether the statement contains the following:

1. Defendant's identification;
2. Relationship of the parties;
3. Location of the incident;
4. The act(s) that constitutes the basis of the charge(s) and whether the statement is consistent with the injury;
5. Time of the incident.
6. *Crawford* analysis.

Officer Predicates for EU Statement of Victim

1. Please state your name and spell your last name for the record.
2. What is your occupation?
3. How long have you been so employed?
4. Were you so employed on (date of incident)?
5. How did you come to be at that location?
6. At what time were you dispatched?
7. At what time did you arrive at (location)? Is (location) here in Miami-Dade County?

8. Do you remember what the contents of the dispatch were?
9. Were you in emergency mode? What does emergency mode mean?
10. What was your primary purpose when you arrived at the scene?
11. What did you see when you arrived?
12. When you got to the location, what, if anything, did you hear: (E.g., victim screaming at offender, victim screaming at no one in particular, children screaming, offender screaming)
13. What did you do when you arrived?
14. Was there anyone else present when you arrived?
15. Did you speak to anybody?
16. Who was the first person that you spoke with?
17. Did you know at that point who the suspect was?
18. Did you have an occasion to observe a person who later became known to you as (victim's name) on that date and location?
19. Did you have an opportunity to speak to the victim?

20. Why did you speak with the victim?
21. How much time passed between the time you received the call and the time you spoke to the victim?
22. Describe her/his physical condition at the time that you spoke with her? (Bleeding, bruised, sweating etc.) (if applicable) Was (condition) photographed? [*May I approach*?] I am showing you what has been marked for Identification as State's ( ), do you recognize this? What is it? Does this photograph fairly and accurately depict the (condition) of (Victim's name) on (date)? State's moves ( ) into evidence.
23. Did the victim appear to you to be in pain?
24. What did you observe that led you to believe she was in pain? (E.g., bleeding, swelling, bruising, crying, rubbing arm, etc.)
25. Did the injuries appear to be recent: (E.g. still bleeding, etc.)
26. Describe the victim's emotional condition at the time you were speaking to her.
27. What did you observe that led you to believe she was upset or excited? (E.g., trembling, shaking, crying, looking over the shoulder, talking fast, breathless, etc.)
28. At this time and in this condition, did the victim make any statements to you about what had happened?
29. Describe the circumstances under which she made these statements. (E.g., she was standing in the yard or in her living room, middle of the night, wearing her nightgown, kids handing to her legs, right after this occurred, still bleeding, crying, etc.)
30. Did you Mirandize her?
31. Were the statements sworn?
32. Did you tell her that her statements could or would be used at trial?
33. Was the victim in "police custody" at the time she made the statements?
34. Was the victim a "potential suspect" in the case?

After asking the foundation questions, see Step 2 and Step 3

Step 2: If the victim blurted out statements to the officer and her statements were not in response to police questions:

1. Were the statements taken during "the course of an interrogation"?
2. At this time, did the victim make any statements to you that were not in response to any questions?
3. What did she tell you?

Step 3: If the victim made statements in response to questions by the officer:

1. Were the statements taken during the "course of an interrogation?"

2. What was the purpose of your questions?
3. Were your questions to her an interrogation or merely part of your initial investigation?
4. Were these questions asked in order to determine whether a crime had even occurred?
5. What did you ask her?
6. What did the victim say?
7. Then what did you ask her?
8. What did she say?
9. Did the Victim indicate how the (condition) was caused?
10. Did the Victim indicate when the (condition) was caused?
11. Did the Victim indicate who caused (condition)?
12. Do you see (him/her) in court today?
13. Would you please point out (him/her) and indicate an article of clothing he/she is wearing.
14. Let the record reflect that the witness has identified the defendant.
15. Did you have an opportunity to observe the defendant?
16. At what point did you take the defendant into custody?
17. Did the defendant have any injuries?
18. What was the defendant's demeanor? (Nervous, calm, angry, etc.)
19. (If applicable) Did the defendant make any statements?

EXCITED UTTERANCE ARGUMENT

STATE V. JANO ANALYSIS

It is the State's position that in the case of The State of Florida v. (Defendant's Name) that the statements made by the victim (Victim's Name) are admissible under the excited utterance hearsay exception Florida Statute §90.803 (2). The State has met the burden set forth in State v. Jano, 524 So. 2d 660 (Fla. 1988), by satisfying the three prongs enumerated therein.

The **first prong** of Jano requires the State to show that **"there must be an event startling enough to cause nervous excitement."** The startling event here was a confrontation between the defendant (Defendant's Name) and the victim (Victim's Name). Officer (Officer's Name) testified that (FACTS OF CASE – Example - the victim was still very upset when he spoke with her and that, in fact, she was yelling. Her appearance was "disheveled," she had recently been crying. The officer testified that the victim had red eyes, red face, her mascara was running, her hair was matted, and her clothing was torn and bloody. But this startling event wasn't just limited to a confrontation between the two - it escalated to physical violence. This victim was beaten. How do we know she was beaten? [PHOTOS] What do we know about the beating, (What's been marked as State's Composite 1A) it was physical, it was violent, and it was bloody…and here are the photographic evidence that the state submitted to support this.) Under State v. Edwards, 763 So. 2d 549 (Fla. 3DCA 2000)**,** the 3rd DCA held that the court can consider the physical and/or mental condition of the declarant, and here the declarant, (Victim's Name), was beaten, bruised, and bloody. The officer then described to this court the victim's injuries as a bloody split lip and a swollen left eye. Your honor, here clearly there was a startling event. (Make argument pursuant State v. Edwards as appropriate).

The **second prong** of the excited utterance test requires the State to show that "**the statement must have been made before there was time to contrive or misrepresent.**" Here the officer testified that (FACTS OF CASE – Example - less than five minutes elapsed between the beating and the victim's statement to him. Contrary to defense counsel's argument, a "3 signal" call went out in this case, according to the Officer's testimony a "3 signal" call goes out when the incident is taking place, therefore we know that this beating was taking place at 6:38 a.m.

The call for this incident went out over the radio as "a 3 signal in progress", the call went out at 6:38 a.m. and the officer arrived on the scene four minutes later at 6:42 a.m. The statement at issue was made less than one minute after the officer arrival. This five minute period provided the victim with no time to contrive or misrepresent.) There is no bright line standard by which to measure the length of a

permissible time gap between a crime and a victim's statement for the purpose of analyzing the admissibility of a statement as an excited utterance. Instead, as stated in Jano, 'where the time interval between the event and the statement is long enough to permit reflective thought, the statement will be excluded.' In the present case (FACTS OF CASE – Example -five minutes did not allow (Victim's Name) sufficient time for reflective thought and therefore the statement should be allowed.)

The **third prong** of Jano requires that **"the statement must be made while the person is under the stress of excitement caused by the event."** Here the victim's words ring clear, (STATEMENT TO BE INTRODUCED _ Example - "That bastard can't hit me like this. I'm not his dog.") Clearly (Victim's Name) is under the stress of the starting event – the beating she suffered at the hands of the defendant.

The act of a being physically beaten is an event that would excite anyone. Here, according to the testimonial evidence, (Victim's Name) displayed the emotional and physical characteristics of a person under the stress of a startling event and with less than (Number of Minutes) minutes of time between the beating and the statement, she had no time to contrive or misrepresent anything.

The statement, (STATEMENT TO BE INTRODUCED) should be allowed under §90.803(2) the excited utterance exception to the hearsay rule.

CRAWFORD, DAVIS, HAMMON AND LOPEZ ANALYSIS

In addition, the statement (STATEMENT TO BE INTRODUCED) should be allowed into evidence, because the victim is not available to testify but the victim's statement is not testimonial under the analysis set forth in Crawford v. Washington, Davis v. Washington, Hammon v. Illinois, and State v. Lopez. **(ASAs MUST MAKE CASE SPECIFIC ARGUMENTS EXPLAINING TO THE COURT WHICH FACTORS EXIST TO SHOW THAT THE STATEMENT IS NOT TESTIMONIAL UNDER THE ANALYTICAL SCHEME SET FORTH IN CRAWFORD, DAVIS, HAMMON, AND LOPEZ.)**

Thank you, Your Honor.

Voir Dire

Selecting a Jury

Misdemeanor Domestic Violence Unit
Office of the State Attorney, Eleventh Judicial Circuit of Florida

GENERAL VOIR DIRE

Voir Dire is a French term that simply means to "speak the truth." Voir Dire refers to the process within our criminal justice system by which potential jurors are questioned about their backgrounds, opinions, and potential biases before being selected to sit on the jury panel. Voir Dire is the attorney's first opportunity to "connect" with the jury panel. This connection is formed through personal interaction between the attorney and each individual person within the jury venire. Each case will require ASAs to formulate a Voir Dire that best elucidates the issues and the relevant laws for the potential jurors, all while revealing any hidden biases or opinions that may exist within the potential jurors. While touching on foreseeable issues in a case is important during Voir Dire, attitude, body language, and presentation is just as important as content. The goal is to select a panel of jurors who will apply the law to the facts and evidence presented, and return a fair and just verdict. The following is a general Voir Dire outline and should be employed only after specifically reviewing the issues in the particular case.

RELEVANT RULES OF PROCEDURE AND CASE LAW

Fla.R.Crim.P 3.300 governs the Voir Dire Examination, Oath and the excusing of a member from the jury venire.

The time for challenging a prospective juror is explained further in Fla.R.Crim.P. 3.310.

"FOR CAUSE" CHALLENGES:

The grounds for striking a potential juror "for cause" (Cause Challenges) are set forth in Fla. Stat. § 913.03. The key question to focus on when seeking to strike a juror for cause is whether or not the potential juror's past experiences overcomes their ability to be "fair and impartial?" This question goes toward section 913.03(10)'s prohibition on impartiality. When seeking to strike a potential juror for cause, attorneys must articulate specific reasons why the juror is not suitable to sit on the panel. This is why it is important to speak to everyone within the venire. It is impossible to challenge a juror for cause if you never engaged the juror during your Voir Dire.

1. Unequivocal responses from jurors stating their fairness and impartiality are usually enough to deny a cause challenge. See State v. Brown, 818 So. 2d 652 (Fla. 3rd DCA 2002).
2. Where a juror gives an equivocal response, or a response where there is a basis for any reasonable doubt as to their ability to be fair and impartial, then a cause challenge should be granted. See Hamilton v. State, 547 So 2d 630, 632-33 (Fla. 1989) and Huber v. State, 669 So.2d 1079, 1081-82 (Fla. 4th DCA 1996).

PEREMPTORY CHALLENGES:

Fla.Stat § 913.08 and Fla.R.Crim.P 3.350 govern peremptory challenges. Unlike cause challenges, each side is limited in the number of peremptory challenges they can use to strike potential jurors. Peremptory challenges can be used to strike a juror for any race/gender neutral reason. However, the reason cannot be pretextual. If opposing counsel objects to your use of a peremptory on a juror who is a member of a protected class, you must be prepared to offer a race/gender neutral reason

for the peremptory strike. If you are unable to articulate a race/gender neutral reason, then the use of the peremptory will be denied.

The Supreme Court has established the following procedure in order to determine if a peremptory challenge is non pre-textual. See Melbourne v. State, 679 So.2d 759 (Fla. 1996).

Pursuant to Melbourne*:*

1. The Objecting Party must:
    a. Make a timely objection;
    b. Show that the venire-person is a member of a distinct racial/gender/religious group; AND
    c. Request that the court ask the striking party its reason for the strike.
2. The burden of production now shifts to the proponent of the strike to come forward with a race/gender neutral reason.
3. If the explanation is facially race/gender neutral and the court believes that given all of the circumstances surrounding the peremptory strike, the explanation is not a pretext, the strike will be sustained. The court in this situation is not focusing on how reasonable the explanation is but on its genuineness.

THE USE OF HYPOTHETICALS DURING VOIR DIRE:

Many attorneys will use hypotheticals during their voir dire for many purposes. Hypotheticals can be used to educate the venire on relevant legal issues, relevant laws, as well as to engage the venire in conversation to help reveal any hidden opinions or biases that may impede impartiality. More importantly, hypotheticals can also aid in building rapport with the venire, and to introduce key concepts, such as understanding why witnesses sometimes choose not to participate at trial, or change small portions of their testimony due to stress, trauma, or memory failures, etc.

It is improper to use hypotheticals that embody testimony, or use similar facts that will be presented at trial, for the purpose of ascertaining from a juror what verdict they would return based upon the facts presented. Dicks v. State, 83 Fla. 717, 93 So. 137, 137 (1922); see also Saulsberry v. State, 398 So.2d 1017, 1018 (Fla. 5th DCA 2004).

However, the use of hypotheticals that correctly reference the relevant laws of a case, can be used as an aid to determine whether cause or peremptory challenges are proper. For this purpose, and at the sound and reasonable discretion of the trial court, hypotheticals may be prompted to the venire on voir dire examination. Pope v. State, 84 Fla. 428, 430 94 So. 865 (1922).

Remember, hypotheticals are only tools to allow you to better relate often-complex legal principles to potential jurors. They are worthless if you cannot relate them to the particular legal processes of concern to you in your voir dire. *Therefore, always give the jurors the reasons why you are giving your hypotheticals and what they are meant to show.*

TIME MANAGEMENT

Finally, use your time wisely. Oftentimes judges give a half-hour or less for voir dire. Therefore, think about what are the most pertinent issues in your case. After your introduction and preliminary matters, dive right into these critical matters.

For example, in DV Injunction Violation cases whether or not jurors can follow the law, even if they disagree with that law, is an extremely important area of inquiry. Thus, this area should be dealt with before such areas as physical versus testimonial evidence.

As such, it is very important that you think about your entire case before formulating your trial strategy. Your Assistant Chief will help you during your trial review sessions.

INTRODUCTION

- Introduce yourself: let the venire know who you are, and who you represent.
- Explanation of "voir dire" process: educate the venire as to the jury selection process. Be careful not to bore the jury…especially after a Judge has already discussed this in detail with the jury.
- "Icebreaker" – Example: "By a show of hands, How many of you were thrilled to receive a summons for jury duty today?"

DISCUSS DOMESTIC VIOLENCE VOIR DIRE AS APPROPRIATE

HOLLYWOOD CRIME DRAMAS (LAW & ORDER, CSI)

- Explain how Hollywood has made society expect videotapes and DNA on all of our cases:
    - "Who watches CSI Miami, Law & Order? What parts of those shows do you expect to see here today?"
- Verify if the individual members of this panel have the same high expectations in our cases:
    - "Who believes that every prosecution is based upon physical evidence such as fingerprints, DNA, photographs and videotaped evidence?"
- Explain how real life seldom mimics Hollywood and that the cases we prosecute may not have video, fingerprints, or DNA evidence:
    - "Hollywood does not mimic reality. For example, crimes of domestic violence are often prosecuted with little to no physical evidence, and since the incident occurred in the privacy of the home, the only witness to the incident might be the victim. Does anyone have a problem with this?"
- Make sure that the members of the panel are comfortable with this and if they are not, then ask sufficient follow up questions in order to support a cause or peremptory challenge.

WEIGHING THE EVIDENCE

- Ask jurors how they determine credibility?
    - "How can you tell if someone is telling the truth? What do you look for in order to determine truthfulness?"
        - Does anyone agree or disagree?
        - Why?

- Be sure to review applicable jury instructions (3.9) and inquire in the areas relevant to your particular case
    - Focus in on who stands to gain the most from their testimony, Instruction 3.9(4).
    - Also, does the witness' testimony agree with the other evidence in the case? Especially in cases where there is corroborating evidence that an officer observes an injury, or photographs documenting the injury the witness describes, or a 911 audio where the witness gives prior consistent statements to police dispatch.

PHYSICAL v. TESTIMONIAL EVIDENCE

- Ask jurors to give you examples of each, and then explain the differences:
    - "Who can give me an example of physical evidence that might be used in the prosecution of a crime? And who can give me an example of testimonial evidence?"
    - Physical evidence is an item you can see or touch. Testimonial evidence you will hear from witnesses on the witness stand.
- Advise jurors that the law requires them to give equal weight to physical and testimonial evidence.
    - "The judge will instruct you that there is no requirement under the law that says one form of evidence is better than the other because it is the quality of evidence that is important.
- Remind jurors who show a preference for physical evidence over testimonial evidence that physical evidence may be worthless without testimonial evidence offered to explain the physical evidence.
    - "A fingerprint found at a crime scene is worthless without the testimony linking that fingerprint to the defendant."
- Hypothetical: (Four Quarters vs. One Dollar): "If I owed you a dollar, and I gave you the choice between four quarters or a dollar bill which would you prefer? Some jurors will prefer the four quarters, while others will prefer the dollar bill. Select a juror who has a specific preference for the dollar bill and then ask the following question: Now what if I only had the four quarters would you still accept it to satisfy the debt? Why? (Because they are worth the same). Use this to further explain how although some jurors might have a preference for physical evidence over testimonial evidence, they are both worth the same and should be given equal consideration.
- Ask jurors if they would require both types of evidence before returning a guilty verdict.
    - "If the State only presented the testimony of one witness, and you believed that one witness, who would be able to return a verdict without any physical evidence? Who would require physical evidence, in addition to the testimony of one **credible** witness?"

ONE WITNESS TESTIMONY

- Ask jurors about their level of comfort regarding deciding the defendant's guilt based upon the testimony of one witness.
    - "How many of you could decide the defendant's guilt based on the testimony of one **credible** witness? How many of you feel that you could not conclude that anyone was guilty beyond a reasonable doubt based on just one **credible** witness?"

- Hypothetical: It's halftime during a Miami Dolphin's Monday Night Football game. A man in a trench coat comes out of the tunnel, removes that trench coat and proceeds to streak across the field. I bring you video from the game showing the defendant streaking with four witnesses who observed the defendant streaking. Would any of you have a problem convicting the defendant of indecent exposure? Now, what if the defendant was in a dark alleyway and the victim was one woman, who was alone at the time? I bring you the testimony of the one victim, and you believe her testimony beyond a reasonable doubt, you find her credible. Who now would have a problem convicting?
    - The problem is that crime rarely occurs on the 50-yard line of a Dolphin's game in front of 70,000 people. It occurs in dark alleyways and behind closed doors. That is why the key for you as jurors is using you common sense to evaluate the testimony of the witnesses and evidence presented to make a decision on what evidence is credible.
    - Would anyone require me to bring in more than one **credible** witness?
    - Does anyone believe that it is impossible for me to prove a case with only one **credible** witness?

REASONABLE DOUBT (Jury Instruction 3.7)

- Explain to the jury that reasonable doubt does not mean beyond all doubt.
    - "Does everyone understand that a reasonable doubt is not a forced doubt, speculative doubt, possible doubt, or imagined doubt?"
- Example: Say that my job is to prove to you that it rained last night, and assume the testimony given is that when the witnesses woke up in the morning, the streets were all wet, the cars were wet, the trees and lawns were wet, and their houses were wet; in addition the forecaster had said that there was a 60% chance of rain.
- What would be your conclusion?
- Could it have been a crazy neighbor who took a long hose and decided to make it look like it rained in the neighborhood?
- Anything is possible, but isn't necessarily reasonable.
- Does anyone disagree?
- Additional hypos: The Odometer, Crossing the Street, At the Train Station", Snow fall, The Cookies.) Consult your CTA, the Assistant Chief or Division Chief for an explanation of these and other useful hypotheticals.

PRESUMPTION OF INNOCENCE/BURDEN OF PROOF (Jury Instruction 3.7)

- Explain to the jury the presumption of innocence and the State's burden of proof. To overcome the defendant's presumption of innocence, the state has the burden of proving that the crime with which the defendant is charged was committed and that the defendant is the person who committed the crime. **The defendant is not required to present evidence or prove anything.**
    - "The Defendant as he sits here today is presumed innocent. The presumption of innocence only stays with the defendant until I prove to you beyond a reasonable doubt, that the defendant committed the crimes with which he/she is charged."
    - "Once the evidence is sufficient to convince you beyond a reasonable doubt that the defendant committed the crime, then the defendant is no longer presumed innocent."

FOLLOWING THE LAW

- Inquire from the jurors if they will be able to apply the law even if they don't agree with it.
- Hypothetical: "If the Florida legislature passed a law that made it illegal to wear a blue suit on Tuesdays, how many of you would agree that this would be a stupid law? Well let's say that they passed this law and it was now illegal to wear a blue suit on Tuesdays, and the defendant is arrested and charged with breaking this law. The defendant goes to trial, and I prove to you beyond a reasonable doubt that he did in fact wear a blue suit on a Tuesday, who here would be able to return a guilty verdict?"
    - "Could you apply the law even if you don't agree with the law?"

WHAT LAWYERS SAY IS NOT EVIDENCE

- Remind jurors that what the lawyers say throughout the trial is not evidence.
- "The judge will instruct you that what the lawyers say is not evidence in this case. This includes any questions posed by one of the attorneys. The only evidence you are to consider will come in the form of witnesses testifying in court and/or physical evidence introduced at trial."
- Hypothetical: "A witness testifies that he saw a blue car run a stop sign. The attorney asks the witness, 'Isn't it true that the car wasn't blue, and that it was actually red?' Ask the jury, what color is the car? Why? What is the evidence? What can you as a juror consider? Was any evidence presented that the car was actually red? When you return to the jury room to deliberate, would you discuss the car being red?"

VIEWS ON POLICE OFFICERS

- Inquire about each juror's opinions on police officers and law enforcement in general.
    - "Has anyone here had any experiences, either both negative or positive, with police officers?" (Be sure to talk to individual jurors about their experiences.)
    - "Do you feel you were treated fairly by police?"
    - "Was there anything about your experience that maybe has caused you to feel strongly one way or the other either for or against police officers?"
- "Based upon your experiences, do you believe police are less credible or more credible?" Does anyone agree or disagree?

POLICE OFFICER TESTIMONY

- Inquire about each juror's opinions on testimony by Police Officers.
    - "Does anyone here believe that police officers are more believable as witnesses than a civilian? Should police officer testimony be treated any differently from any other witnesses? Why or why not? Does anyone agree or disagree?"
    - "Can you evaluate the testimony of a police officer the same way you would evaluate the testimony of any other witness? Why or why not? Does anyone agree or disagree?"
- "Does anyone here believe that a police officer would lie in order to help the prosecution of a case? Why or why not? Does anyone agree or disagree?"A way to rehabilitate those jurors who say they trust police officers more than a lay witness:
    - Juror X, what do you do for a living? Wouldn't you say there are good (the juror's profession/job) and bad (the juror's profession/job)? Wouldn't you say that it is the same thing for police officers? Then isn't it true that you should treat every officer who testifies on his or her own merits?

JURORS AS VICTIM'S OF CRIME

- First review the Jury Questionnaires provided by the bailiff prior to beginning your voir dire. Then inquire as to whether or not anyone in the venire has been a victim of a crime.
- Ask the jurors who admit to being victims of crime (only when relevant):
    - When they were victimized?
    - Where did the crime occur?
    - What happened?
    - How many times have they been victimized?
    - How were you treated by the Police?
    - How were you treated by the criminal justice system?
    - Did they apprehend the suspect?
    - Did their case ever go to trial?
    - Were they satisfied with the outcome?
    - Was there anything about your experience that would cause the juror to feel strongly either for or against law enforcement or the criminal justice system?
    - If the defendant was arrested, how did the SAO treat you?

ARRESTS OF JUROR, FAMILY MEMBER OR FRIEND

- First review the Jury Questionnaires provided by the bailiff prior to beginning your voir dire. Then inquire as to whether or not anyone in the venire has been arrested, or has had a family member or friend that has been arrested.
- Ask the Jurors who admit to being arrested, or knowing someone who has been arrested the following:
    - Would they like to speak about this issue in private?
        - If the answer is yes, request that this juror be questioned outside of the presence of other jurors.
    - Who was arrested?
    - What were they arrested for?
    - When did this happen?
    - Did our office prosecute that person?
- Was there anything about your experience that would cause you to feel strongly either for or against law enforcement or the criminal justice system?

DOMESTIC VIOLENCE VOIR DIRE QUESTIONS

The following questions and issues represent possible areas of inquiry during a Domestic Violence Voir Dire.

NATURE OF DOMESTIC VIOLENCE CRIMES

- What is domestic violence?
- What is it about the crime that makes it "Domestic?"
- What is the difference between domestic violence and any other type of violence? Some people feel that domestic violence cases are personal matters and should be dealt with at home and not in the courts?
- Does anyone agree or disagree?
- Why or Why not?
- Who here believes that the government should not interfere or intervene in domestic violence situations?
- Why or Why not?
- When do you think that domestic violence becomes a criminal matter?
- Why?
- Has anyone here been a victim of domestic abuse?
- When?
- What happened?
- Anything about your experience that might affect your sitting on this panel today?

INVOLVEMENT WITH DOMESTIC VIOLENCE CASES

- Has anyone here ever been accused of domestic abuse?
- When?
- What happened?
- Anything about your experience that might affect your sitting on this panel today?
- Does anyone know someone that has been a victim of domestic abuse?
- Who?
- What happened?
- How did they react?
- How do you feel about it?
- Anything about your experience that might affect your sitting on this panel today?
- Has anyone ever witnessed domestic violence?
- When?
- What happened?
- How did it affect you?
- Anything about your experience that might affect your sitting on this panel today?
- Do you know people who stay in abusive relationships?
- Why do you think people stay in abusive relationships?

PROSECUTION OF DOMESTIC VIOLENCE CASES

- Who do you think should decide whether a person who is arrested for committing a crime of domestic violence is prosecuted?
- Should it be up to the State or the victim?
- Why or why not?

- What if the victim doesn't want the person prosecuted? Should the State drop the charges?
- Why or why not?

- Can anyone think of a reason why a victim would not want a defendant prosecuted?

- Can anyone think of a reason why a victim would not want to testify against a defendant?

- Does anyone think that the state should not waste time and money on prosecuting someone if the victim does not want to prosecute?
- Why or why not?

- Does the fact that a victim does not want a defendant prosecuted diminish the fact a crime was committed?

BATTERY

- The law requires the State to prove beyond a reasonable doubt that the defendant, touched or struck the victim against her will. Does anyone require me to show them that an injury occurred in order to find the defendant guilty? Does anyone feel that a police officer should not arrest someone if no injury was caused or only a minor injury was caused?
- Why or why not?

- Does anyone feel that only cases involving serious injury should be criminal?
- Why or why not?

- Should hitting someone be a criminal act?
- Why?

- Should hitting someone that you know be treated differently from hitting a stranger?
- Why?

- Is hitting someone that you know less serious than hitting a stranger?
- Why?

- Is hitting someone an appropriate way to express anger?

- Is hitting someone ever justified?
- Why?

- Who here believes a man should never hit a woman?

- Who believes it is acceptable for a woman to hit a man?
- Is it acceptable for the man to hit the woman back?
- Why?

INJUNCTION VIOLATIONS

- What is an injunction for protection against domestic violence? (legal term for restraining order)
- Why would someone seek an injunction?
- Has anyone here ever sought a domestic violence injunction?
  - When?
  - Why?
- What happened?
- Anything about your experience that might affect your sitting on this panel today?
- Does anyone know someone who has sought a domestic violence injunction?
  - Who?
  - Why?
  - What happened?
- Anything about your experience that might affect your sitting on this panel today?
  - Why?

Violations of Civil Injunctions

Misdemeanor Domestic Violence Unit
Office of the State Attorney, Eleventh Judicial Circuit of Florida

VIOLATIONS OF CIVIL INJUNCTIONS IN GENERAL

An Injunction for Protection Against Domestic Violence may be sought under several possible circumstances. There are four basic circumstances that would support the issuance of an Injunction. The following is a summary of the law governing Domestic Violence Injunctions:

(1) Florida Statute § 741 **Injunctions for Protection Against Domestic Violence**:

"Domestic Violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

The victim's relationship with the person against whom the injunction is being filed must be that of:

(a) a spouse,
(b) an ex-spouse,
(c) a relative by blood or marriage who currently lives with the victim or who lived with the victim in the past,
(d) anyone who lives with or has lived with the victim in the same dwelling as a family unit, or
(e) anyone with whom the victim has had a child, with or without having lived together.

The act of "Domestic Violence," must have occurred between the victim and this person, or the victim must have a reasonable cause to believe that he/she is in imminent danger of becoming the victim of an act of domestic violence in order to have a legal basis to file for an injunction. The judge must believe that an immediate and present danger of domestic violence exists in order to grant a Temporary Injunction.

(2) Florida Statute § 784.046 **Protective Injunction Repeat Violence:**

Anyone can be eligible to obtain an injunction under this statute if:

Two (2) incidents of violence or stalking have occurred, one of which must have been within six (6) months of the filing of the petition, committed by the Respondent, and said acts are or were directed at the Petitioner or a family member of the Victim.

(3) Florida Statute § 784.046 **Protective Injunction Dating Violence**:

"Dating Violence" means violence between people who have, or have had, a continuing and significant romantic or intimate relationship.

The relationship with the person whom the injunction is being filed against must:
(1) have existed within the past six (6) months;
(2) have been characterized by the expectation of affection or sexual involvement; and

(3) the frequency (amount) and type of interaction with the other person must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

It is not considered to be "Dating Violence" in cases where the contact between the two people has been "casual" or "ordinary."

To be eligible to obtain an injunction under this statute, the victim must be:
(1) a victim of "Dating Violence" and have reasonable cause to believe that the victim is in imminent danger of becoming the victim of another act of Dating Violence, or
(2) have a reasonable cause to believe that the victim is in imminent danger of becoming a victim of "Dating Violence" or
(3) is the parent or legal guardian of a minor child who is living at the home and who seeks an injunction against "Dating Violence" on behalf of that child.

"Dating Violence" includes any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death.

(4) Florida Statute § 784.046 **Protective Injunction Sexual Violence**

"Sexual Violence" means a sexual battery or a lewd or lascivious act committed upon or in the presence of (a) a person younger than 16 years of age or luring or enticing a child, or sexual performance by a child, or any other forcible felony where in a sexual act is committed or attempted regardless of criminal charges based on the incident were filed, reduced, or dismissed by the State Attorney.

Preparing Injunction Violation Cases

Obtain a certified copy of the Petition, Temporary Injunction, the Permanent Injunction, and Proof of Service for the particular injunction at issue in your case. Provide discovery of said documents and list the Service Officer who personally served the Defendant with the injunction.

File a Request for Compulsory Judicial Notice (pursuant to § 90.202 and § 90.203) of the civil case file related the injunction.

Consult with Clerk's office and arrange for the civil case to be available in court on the day of trial for related the criminal case.

Be prepared to litigate appropriate Williams Rule and Inextricably Intertwined evidence issues involved in Injunction Violation cases.

ASAs shall consider the Fifth District Court of Appeal's ruling in Young v. State, 827 So.2d 1075 (Fla. 5th DCA 2002), in order to make an appropriate charging decision in injunction violation cases. Young v. State holds that the crime of Battery was subsumed by the crime of Violation of Injunction when the Battery constituted the Violation of Injunction charged. ASAs must consult the Assistant

Chief and Division Chief prior to filing charges in cases involving charges of Battery along with an Injunction Violation.

At Trial on Injunction Violation Cases

REMEMBER TO:

1. Have the judge take Judicial Notice of the civil case for the Injunction involved in the criminal case. (See EXHIBIT INJUNCTION #1)
2. Introduce the relevant Injunction into evidence along with the corresponding proof of service.
3. Call the Service Officer as a witness in order to prove the Defendant was personally served with the Injunction and the Defendant had actual knowledge of the Injunction at the time of the charged incident. If the Service Officer is unavailable to testify, ASAs may be able to establish service/notice through the testimony of the Victim; this is if both the Victim and the Defendant were present during the hearing at which the Injunction was issued AND the Victim can testify that the Defendant was personally served or notified by the court.
4. Take testimony from all witnesses who can establish how and when the Defendant violated the terms of the Injunction.

PREDICATES FOR QUESTIONING SERVICE OFFICER

1. Please state your name.
2. How are you employed?
3. With whom are you employed?
4. How long have you been a police officer with (name of department)?
5. Were you on duty on (DATE) (the date the officer served the injunction)?
6 Were you assigned to any particular unit? (court services/injunction service)

Ask the next line of questions only if the answer to 6 was " yes".

1. What were your duties at the time?
2. Please describe how you go about serving an injunction?
3. How do you determine that you are serving the right person?
4. Do you always follow the same procedure?
5. How many injunctions have you served during your career?

Ask the next line of questions only if the officer can I.D. the Defendant.

1. Did you have occasion to come in contact with someone who later became known to you as (name of the defendant/respondent)?
2. Please look around the courtroom.
3. Do you see (name of the defendant/respondent) in court today?
4. Please point him/her out and describe something he/she is wearing?
5. Let the record reflect that the officer has identified the defendant in this case.

Ask the next line of questions if the answer to 6 was "no" and if they cannot I.D. the Defendant in court.

(The Injunction along with the Service Page should have already been marked for ID purposes)

1. I am showing you what has been marked as State's Exhibit 1-A for identification purposes.
2. Do you recognize it?
3. How do you recognize it?
4. What is it?
5. How many injunctions have you served during your career?
6. Can you please describe how you go about serving someone?
7. How do you ascertain that it is the right person (example driver's license number or social security number)?
8. Do you always follow the same procedure?
9. Did you have occasion to serve someone that became known to you as (name of the defendant/respondent)?
10. How do you know that you served that person?
11. After serving the defendant with the injunction, did you read the injunction to him/her?
12. Did the defendant seem to understand?
13. Did the defendant ask any questions?

    If the officer can't remember then ask:

    a) Do people usually ask you questions?
    b) Do you answer their questions?

NOTE: Make sure that the injunction was read to the defendant in his/her language.

1. At this time I ask the Court to enter into evidence what's been previously marked as State's A for ID Purposes.

After the Injunction/Service package is entered into Evidence and the testimony of the witness is done, Request the Court to instruct the Jury on the Judicial Notice previously adopted of the Civil Court File:

2. At this time, State requests Your Honor to instruct the Jury of the Judicial Notice of Civil case #……..

PREDICATES FOR QUESTIONING VICTIM

1. Please tell us your name.
2. Do you know (name of the defendant/respondent)?
3. Please look around the courtroom.
4. Do you see him/her in court today?
5. Please point him/her out and describe something he/she is wearing.
6. Let the record reflect that the victim/witness has identified the defendant.
7. Let me turn your attention to (DATE) (date that the defendant was served in front of the victim/witness).
8. Did you attend an injunction hearing on that date?
9. Was the defendant present?
10. Did the judge issue an injunction against him/her?
11. Did the judge explain the conditions of the injunction to him/her?
12. How did the judge explain the conditions to him/her?
13. Did the defendant appear to understand?
14. Did the defendant ask any questions?

If the previous answer is "yes" then ask: Did the judge answer his/her questions?
If the defendant speaks a language other than English, then ask the following line of questions after question 12.

1. Does the defendant understand English?

If the answer is "yes" then ask questions 13 and 14.
If the answer is "no " then ask the following:

2. What language does he/she speak? (Elaborate on this topic – What language does he/she speak at home, with family, conducting business, etc.)
3. Did someone interpret for the judge?
4. Who interpreted for the judge?
5. Do you understand _____ (the language interpreted into)?

Question the Victim on the specific facts surrounding the violation of injunction including but not limited to:

- When and where did the incident occur?
- Were there any witnesses?
- What type of contact?
- If the defendant was physically present, how close did he/ she come to the victim?
- What occurred during contact?
- Did you call the police? Or, who called the police?
- When the police got there, was the defendant still on the scene?

NOTE: You may get the Injunction into evidence through the Victim, if for some reason the service officer is unavailable, and the victim was a witness to the Defendant being served.

JURY INSTRUCTIONS

In 2007, the following jury instruction was approved for the crime of Violation of Injunction (See WL 2438370):

VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE
JURY INSTRUCTION 8.18
F.S. 741.31(4)(a)

To prove the crime of Violation of a Domestic Violence Injunction, the State must prove the following two (2) elements beyond a reasonable doubt:

Elements

1. A temporary or final injunction for protection against domestic violence was issued by a court against (Defendant).

2. (Defendant) willfully violated the injunction by (alleged violation of section 741.31(4)(a)):

Give 2a, 2b, 2c, or 2d as applicable

a. [refusing to vacate the dwelling that the parties share;]

b. [returning to the dwelling or the property that the parties share;]

c. [committing an act of domestic violence against (petitioner);]

d. [committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to (petitioner), coupled with an apparent ability to do so, and through doing some act that creates a well-founded fear that such violence is imminent.]

Definitions

"Willfully" means intentionally, knowingly, and purposely.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

GEORGE PARILLA,

Defendant(s)

CASE NO: F10003450
JUDGE: WARD

REQUEST FOR COMPULSORY JUDICIAL NOTICE

COMES NOW KATHERINE FERNANDEZ RUNDLE, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and pursuant to Florida Statutes 90.202(12) and 90.203, notifies the Court and the Counsel for the Defendant that at the time of trial in the above-styled cause, the State will request the Court to take judicial notice that:

> A civil case involving Petitioner Maria Martinez and Respondent George Parrilla was created and/or exists under case # 2009-003555-FC-04.

Respectfully submitted

KATHERINE FERNANDEZ RUNDLE
State Attorney

By: _____

Assistant State Attorney
Florida Bar #
175 NW 1st Avenue, Suite 2500
Miami, FL 33128
(305) 349-5830

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above was furnished to Defense Counsel, THE PUBLIC DEFENDER, on this 11TH day of January 2011.

_____
Assistant State Attorney

Case Law Guide

Misdemeanor Domestic Violence Unit

Office of the State Attorney, Eleventh Judicial Circuit of Florida

CASE LAW GUIDE

The following list details important cases that effect the prosecution of Domestic Violence. Print copies of each of these cases and make three copies of each (i.e. one for you, one for the judge, one for the defense). Create a case law box, case law folder, or case law binder to keep all these cases together. You are responsible for reading each of these cases and knowing how to argue the law contained therein.

I. EXCITED UTTERANCES

A. CHARLES W. EHRHARDT, FLORIDA EVIDENCE 865-72 (West 2011) (mandatory reading). Fla. Stat. § 90.803(2) explains the excited utterance exception in detail and provides numerous cases. See also id. at 842 (stating that the excited utterance exception, for purposes of confrontation clause analysis is a "firmly rooted exception." State v. Frazier, 753 So.2d 644 (Fla. 5th DCA 2000), Williams v. State, 714 So.2d 462, 465 (Fla. 3d DCA 1997), and J.L.W. v. State, 642 So.2d 1198, 1199 (Fla. 2d DCA 1994).

B. State v. Jano, 524 So.2d 660 (Fla. 1988). States general rules of excited utterance analysis and sets forth three prongs that must be satisfied prior to admission of a statement into evidence as an excited utterance.

C. Ware v. State, 596 So.2d 1200 (Fla. 3d DCA 1992). States that statements made on a 911 tape can be admitted as an excited utterance. Furthermore, the statements can still be introduced as excited utterances, even if they are statements made by a non-victim.

D. Power v. State, 605 So.2d 856, 862 (Fla. 1992). The court sustained admissibility of excited utterance despite the fact that the declarant was described as appearing "very shaken." Use this case to establish the threshold of the "excited" element of the excited utterance.

E. Appell v. State, 250 So.2d 318, 321 (Fla. 4th DCA 1971). If declarant is injured, the statement is more likely to be an excited utterance because the declarant has less of an ability to reflect consciously while injured. This is always present in our excited utterance cases, so you should ensure that you take advantage of this holding. Please note that this case has been reversed on other grounds. (NOTE: This case was decided under the former Res Gestae exception to the hearsay rule. The Res Gestae rule served as a catchall for several hearsay exceptions. Instead of including the oft-criticized and general Res Gestae Rule in the Florida Evidence Code, the Florida Legislature enumerated each of the exceptions that were previously admissible into separate and distinct exceptions: spontaneous statements, excited utterances, and statements of the declarant's then-existing mental, emotional, or physical condition. To the extent that the doctrine of Res Gestae has been incorporated into specific hearsay exceptions of the Florida Evidence Code, it retains its vitality.

F. Garcia v. State, 492 So.2d 360, 365 (Fla. 1986). Statement made to a police officer by a wounded victim was admissible, because "her response was spontaneous, sprang from the stress, pain, and excitement of the shootings and robberies, and was not the result of any premeditated design." (Same as above, this statement was deemed admissible on Res Gestae grounds.)

G. Williams v. State, 714 So.2d 462 (Fla. 3d DCA 1997). States that an excited utterance may be sufficient to sustain conviction without independent corroborating evidence. In a domestic violence prosecution, tape of a 911 call containing the victim's statement that "her boyfriend, Williams, had forced his way into her apartment and struck her on the forehead" was admissible under § 90.803(2) as an excited utterance.

II. WILLIAMS RULE

Pursuant to Fla. Stat. § 90.404(2), Other crimes, wrongs, or acts, similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of **motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident**, but is inadmissible when the evidence is relevant solely to prove bad character or propensity.

The Propriety of the State's Notice of Intent

1. Particularity Requirement (i.e. giving a place and date of the Williams Rule incident). Pursuant to § 90.404(2)(d)(1). When the state intends to offer evidence of other criminal offenses, **no fewer than 10 days before trial,** the state shall furnish to the defendant or to the defendant's counsel a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information. The following cases establish how much specificity an Information must have.

2. State v. Dell'Orfano, 651 So.2d 1213 (Fla. 4th DCA 1995). Court upheld an Information where it gave a two year window in which it was alleged that the defendant had committed the crime. The court held that the rule was that the State had to give the defendant all the information it could get its hands on to constitute an adequate charging document. Because the victim, a child at the time of the crime, could give nothing more specific than a two year window, the State had given the defendant all the information it had, and thus the information was sufficient. Always consider "remoteness" of the Williams Rule incident. See discussion below.

3. State v. Jones, 539 So.2d 535 (Fla. 3d DCA 1989). State appealed from order of the Circuit Court, Dade County, Thomas M. Carney, J., which dismissed information due to the State's failure to sufficiently narrow the time frame in which charges of sexual battery occurred. The District Court of Appeal, Nesbitt, J., held that, in view of prosecutor's good-faith assertions that he could not be more specific, information which alleged that the incidents occurred between March of 1986 and February of 1987 should not have been dismissed for lack of specificity. Court upheld an Information that gave

a one year time frame. "It is not necessary that the exact date of the offense be alleged in the information if that date is not known, it is sufficient to allege that the offense occurred within stated specific time limits." In all the cases where courts have stricken Informations, it has been because the State could have narrowed the date down through more investigation, but chose not to do so. See State v. Garcia, 511 So. 2d 714 (Fla. 2d DCA 1987); Knight v. State, 506 So. 2d 1182 (Fla. 5th DCA 1987).

Williams Rule Notice Violations

Barbee v. State, 630 So.2d 655 (Fla. 5th DCA 1994). State's failure to comply strictly with ten-day notice requirement in respect to similar fact evidence was not fatal per se to admissibility of that evidence and harmless error rule applied. "…[W]e hold that the violation of a rule of procedure prescribed by this Court does not call for a reversal of a conviction unless the record disclosed that noncompliance with the rule resulted in prejudice or harm to the defendant."

Admissibility of Williams Rule Evidence

1. Williams v. State, 110 So.2d 654, 659 (Fla. 1959). Evidence of any facts **relevant** to a material fact at issue, except where the sole relevancy is character or propensity of the accused, is admissible unless precluded by some specific exception or rule of exclusion. This is a very broad standard.

2. Lazarowicz v. State, 561 So.2d 392, 395 (Fla. 3d DCA 1990). Williams Rule is not a rule of exclusion, but one of inclusion. The Court held that any fact **relevant** to prove a fact in issue is admissible into evidence even though it points to a separate crime unless its admissibility is precluded by a specific rule of exclusion. See also Heiney v. State, 447 So.2d 210 (Fla. 1984).

3. Fla.Stat. 90.404(2)(a) lists examples of the types of issues which may be proven by the use of evidence of collateral crimes. These are motive, opportunity, intent, preparation, plan, knowledge, identity, and proof of the absence of mistake or accident. The issues contained in the statute are merely examples, not limitations. This contention is supported by the wording of the statute which says, "...evidence of other crimes ... is admissible to prove a material fact in issue, *such as* (emphasis added)..." and the supporting case law. See, Cotita v. State, 381 So.2d 1146 (1st DCA 1980) and Franklin v. State, 229 So.2d 892 (3rd DCA 1969).

4. Evans v. State, 693 So.2d 1096 (Fla. 3d DCA 1997). This is a significant case for the State and ASAs should cite it every time they argue for the admissibility of Williams Rule evidence. In Evans, the State introduced evidence of prior physical abuse committed by the defendant upon the same victim for purposes of proving intent and/or lack of mistake or accident. The court held that this was permissible and there was no need for factual similarity between the charged offense and the prior abusive conduct beyond the existence of physical abuse in all instances. Intent is a valid ground upon which to enter Williams Rule evidence. Since intent is an element of the crime of

battery (and since willfulness is an element of the crime of violating an injunction) Williams Rule is inherently and automatically admissible.
The defense will argue that the Williams Rule evidence should not be admissible for this purpose unless the defense for the crime is lack of intent. Evans explicitly quotes Estelle v. McGuire, 502 U.S 62, 69-70 (1991) which states that: [t]he prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense. The evidence was relevant to show intent, and nothing requires the state to refrain from introducing relevant evidence simply because the defense chooses not to contest the point.

5. Ashley v. State, 265 So.2d 685 (Fla. 1972). Even though the Williams Rule evidence was not necessary for the State (because the defendant confessed to the crime), it was still admissible to prove intent.

6. Courts have expanded the above statutory list of relevant issues, provable by the use of collateral crimes, to include, among others:
    a. Corroborating the Victim's Story/Making it More Credible: Potts v. State, 427 So2d 822 (2nd DCA 1983); Pendleton v. State, 348 So.2d 1206 (4th DCA 1977).
    b. Rebutting An Anticipated Defense: Consent - Williams v. State, 110 So.2d 654 (Fla. 1959); Alibi - Cotita v. State, supra.

7. Showing the Controlling Nature of the Relationship. See Irizarry v. State, 905 So.2d 160 (Fla. 3d DCA 2005); Wilchcomb v. State, 842 So.2d 198 (Fla. 3d DCA 2003); In Livingston v. State, 678 So.2d 895, 897 (Fla. 4th DCA 1996) the court affirmed the admissibility of the defendant's actions of stalking the victim prior to the much later act of battery. The court held that "[e]vidence of defendant's prior encounters with [the victim] place the incident in the context of his feelings for her and explain the strong emotions which may have ignited the battery." Id. Like the Evans case above, both Irizarry and Livingston are significant cases for domestic violence cases, and should be cited by ASAs every time they argue for the admissibility of Williams rule evidence.

F. Remoteness

Duffy v. State, 741 So.2d 1192 (Fla. 4th DCA 1999). This case states that a 12 year hiatus between the previous crime, and the current crime charged made the evidence of the previous crime too remote to be admissible. When faced with the claim that prior crimes are too remote to be relevant, the court must consider not the passage of time alone, but the effect of the passage of time on the evidence. Citing Huering v. State, 513 So.2d 122, 123 (Fla. 1997).

G. Features

1. Ashley v. State, 265 So.2d 685, 693 (Fla. 1972). "The State in introducing testimony concerning other crimes committed by a defendant may not make such crimes a feature of the trial instead of the incident." When the former offenses rather than the offense with which the defendant is charges are made a "feature" of the present trial, the evidence is inadmissible.

CHARLES W. EHRHARDT, FLORIDA EVIDENCE 232-35 (West 2011) (mandatory reading including case notes). Explains the theory behind the "feature" limitation, and gives an explanation of useful case law. Among the relevant factors that can be considered in determining whether the substantial prejudice of the other acts evidence has outweighted its probative value and become the feature of the trial are the following: (1) the strength of other evidence available to the State has to prove the fact (i.e. intent); (2) whether the defense is vigorously disputing the fact; (3) the emotional impact of the other acts evidence; (4) how closely the other acts evidence resembles the crime charged; (5) the amount of other acts evidence compared to evidence directly related to the crime charged; (6) whether the evidence was adduced by the State or defense; (7) the type of prosecution in which the evidence was offered (domestic violence, etc); and (8) whether the jury will be properly instructed on the proper use of the evidence.

2. Snowden v. State, 537 So.2d 1383 (Fla. 3d DCA 1989). Where the defendant's trial strategy causes similar fact evidence to outweigh the evidence directly related to the crime charged, the court should disregard the feature analysis entirely. The State is not accountable if the defense chooses to dwell on the collateral acts.

H. The Strikingly Similar Requirement

1. The defense may argue that the case law requires the other acts evidence to be so strikingly similar to the charged event that it clearly indicates the defendant's involvement. If a court were to accept this argument, it would create a remarkably high standard that we would normally not be able to meet. You must understand that the only time the case law requires the application of this standard, is when the other acts evidence is being introduced to prove the defendant's identity via a particular *modus operandi*.

2. Evans v. State, 693 So.2d 1101, 1101-1102 (Fla. 3d DCA 1997). Where evidence of collateral acts is offered to prove motive, there is no similarity requirement. Citing Finney v. State 660 So.2d 674, 681-82 (Fla. 1995). The similarity standard is relaxed when the State is using the evidence to prove intent. It is safe to say that the only time the strikingly similar standard is applied is where the evidence is offered *to prove identity via modus operandi*. Williams v. State, 621 So.2d 413, 414 (Fla. 1993). [I]t is generally the similarity between the charged offense and the other crime or act that gives the evidence probative value. Thus, evidence of other crimes, whether factually similar or dissimilar to the charged crime, is admissible if the evidence is relevant to prove a matter of consequence other than bad character or propensity.

III. INEXTRICABLY INTERTWINED EVIDENCE

A. The fact that evidence is not admissible under § 90.404(2)(a) (i.e. Williams Rule) does not mean that it is not admissible at all. See Sexton v. State, 697 So.2d 833, 836 (Fla. 1997).

B. Evidence of "other crimes" is not limited to other crimes with similar facts. So called similar fact crimes are merely a special application of the general rule that all relevant evidence is admissible unless specifically excluded by a rule of evidence." Sexton v. State, at 836 (Fla. 1997). "But if the evidence of a defendant's collateral bad acts bears no logical

resemblance to the crime for which the defendant is being tried, then § 90.404(2)(a) does not apply and the general rule is that § 90.402 controls.*"* Sexton v. State, Id. at 837 (Fla. 1997).

C. Evidence of uncharged crimes that are inseparable from the crime charged, is not Williams rule evidence. It is admissible under § 90.402 because "it is a relevant and inseparable part of the act which is in issue. . . and it is necessary to admit the evidence to adequately describe the deed." Griffin v. State, 639 So.2d 966, 968 (Fla. 1994), quoting CHARLES W. ERHARDT, Florida Evidence §404.17 (1993 ed.) See also; Austin v. State, 500 So.2d 262 (Fla. 1st DCA 1987); Kelly v. State, 552 So.2d 1140 (Fla. 5th DCA 1989); Livingston v. State, 678 So.2d 895 (Fla. 4th DCA 1996).

D. Tumulty v. State, 489 So.2d 150, 153 (Fla. 4th DCA 1986) is one of the leading cases of inextricably intertwined evidence analysis. Reference should be made to it whenever the State argues inextricably intertwined evidence. The court in Tumulty held that this type of evidence is not admitted either because it shows the commission of other crimes or because it bears on character, but rather because it is a relevant and inseparable part of the act which is in issue. This type of evidence is admitted for the same reason as other evidence that is part of the so-called *res gestae*; it is necessary to admit the evidence to adequately describe the deed. Tumulty is also useful example of evidence of drug conspiracy over a period of years having been held as inextricably intertwined to a murder.

E. The **ten-day notice requirement** of Williams Rule does **not** apply to inextricably intertwined evidence. Erickson v. State, 565 So.2d 328 (Fla. 4th DCA 1990).

F. Inextricably intertwined evidence plays an important role in prosecuting violations of injunction cases. Please note that in violation of injunction cases, the reasons why the petitioner requested the injunction (found on the petition for injunction) can often help to better paint the entire picture of the criminal endeavor to the jury.

IV. COMMENTING ON FAILURE TO CALL A WITNESS

A. Halliburton v. State, 561 So.2d 248 (Fla. 1990). An inference which is adverse to a party based on the party's failure to call witness is permissible when it is shown that witness is peculiarly within the party's power to produce and testimony of witness would elucidate testimony. The Trial judge did not err in forbidding defense counsel from making comment on failure to call a witness where witness was available to both sides. Judges often allow this type of comment as part of the defense argument pointing to lack of evidence. This is the exact type of argument that the Halliburton court forbids.

B. Jackson v. State, 575 So.2d 181 (Fla.1991). State's ability to comment on defendant's failure to a call witness (either in closing argument or in cross-examination) is predicated upon two conditions:

1. First that the defendant has assumed a burden of proof by choosing an affirmative defense (self-defense, alibi, defense of others); and

2. The witness upon whom the State comments is unavailable to the State because of the nature of the relationship between the defendant and the witness (husband, wife, father, son, etc.). This is a narrow exception to the general rule that the State may not engage in such a comment because it shifts the burden of proof.

IV. PRE-TRIAL DIVERSION

State v. Winton, 522 So.2d 463 (Fla. 3d DCA 1988); Cleveland v. State, 417 So. 2d 653 (Fla. 1982); Fla. Stat. § 948.08. Pre-trial diversion program is left completely to the discretion of the State Attorney. Trial court is without authority to force the State to offer PTD or to refuse to accept a PTD plea or set or reject any condition thereof.

V. JUDGMENT OF ACQUITTAL (JOA)

At trial there will be a motion for JOA at the close of the State's case and at the close of all evidence. There are different standards applied between the two separate Motions for Judgment of Acquittal.

A. The standard at the close of the State's case-in-chief is whether the State, in a light most favorable to the State and assuming all inferences in the favor of the State, has presented evidence sufficient to fill each element of the *prima facie* case. Proko v. State, 566 So.2d 918 (Fla. 5th DCA 1992).

B. The standard at the close of all evidence is whether a reasonable juror could find guilt beyond a reasonable doubt. It is irrelevant whether the judge would him or herself acquit the defendant, because credibility is not a factor in the JOA analysis. The issue is whether any reasonable juror could disbelieve defendant's reasonable hypothesis of innocence. This analysis includes the standard that the court should enter a JOA only if the State fails to present evidence from which the jury can exclude every reasonable hypothesis except that of guilt. Barwick v. State, 660 So.2d 685 (Fla. 1995). Morejon v. State, 633 So.2d 1094 (Fla. 3d DCA 1994). The State need only offer some evidence inconsistent with the defendant's reasonable hypothesis of innocence.

VII. RICHARDSON HEARING

A. State v. Guzman, 667 So.2d 989 (Fla. 3d DCA 1996). The Third District Court of Appeals reversed Circuit Court judge who dismissed a case because the State failed to produce surveillance tapes. The Court found that the violation was not willful and that there existed no prejudice because the trial court did not listen or hear a proffer from counsel regarding their content. In this posture, it was impossible to have made a finding that the tapes were inculpatory, exculpatory, inconclusive, or ambiguous.

B. Keen v. State, 456 So.2d 571 (Fla. 2d DCA 1984). Surprise alone is not sufficient to prove prejudice.

C. Miller v. State, 636 So.2d 144 (Fla. 1st DCA 1994). Lack of opportunity to obtain impeachment material is insufficient to exclude a witness.

D. Watson v. State, 672 So. 2d 70, (Fla. 4th DCA 1996). Conviction affirmed where the defendant failed to prove prejudice in Richardson Hearing.

E. Williams v. State, 662 So.2d 437 (Fla. 5th DCA 1995); State v. Banks, 418 So.2d 1059 (Fla. 2d DCA 1982); Mobley v. State, 327 So.2d 900 (Fla. 3d DCA 1976). No prejudice where Δ through other means had been able to obtain the sought after evidence or information. (This is particularly applicable to 911 tapes since the defense can order 911 tapes from Police Communications departments, without the State first getting the tapes.)

F. State v. Platcha, 415 So.2d 1356 (Fla. 2d DCA 1982). If the court determines that there is prejudice, relevant evidence should still be admitted unless there is no other remedy available.

G. State v. Delgaudio, 445 So.2d 605 (Fla. 3d DCA 1984). Dismissal is an action of such magnitude that resorting to such a sanction should only be had when no viable alternative exists.

H. Taylor v. State, 643 So.2d 1122 (Fla. 3d DCA 1994). The exclusion of a witness is a drastic remedy, which should only be used upon the showing of a willful, substantial disregard of discovery rules that results in prejudice.

I. Griffin v. State, 598 So.2d 254 (Fla. 1st DCA 1992). Information in the hands of law enforcement is within the State's constructive possession.

J. Watson v. State, 509 So.2d 396 (Fla. 4th DCA 1987). Rebuttal witnesses must be listed if the State should have reasonably expected that said witness would need to be called.

K. Medina v. State, 466 So.2d 1046 (Fla. 1985). The State has no obligation to actively assist the Δse in investigating the case. The defense has the initial burden of trying to discover impeachment evidence, and the State is not required to prepare their case for them.

VIII. DOUBLE JEOPARDY ANALYSIS

The seminal case providing analysis for double jeopardy is Blockburger v. United States, 284 U.S. 299 (1931). The test is whether each separate statutory provision requires proof of additional facts that the other does not. If each charged offense requires proof of an additional element that the other offense does not, multiple convictions do not violate double jeopardy principles. This test is known as the "Blockburger" test, or the "same elements" test.

In Florida, the prevailing standard for determining the constitutionality of multiple convictions for offenses arising from the same criminal transaction is whether the legislature intended to authorize separate punishments for two crimes. Absent a clear statement of legislative intent to authorize two separate punishments for two crimes the courts employ the Blockburger Test. Gordon v. State, 780 So.2d 17 (Fla. 2001).

IX. INDIRECT CRIMINAL CONTEMPT

F.R.C.P. 3.840 governs indirect criminal contempt. F.R.C.P. Rule 3.840(d) states, "All issues of law and fact shall be heard and determined by the judge." See also Wells v. State, 654 So.2d 146 (Fla. 3rd DCA 1995). Defendant who was charged with indirect criminal contempt for violating domestic violence injunction was not entitled to jury trial the denial of which merely limited the maximum term of imprisonment to six months upon conviction.

X. MOTIONS FOR A MISTRIAL

Florida case law clearly states that a motion for a declaration of a mistrial is addressed to the sound discretion of the trial judge. See Salvatore v. State, 366 So.2d 745, 750 (Fla. 1978); Strawn v. State ex rel. Anderberg, 332 So.2d 601 (Fla. 1976); Paramore v. State, 229 So.2d 855 (Fla. 1969). In this State the rule has been long established and continuously adhered to that the power to declare a mistrial and discharge the jury should be exercised with great caution and should be done only in cases of absolute necessity. See Salvatore v. State, 366 So.2d 745, 750 (Fla. 1978; State ex rel. Wilson v. Lewis, 55 So.2d 118 (Fla. 1951); State ex rel. Alcala v. Grayson, 156 Fla. 435, 23 So.2d 484 (1945).

Moreover, a mistrial is appropriate only when the error committed was so prejudicial as to vitiate the entire trial. Overton v. State, 801 So.2d 877, 897 (Fla. 2001); Cobb v. State, 376 So.2d 230 (Fla. 1979); Duest v. State, 462 So.2d 446, 448 (Fla. 1985); Randolph v. State, 556 So.2d 808, 810 (Fla. 5th DCA 1990).

The proper procedure to take when objectionable comments are made is to object and request an instruction from the court that the jury disregard the remarks. Ferguson v. State, 417 So.2d 639 (Fla. 1982).

A motion for mistrial should be granted only when it is necessary to ensure that the defendant receives a fair trial. See Marek v. State, 492 So.2d 1055, 1057 (Fla. 1986); Power v. State, 605 So.2d 856 (Fla. 1992); Gudina v. State, 693 So.2d 953, 964 (Fla. 1997).

XI. SELF-DEFENSE

Self-defense is an affirmative defense, which must be presented by the Defendant at trial by means of legally admissible and sufficient evidence.

If self-defense evidence is introduced, the State must prove beyond a reasonable doubt that the Defendant's actions at the time of the incident are not self-defense under applicable law.

In order for the defense to introduce evidence of self-defense on the part of the Defendant, the proper predicate must be established first. The proper predicate is laid "by the showing of some overt act by the [victim] at or about the time of the [incident] that reasonably indicates a need for action by the defendant to act in self-defense." See Williams v. State, 252 So.2d 243, 247 (Fla. 4th DCA 1971); Smith v. State, 410 So.2d 579, 580-581 (Fla. 4th DCA 1982).

Whether the evidence of some overt act by the Victim as presented by the defense is sufficient to satisfy the required predicate, will depend on the factual circumstances of each case and the exercise of the judge's discretion. See Heath v. State, 648 So.2d 660 (Fla. 1994) (trial court has wide discretion in ruling on the admissibility of evidence and its rulings will not be disturbed absent an abuse of discretion), cert. denied, 515 U.S. 1162, 115 S.Ct. 2618, 132 L.Ed.2d 860 (1995); Welty v. State, 402 So.2d 1159 (Fla. 1981) (same).

Once the proper predicate has been laid, the defense can show the Defendant's act of self-defense was **reasonable only by providing two distinct types of evidence:**

Introduce evidence that the Victim has a **reputation for violence**. Evidence of specific prior bad acts or opinion evidence, is not proper to establish Victim's reputation for violence. This is because evidence as to reputation is admissible by virtue of a long-standing exception to the hearsay rule, as relevant and material on the issue of the Victim's propensity for violence and the likelihood that the Victim was the aggressor at the time of the incident. See Smith v. State, 410 So.2d 579, 580-581 (Fla. 4th DCA 1982).

OR
Introduce evidence of a **prior specific act of violence** by the Victim, coupled with evidence that the Defendant knew about this act at the time of the incident. This prior specific act evidence is introduced for the **limited** purpose of proving the reasonableness of the Defendant's apprehension and self-defense action at the time of the charged incident. Id.

To prove reputation under Fla. Stat. Sec. 90.405, first it is necessary to lay the foundation that the testifying witness is aware of the person's reputation in the community. See Stripling v. State, 349 So.2d 187, 192 (Fla. 3rd DCA 1977), cert. den., 359 So.2d 1220 (Fla. 1978).

More importantly, for reputation evidence to be admissible it must be established that the community from which reputation testimony is drawn is sufficiently broad to provide witness with adequate knowledge to give reliable assessment. This assessment must be based on more than mere personal opinion, fleeting encounters, or rumors. See Larzelere v. State, 676 So.2d 394, 399 (Fla. 1996); Wisinski v. State, 508 So.2d 504 (Fla. 4th DCA 1987) (trial court did not abuse its discretion in refusing to admit reputation testimony given the small number of people, the limited cross-section, and the relatively short period of time on which the reputation testimony was based), review denied, 518 So.2d 1279 (Fla. 1987); Gable v. State, 492 So.2d 1132 (Fla. 5th DCA 1986) (trial judge has wide discretion in admitting or excluding reputation testimony; one learns of another's general reputation in a community over a period of time and through miscellaneous contact with many people).

XII. ASA's AS WITNESSES IN THEIR OWN CASES

This situation arises when a victim/witness/police officer makes a contradictory statement to a defense attorney in a hallway interview from what was said to the ASA during a sworn PFC and turned over in discovery.

In State v. Evans, 770 So. 2d 1174 (Fla. 2000), the Florida Supreme Court held that Rule 3.220 requires the state to turn over (1) the substance of any oral statements made by the defendant, (2) written statements made by the person and signed or otherwise adopted or approved by the person and any other statement of any kind made by the person which is written or recorded or summarized, and (3) any statement (oral or recorded) if that statement materially alters a prior statement.

In State v. Olson, 705 So. 2d 687 (Fla. 5th DCA 1998) Florida Courts further defined that it is the statement itself, and **not the "personal recollection" of the particular Assistant State Attorney** that may be used for purposes of impeachment.

XIII. Probable Cause Findings When Police List Erroneous Charge

Often times, the police arrest a defendant and list the wrong statute number or give an erroneous charge for the facts alleged in the A-Form. This situation occurs mostly when an officer charges a defendant under 741.31 (violation of a DV Injunction), when the case really is a violation of pre-trial release conditions (741.29(6)), or vice versa.

The standard for probable cause under Florida Rules of Criminal 3.133(a)(3) is the same standard necessary for the court to issue an arrest warrant. Under Florida Statute 901.02(1), an arrest warrant is validly issued where a judge reasonably believes the person complained against has committed an offense in the judge's jurisdiction. Thus, even if the police misstate the law, a judge, if he/she reasonably believes ***any*** crime was committed, may find probable cause.

Please see Freeman v. State, 909 So. 2d 965 (3rd DCA 2005) - concluding that, "[W]here, by objective standards, probable cause to arrest for a certain crime exists, the validity of an arrest does not turn on the fact that an arrest was effected on another charge." Quoting Thomas v. State, 395 So.2d 280, 280-81 (Fla. 3d DCA 1981).

XIV. Release on Own Recognizance (ROR) - State Does not File an Information

According to Rule 3.134, "The state shall file formal charges on defendants in custody by information, or indictment, or in the case of alleged misdemeanors by whatever documents constitute a formal charge, within 30 days from the date on which the defendants are arrested or from the date of the service of capiases upon them. If the defendants remain uncharged, the court on the 30th day and with notice to the State shall:

1. Order that the defendants automatically be released on their own recognizance on the 33rd day unless the state files formal charges by that date; or
2. If good cause is shown by the state, order that the defendants automatically be released on their own recognizance on the 40th day unless the state files formal charges by that date.

In no event shall any defendants remain *in custody* beyond 40 days unless they have been formally charged with a crime." (emphasis added).

The plain language of the statute does not provide for automatic ROR—the state must be notified before the defendant is released.

In Bowens v. Tyson, 578 So. 2d 696 (Fla. 1991). the defendant filed a motion for pretrial release 42 days after he was arrested. Later that same day, the state filed an Information. Id. at 697. The Florida Supreme Court disagreed with the defendant's assertion that "an Information filed after forty days is untimely." Id. According to the Court, the underlying purpose of Rule 3.133(b)(6)—now known as Rule 3.134—"is to force the state to formally charge the accused as soon after arrest as practical." The Court reasoned: "When an accused who has been held in custody for thirty days without being formally charged files a motion for release, the state has three options: 1) it must file an information or indictment; 2) it must show good cause for its delay; or 3) it must release the accused. The effect of a motion to release is to put the state on notice that it has failed to bring timely criminal charges and to force the state to explain its dereliction. It was never the intent of this Court that the rule act as an automatic release without a show cause hearing. If between the filing of the motion to release and the hearing the state files an information or an indictment, the purpose of the rule is served." Id.

Thus, the defense must first file a motion for release and set a hearing date. Making an oral motion in court does not provide the State with notice. According to the Rules of Criminal Procedure, "A copy of any written motion which may not be heard ex parte and a copy of the notice of the hearing thereof, shall be served on the adverse party a reasonable time before the time specified for the hearing." Rule 3.060.

In Ford v. Campbell, 697 So. 2d 1301, 1302 (Fla. 1st DCA 1997). The defendant was arrested for aggravated battery. The defendant filed a motion 52 days after the arrest "under Rule 3.134 for an order releasing her on her own recognizance." Id. The motion was scheduled for a hearing 20 days later, but the state filed an Information charging the defendant with aggravated battery before the motion date. The trial court denied the defendant's motion for ROR. In affirming the decision of the trial court, the First District reasoned that "[t]he state's failure to file an information within [the time provided by Rule 3.134] can lead to an order releasing the defendant, but the rule provides that the state must be given notice of the defendant's prospective release . . ." Id. Interpreting Rule 3.134, the court concluded, "[t]he last sentence of the rule does create an entitlement to release after 40 days but that assumes the defendant has previously filed a motion for release. The rule does not allow a defendant to wait until after the expiration of the 40 day time limit to file a motion for release and then to claim an absolute right to release regardless of the State's response. Such an interpretation would nullify the provision in the rule that requires notice to the State before the defendant is released . . ." Id. at 1032-33. Furthermore, the First District echoed the Supreme Court's opinion in Bowens, and "adopt[ed] the more practical view that rule 3.134 is not self-executing. The rule creates a right to release but it presumes that the defendant will assert that right by filing an appropriate motion." Id. at 1303. Therefore, the defendant must file a motion for release, give notice to the state (with a

reasonable amount of time before the hearing) and a hearing must be held before a defendant is released.

For any argument about the meaning of the term "in custody" the State should rely on the tenants of statutory interpretation and point the court to the statutes surrounding F.R.C.P. 3.134. F.R.C.P. 3.131 distinguishes between Pretrial Release and a Defendant who is "detained," (i.e., in custody). F.R.C.P. 3.133 differentiates between (1) a "Defendant in Custody" and (2) a "Defendant in Pretrial Release" who "has been released from custody.

Being affixed with GPS is not the same as being in custody. ASAs should use the above statutes and the below definitions and cases to argue that "in custody" has specific meaning and refers to being in held in a pre-trial detention center.

> Barns v. State, 768 So. 2d 529 (Fla. 4th DCA 2000) the court held that a Defendant may be remanded into custody without bond when defendant has committed new crimes while on pretrial release. The case specifically references F.S.A. §903.047.
>
> State v. Siddal, 772 So. 2d 555 (Fla. 3d DCA 2000), a sex offender, who was on probation on the effective date of the Involuntary Civil Commitment of Sexually Violent Predators Act, was not in "custody."

Abbreviations

Misdemeanor Domestic Violence Unit
Office of the State Attorney, Eleventh Judicial Circuit of Florida

ABBREVIATIONS

Δ	Defendant/Defense
K	State
12 MRP	12 Months Reporting Probation
911	911 Tape
ΔNPI	Δ not positively identified
AA	Alcoholics Anonymous
ADJ	Adjudication
ADV	The Advocate Program
WH	Withhold of Adjudication
ARR	Arraignment
AW	Arrest Warrant
BH	Bond Hearing
BIP	Batterer's Intervention Program
BW	Bench Warrant
BWSA	Bench Warrant Set Aside
BWQ	Bench Warrant Quashed
BWV	Bench Warrant Vacated
CT	Court
CJIS	Criminal Justice Information System
Comp + Paid	Completed and Paid
Comp Hrg	Competency Hearing
Cont	Continuance • K Cont State Continuance • Δ Cont Defense Continuance • Ct. Cont Court Continuance • Jt. Cont Joint Continuance
CSH	Community Service Hours
CTS	Credit for Time Served
DCJ	Dade County Jail
DD	Demand Discovery
DISCO	Discovery
DIC	Discovery Provided in Court
ΔIC	Defendant in Custody
DIP	Domestic Intervention Program
ΔP	Defendant Present
ΔPW	Defendant Presence Waived
DVS	Domestic Violence Supplement Report
DVDC	Domestic Violence Drug Court
ERP	Early Release Program
EJRC	Enhanced Judicial Review Calendar
F/B	Followed by
FCIC/NCIC	Florida Criminal History/ National Criminal History
FTA	Failed to Appear

- VFTA (Victim Failed to Appear)
- WFTA (Witness Failed to Appear)
- OFTA (Officer Failed to Appear)
- ΔFTA (Defendant Failed to Appear)

GOA	Gone On Arrival
KR	State Ready
KNR	State Not Ready
KNP	State Nolle Prosse
KNA	State No Action
KO	State Offer
ID √	Identification Checked
INJ	Injury
JOA	Judgment of Acquittal
JRC	Judicial Review Calendar
JT	Jury Trial
BT	Bench Trial
MH	Mental Health Screening
MSAO	Modified Stay Away Order
MTC	Motion to Compel
N/A	Narcotics Anonymous
NOA	Notice of Appearance
NOB	Not on Board (ie: VNOB/WNOB)
NOE	Notice of Expiration
OΔO	Over Defense Objection
OKO	Over State's Objection
ONI	Order Certifying No Incarceration
PC	Probable Cause
PCN	Police Case Number
P CERT	Professional Certificate
PDA	Public Defender Appointed
∅PDA	Public Defender Not Appointed / Defendant does not qualify for PD
PDD	Public Defender Discharged
PA	Private Attorney
PFC	Pre-file Conference
PIC	Present, and In Custody
PIF	Paid In Full
PNG	Pleads Not Guilty
PROB	Probation
PTC	Pre-trial Conference
PTD	Pre-trial Diversion
PTDE	Pre-trial Diversion Eligible
PTS	Pre-trial Services
PTS/ Alt. Bond $	Pre-trial Services with an alternate bond of (insert amount)
PVA	Probation Violation Affidavit
PVH	Probation Violation Hearing
TECH	Technical Violation of Probation

SUB	Substantive Violation of Probation
SYG	Stand Your Groud
UT PROB	Unsuccessful Termination of Probation
ST PROB	Successful Termination of Probation
REL	Relationship
ROR	Released on Own Recognizance
R/S	Reset
SAAT	Substance Abuse & Alcohol Treatment (alt. MSAAT = Mandatory)
SAO	Stay Away Order (alt. MSAO = Stay Away Order Modified)
SAPD	Specially-Appointed Public Defender
S/C	Special Conditions
SES	Suspended Entry of Sentence
SF ARR	Set for Arraignment
SF RPT	Set for Report
SF SND	Set for Sounding
SF TRL	Set for Trial
SND	Sounding
SV	Same Victim (also, ⦸SV)
TRL	Trial
TASC	Drug Treatment in Jail
TX	Treatment
VP; OP; WP	Victim Present; Officer Present; Witness Present
WOBA	Writ of Bodily Attachment
WOR	Waiver of Rights
WPNG	Written Plea of Not Guilty

Commonly Used Forms

Misdemeanor Domestic Violence Unit
Office of the State Attorney, Eleventh Judicial Circuit of Florida

Defendant name: _____ Case number _____

Domestic Violence Drug Court Criteria Worksheet

(This worksheet is only a guide. The SAO may, at their sole discretion, allow a Defendant to participate (or not participate) in DV Drug Court regardless of the data in this worksheet.)

SAO determined Defendant meets criteria for DV Drug Court for the following reason(s):

[] Defendant requests Substance Abuse Treatment; **OR**

[] Defendant meets the following criteria

- [ ] Arrest affidavit indicates Defendant under the influence of drugs or alcohol at the time of the offense
- [ ] Defendant found with substances at time of arrest
  - [ ] Alcohol
  - [ ] Marijuana
  - [ ] Cocaine
  - [ ] Prescription drug _____
  - [ ] Other_____
- [ ] Prior arrests/convictions are recent and substance-related
  - [ ] Substance: _____
- [ ] Victim/witness/family member has indicated that Defendant has substance abuse issues; **OR**

[ ] Mandatory SAAT added at a different time than original plea.

Reason:

- [ ] Advocate assessment (If Advocate Assessment, Advocate Program must provide written explanation for the need for SAAT)
- [ ] Defendant tested positive at court hearing
- [ ] Other: _____

COMMENTS:

TRIAL PREPARATION CHECKLIST

Information Packet

(a.) Are following facts correct on information?

- (i.) Δ's Name ☐
- (ii.) Vic's Name ☐
- (iii.) Incident dates ☐
- (iv.) Offense / Statute # ☐
- (v.) Reference to Co-D Statute 777.011 ☐

(b.) Do you have the following items? (If applicable)

- (i.) A-Form ☐
- (ii.) DV Supplement ☐
- (iii.) OIR ☐
- (iv.) Detective Supplement ☐
- (vi.) Property Receipt ☐
- (vii.) Fire Rescue Report ☐
- (viii.) Medical Records ☐
- (ix.) Priors/Certified Convictions for:
  - Defendant ☐
  - Victim ☐
  - Witness ☐

Witness Packet/Subpeonas

(a.) Witness/Victim names correct? ☐

(b.) Addresses correct? ☐

Discovery Information

(a.) Have the following items been turned over?

- (i.) Statements
  - PFC Redacted Statements ☐
  - Victim Statements ☐
  - Defendant Statements
- (ii.) Police Reports ☐
- (iii.) Witness Names ☐
- (iv.) Certified Convictions ☐
- (vi.) 911 Tapes ☐
- (vii.) Medical Reports ☐
- (viii.) Photos ☐

Pre-Trial Motions

(a.) Have the necessary pre-trial motions been filed?

- (i.) Williams Rule Motions ☐
  - 10 Day Notice ☐
  - Dates & Info re:Previous incident ☐
  - Williams Rule Discovery ☐
  - Theory: Motive, Intent, etc. ☐
  - Old Case - pulled & compared ☐
- (ii.) EU Notice/Hearings ☐
- (iii.) Motions in Limine ☐

Victim on Board Cases

(a.) Have you contacted the victim/witness & discussed:

- (i.) Trial Orientation ☐
  (ie: what will happen in trial)
- (ii.) Time / Place / Dress Code ☐
- (iii.) His/her possible contact with PD while in court ☐
- (iv.) Incidents that have occurred since last contact ☐
- (vi.) Any new fact victim/witness might have remembered ☐
- (vii.) Possible Pleas ☐
- (viii.) Pre-Trial Conference ☐
- (ix.) Children issues ☐
- (x.) Defense Witnesses ☐

(b.) Have translations/transcriptions been ordered where applicable? ☐

(c.) Other:

_____

_____

_____

TRIAL PREP/REVIEW

Defendant:	Case #
Charge(s):	Offer:

FACTS:

Witness	Element/Testimony	Evidence
Suppression Motions: Y / N		
Other motions: Y / N		

Strengths:

Weaknesses:

Possible Defenses:

Evidence:

How is evidence being admitted?

BOND

☐ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
☐ IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DIVISION ☐ DOMESTIC VIOLENCE ☐ CRIMINAL	**ORDER OF PRETRIAL RELEASE CONDITIONS** **(Domestic Violence)** **☐ Original / ☐ Re-issued**	**CASE NUMBER**
STATE OF FLORIDA **VS.** **DEFENDANT**		**CLOCK IN**

The aboved-named Defendant has been charged with a crime of domestic violence. Pursuant to 903.047 F.S., the following are the Defendant's conditions of pretrial release:

THE DEFENDANT IS ORDERED AS FOLLOWS:

(Initial all blanks which are appropriate and mark "N/A" for those that do not apply.)

1. Do not engage in any criminal activity.
2. Do not use or possess any illegal drugs.

_____ 3. Do not use, purchase, possess, or carry a firearm, gun, weapon, or ammunition. You must immediately surrender any firearms, ammunition, and any concealed weapons permits to the nearest police department, and file a receipt with the court.

_____ 4. The Defendant is prohibited from having any contact with the following named person(s), hereinafter the victim _____, directly or indirectly, in person, in writing, by telephone, pager, fax, or through third persons. Defendant must stay at least 500 feet away from the victim, the victim's home, place of employment, and/or school at all times.
_____ **The protected party is a spouse, former spouse, a person who (cohabitates) cohabits or has cohabited with the Defendant, a parent of a common child, a child of that person, or a child of the Defendant.**

_____ 5. The Defendant may return to the victim's residence, one time only, within 48 hours of the entry of this order, accompanied by a police officer, to retrieve his/her personal clothing, personal health items, medication, personal and business-related paperwork, and work tools. Going to the home or remaining at the home without the police will subject the Defendant to arrest. The police officer(s) shall request all keys and garage door openers to the home from the Defendant and turn them over to the victim.

_____ 6. The Defendant is allowed to have contact with the victim, but is prohibited from being physically threatening or violent towards the victim in any manner whatsoever.

The Court is aware of a possible conflict between Paragraph 4 of this order and a prior visitation order. However, in order to prevent immediate harm, the Court has entered this Order which supersedes and takes precedence over any prior court orders which allow contact between the parties. Either party may request a hearing before the judge in the case where the visitation order was entered to seek a modified visitation order which does not conflict with the "no contact" provisions in this order.

This order shall remain in effect until modified or terminated by the Court.

Violation of this order may be a first degree misdemeanor which carries a maximum punishment upon conviction of one (1) year in jail and a fine of $1,000.00, or may subject the defendant to criminal contempt of court charges, and/or result in revocation of bond or pretrial release .

DONE AND ORDERED at Miami-Dade County, Florida, this _____ day of _____, 20_____.

_____
JUDGE

Defendant: DOB_____ Sex_____ Race_____ Height_____ Weight_____

MOD

☐ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
☐ IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DIVISION ☐ DOMESTIC VIOLENCE ☐ CRIMINAL	**ORDER MODIFYING PRETRIAL RELEASE CONDITIONS (Domestic Violence)**	**CASE NUMBER**
STATE OF FLORIDA **VS.** **DEFENDANT**		**CLOCK IN**

This matter came before the court upon the Defendant/Victim's request to modify Paragraph 4 of the Order of Pretrial Release Conditions previously issued pursuant to 903.047 F.S. The Court heard the testimony of the witnesses and hereby **ORDERS AND ADJUDGES:**

1. Paragraph 4 (the "no contact" provision) of the Order of Pretrial Release Condition issued in this case on _____ (Date) in favor of _____ (Victim) is hereby vacated to to allow parties to have contact.

   _____ The protected party is a spouse, former spouse, a person who (cohabitates) cohabits or has cohabited with the Defendant, a parent of a common child, a child of that person, or a child of the Defendant.

2. The Defendant is allowed to have contact with the victim, but is prohibited from being physically threatening or violent towards the victim in any manner. This is a condition of Pretrial Release pursuant to 903.047 F.S.

3. The Defendant is ordered not to use, purchase, possess, or carry a firearm, gun, weapon, or ammunition. Defendant must immediately surrender any firearms, ammunition, and any concealed weapons permits to the nearest police department, and file a receipt with the court.

4. All other conditions of the Order of Pretrial Release Conditions remaining in full force and effect

DONE AND ORDERED at Miami-Dade County, Florida, this _____ day of _____, 20____.

_____
JUDGE

Defendant: DOB_____ Sex_____ Race_____ Height_____ Weight_____

WHITE - Clerk YELLOW - Warrants PINK - Victim GOLD - State Attorney BLUE - Defendant

CLK/CT 774 REV. 6/07 Clerk's web address: www.miami-dadeclerk.com

ADVOCATE PROGRAM, INC.
DOMESTIC VIOLENCE UNIT
PRETRIAL DIVERSION REFERRAL

STATE OF FLORIDA

IN THE STATE/CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA

_____
Last First Middle
Defendant

CASE No. _____
Concurrent with _____

DATE: : _____
CHARGE: _____
JUDGE: _____
ADDRESS: _____

TELEPHONE: _____
DATE OF BIRTH: _____
CITY_____ STATE _____ ZIP CODE_____

To the Defendant:

You have been referred for Pretrial Diversion. This means that a "not guilty" plea has been entered for you to the above charge(s), and that if you comply with all conditions of the Diversion Program and serve a mandatory minimum of 6 months of supervision, the State will "nolle prosse" (dismiss) the charge(s) against you. You may then be eligible to have your arrest record sealed by the Court. **The cost for the Program is $250.00. There will be a $25.00 charge if re-entry is necessary. You also must pay $50.00 if an assessment is required and for the cost of treatment.**

As a condition of this agreement, you may be referred to further treatment as specified by the State Attorney's Office, upon notice to you, during the course of your diversion period. In order to enroll in the program:

YOU MUST REPORT WITHIN 24 HOURS (EXCLUDING WEEKEND AND HOLIDAYS) TO:

ADVOCATE PROGRAM
DOMESTIC VIOLENCE UNIT
1901 SW 1ST STREET, THIRD FLOOR, MIAMI, FLORIDA 33135
MONDAY- FRIDAY, BETWEEN 8:30A.M.- 4:00P.M.

Special Conditions:
You have one (1) opportunity to appear for your intake appointment for the Pretrial Diversion Program, complete the process of signing up for the Program and complete all required treatment programs successfully. Failure to do so may result in revocation from the Program, even if time remains to complete the program. You must follow the directions of your case manager(s) and treatment Agency. You will submit to random testing (which may include urinalysis, breathalyzer, lab test or blood tests) as directed by your advocate counselor, or the professional staff of the treatment center where you are receiving treatments to determine the presence or use of alcohol or controlled substances. You are required to pay for the test.

( ) Domestic violence batterer's assessment and Batterer's Intervention Program.
( ) Substance Abuse assessment and treatment if necessary. ( ) Mandatory Substance abuse.
( ) Mental Health assessment and treatment if necessary. ( ) Mandatory Mental Health.
( ) Anger Management 10 weeks ( ) Parenting Course 12 weeks
( ) AA Meeting at a rate of _____ per week. ( ) NA Meetings at a rate of _____ per week.
( ) Community Service hours_____ at a rate of _____per month.
( ) Restitution payable to: _____ amount _____ at a rate of _____ per month.
( ) Donation to _____ Amount _____at a rate of _____ per month.
( ) Psychiatric evaluation and treatment if necessary. ( ) Other _____
( ) You will be required to report to Court periodically on a Judicial Review or DV Drug Court Review.
( ) Judicial Review set for _____ ( ) DV Drug Court Review set for _____
( ) Stay Away Order _____

KATHERINE FERNANDEZ RUNDLE, STATE ATTORNEY

By: _____/_____ _____
Assistant State Attorney Florida Bar No. Defendant

[ ] Copy of Spanish/Creole translation of this Referral from provided to Defendant

White-Court yellow-Advocate Program pink-Defendant gold-State CS 417 rev. 7/13

☐ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA

DIVISION ☐ CRIMINAL ☐ TRAFFIC ☐ OTHER	ORDER	CASE NUMBER
THE STATE OF FLORIDA VS. PLAINTIFF DEFENDANT		CLOCK IN

THIS CAUSE having come on before the Court and the Court having been fully advised in the premises, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED THAT _____ _____ entered in the above styled cause is hereby

DONE AND ORDERED at Miami, Dade County, Florida, this _____ day of _____, 19_____.

_____
JUDGE

THE STATE OF FLORIDA,

Vs

Defendant

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DOMESTIC VIOLENCE DIVISION
CASE No.

ORDER PLACING DEFENDANT ON PROBATION

THIS CAUSE came to be heard on this day by the Court, and named the Defendant being present and having

( ) Entered a plea of guilty to
( ) Entered a plea of nolo contender to
( ) Been found guilty by jury verdict of
( ) Been found guilty by the court trying the case without a jury of

the offense (s) of _____ OR the Defendant having

( ) Admitted violating probation
( ) Been found in violation of probation by the following acts or omissions: _____

the Court hereby finds the defendant guilty and

( ) Adjudicates the defendants guilty of the underlying offense(s)
( ) Withholds adjudication of guilt on the offense(s)

It appearing to the satisfaction of the Court that the ends of justice and welfare of society do not require that the defendant should suffer the maximum penalty, it is hereby ORDERED AND ADJUDGED that the defendant is placed on probation for a period of _____ months under the supervision of The Advocate Program, Inc. It is further ORDERED that the defendant shall comply with the following general and special conditions of probation during the probationary period (General Conditions listed on the back of the Defendant's copy):

Special Conditions of Probation

(All special conditions of probation shall be completed at least 30 days before your probation is scheduled to end.)

A. You must pay for and complete the Domestic Violence Batterer's Assessment, and Batterer's Intervention Treatment Program or _____. If substance abuse treatment and/or Mental health treatment are deemed necessary upon assessment, you must pay for and successfully complete said treatment(s). You must attend a minimum of one group per week and pay required program fees as they are due weekly. You have one opportunity to appear for your probation intake appointment, complete the process of signing-up for probation, and complete the treatment program successfully. (Failure to do so may result in revocation of your probation, even if time remains within your probation period to complete the program. You must follow the directions of your probation officer and treatment provider regarding attendance at schedule appointments). If, after assessment, it is determined you qualify for enhanced judicial monitoring based on the use of substances, please understand you may have more frequent court appearances to address your status / progress within the program and you may be subject to more frequent urinalysis testing. If you test positive on any urinalysis screenings, you will be notified by the provider and / or your Advocate Probation Officer of the next Enhanced Judicial Review Calendar which you MUST attend.

B. You shall successfully complete_____hours of community service, at a rate of_____hours per week.

C. You shall pay for and complete a Parenting Course. You must attend a minimum of one group per week and pay required program fees as they are due weekly.

D. You shall pay court cost in the amount of $ _____.

E. You shall pay fines in the amount of $_____.

F. You shall stay away from_____
You will have no contact with said person, directly or indirectly, in person, in writing, by phone, pager, fax, or through third persons. You must stay at least 500 feet away from said person's home, place of employment or school and parked car at all times.

G. The protected party is a spouse, former spouse, a person who (cohabitates) cohabits or has cohabited with the Defendant, a parent of a common child, a child of that person, or a child of the Defendant.

H. You must immediately surrender all firearms, ammunition and concealed weapons permits to the nearest police station, obtain a receipt, and turn it in to your probation officer. Additionally, you are prohibited from using, owning, purchasing, possessing or carrying a firearm, ammunition or concealed weapons permits during the term of your probation.

I. You are allowed to have contact with _____, but are prohibited from being physically threatening or violent in any manner whatsoever.

J. You shall pay restitution to_____in the amount of $ _____

K. You shall pay a public Defender's Lien in the amount of $ _____, pursuant to the Final Judgement entered in this case.

L. You must pay for and complete the following program(s) or other conditions (s) through The Advocate Program, Inc. _____
_____

M. You must serve _____ days in the County Jail with credit for_____
_____, commencing _____, as a special condition of probation.

N. You shall pay a minimum of $_____per month towards assessed court costs and/or Public Defender's Lien.

O. 1) You must attend any court appearances as directed by your probation officer and/or court notice. 2) You must pay all probation cost according to the payment schedule set forth by your probation officer.

P. You have one opportunity to complete all terms and conditions of probation, including payment of treatment program fees as due, by the following date:_____

Q. Other: _____

☐ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY,FLORIDA.
☐ IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION		CASE NUMBER
☐ CRIMINAL ☐ FAMILY ☐ TRAFFIC/MISDEMEANOR ☐ OTHER	**STAY AWAY ORDER** **NON-DOMESTIC VIOLENCE**	
STATE OF FLORIDA VS. **PLAINTIFF(S)** **DEFENDANT(S)**		**CLOCK IN**

THIS CAUSE came before the Court to be heard, and the Court having been fully advised in the premises and having heard from the parties, it is hererby

ORDERED AND ADJUDGED that the above-named Defendant shall stay away from the victim(s) in this case, _____, and shall have no contact with him/her in person, by telephone, and/or through any other individual. This shall include but is not limited to the victim's home and place of business.

DONE AND ORDERED in Miami-Dade County, Florida, this _____ day of _____, 20 _____.

_____
Judge

CLK/CT 747 Rev. 5/08 WHITE-Clerk YELLOW-Pretrial PINK- Defendant GOLD-State Attorney

☐ IN THE CIRCUIT COURT OF ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

☑ IN THE COUNTY COURT IN AND FOR DADE COUNTY FLORIDA

DIVISION	ORDER	CASE NUMBER
☑ CRIMINAL ☐ TRAFFIC ☐ OTHER	Granting Defendant's Motion to Travel	M12-54321

THE STATE OF FLORIDA VS.	CLOCK IN
Joan Doe	
PLAINTIFF DEFENDANT	

THIS CAUSE having come on before the Court and the Court having been fully advised in the premises, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED THAT **The defendant's motion to travel to Venezuela** entered in the above styled cause is hereby

Granted. The defendant may travel to Venezuela between the dates of May 29 - June 15, 2012

DONE AND ORDERED at Miami, Dade County, Florida, this _____day of _____20

_____

JUDGE

VFOSC Cheat Sheet

Effective date of statute: March 12, 2007

It is the responsibility of the State Attorney's Office to alert the court at the first appearance, as well as at each critical stage of case. Qualifying offenses are listed below.

1. Defendant must ***currently*** be on felony probation
   (juvenile probation does not count; whether or not it is a Withhold or Adjudication does not matter)

2. Look at date Defendant committed felony:

   - Placed on probation/community control for Qualifying Offense (QO) *committed* after 3/12/07
   - Placed on probation/community control for *any* felony *committed* after 3/12/07, and previously committed a Qualifying Offense (QO)
     - Ex: Defendant is on probation for a Coke Possession committed on November 12, 2011; previously committed an Armed Robbery in 2001; picked up a Misd. Battery today. **DEF = VFOSC**
   - Placed on probation/community control for any felony *committed* after 3/12/07, and commits a QO.
     - Ex: Defendant is on probation for a Coke Possession committed on November 12, 2011; commits an Armed Robbery today. **DEF = VFOSC**

3. Date placed on probation irrelevant if:

   - Placed on probation/community control for any felony, **and**
   - *Commits* a QO after 3/12/07, **and**
     - Previously found to be: HVO *or* 3-time violent felony offender *or* sexual predator

Qualifying Offenses

1. Kidnapping or attempted kidnapping

2. Murder or attempted murder

3. Aggravated battery or attempted aggravated battery

4. Sexual battery or attempted sexual battery

5. Lewd or lascivious or attempted lewd or lascivious battery, molestation, conduct or exhibition

6. Robbery, carjacking, home invasion robbery (including attempts)

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted

8. Sexual performance by a child or attempted

9. Computer pornography, transmission of child pornography, or selling or buying of minors

10. Poisoning food or water

11. Abuse of a dead human body

12. Any burglary offense or attempted burglary offense that is either a first-degree felony or second-degree felony

13. Arson or attempted arson

14. Aggravated assault

15. Aggravated stalking

16. Aircraft piracy

17. Throwing bombs or destructive devices

18. Treason

19. Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state