

RULE 3.131 | PRETRIAL RELEASE

(a) Right to Pretrial Release. Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. 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 any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure and shall comply with all conditions of pretrial release as ordered by the court. Upon motion by the defendant when bail is set, or upon later motion properly noticed pursuant to law, the court may modify the condition precluding victim contact if good cause is shown and the interests of justice so require. The victim shall be permitted to be heard at any proceeding in which such modification is considered, and the state attorney shall notify the victim of the provisions of this subsection and of the pendency of any such proceeding. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

(b) Hearing at First Appearance – Conditions of Release.

(1) Unless the state has filed a motion for pretrial detention pursuant to rule 3.132, the court shall conduct a hearing to determine pretrial release. For the purpose of this rule, bail is defined as any of the forms of release stated below. Except as otherwise provided by this rule, there is a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release. The judicial officer shall impose the first of the following conditions of release that will reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process; or, if no single condition gives that assurance, shall impose any combination of the following conditions:

(A) personal recognizance of the defendant;

(B) execution of an unsecured appearance bond in an amount specified by the judge;

(C) placement of restrictions on the travel, association, or place of abode of the defendant during the period of release;

(D) placement of the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(E) execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; provided, however, that any criminal defendant who is required to meet monetary bail or bail with any monetary component may satisfy the bail by providing an appearance bond; or

(F) any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) The judge shall at the defendant's first appearance consider all available relevant factors to determine what form of release is necessary to assure the defendant's appearance. If a monetary bail is required, the judge shall determine the amount. Any judge setting or granting monetary bond shall set a separate and specific bail amount for each charge or offense. When bail is posted each charge or offense requires a separate bond.

(3) In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse evaluation and/or treatment, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses



to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant.

(4) No person charged with a dangerous crime, as defined in section 907.041(4)(a), Florida Statutes, shall be released on nonmonetary conditions under the supervision of a pretrial release service, unless the service certifies to the court that it has investigated or otherwise verified the conditions set forth in section 907.041(3)(b), Florida Statutes.

(5) All information provided by a defendant in connection with any application for or attempt to secure bail, to any court, court personnel, or individual soliciting or recording such information for the purpose of evaluating eligibility for or securing bail for the defendant, under circumstances such that the defendant knew or should have known that the information was to be used in connection with an application for bail, shall be accurate, truthful, and complete, without omissions, to the best knowledge of the defendant. Failure to comply with the provisions of this subdivision may result in the revocation or modification of bail. However, no defendant shall be compelled to provide information regarding his or her criminal record.

(6) Information stated in, or offered in connection with, any order entered pursuant to this rule need not strictly conform to the rules of evidence.

(c) Consequences of Failure to Appear.

(1) Any defendant who willfully and knowingly fails to appear and breaches a bond as specified in section 903.26, Florida Statutes, and who voluntarily appears or surrenders shall not be eligible for a recognizance bond.

(2) Any defendant who willfully and knowingly fails to appear and breaches a bond as specified in section 903.26, Florida Statutes, 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.

(d) Subsequent Application for Setting or Modification of Bail.

(1) When a judicial officer not possessing trial jurisdiction orders a defendant held to answer before a court having jurisdiction to try the defendant, and bail has been denied or sought to be modified, application by motion may be made to the court having jurisdiction to try the defendant or, in the absence of the judge of the trial court, to the circuit court. The motion shall be determined promptly. No judge or a court of equal or inferior jurisdiction may modify or set a condition of release, unless the judge:

(A) imposed the conditions of bail or set the amount of bond required;

(B) is the chief judge of the circuit in which the defendant is to be tried;

(C) has been assigned to preside over the criminal trial of the defendant; or

(D) is the first appearance judge and was authorized by the judge initially setting or denying bail to modify or set conditions of release.

(2) Applications by the defendant for modification of bail on any felony charge must be heard by a court in person at a hearing, with the defendant present and with at least 3 hours' notice to the state attorney and county attorney, if bond forfeiture proceedings are handled by the county attorney. The state may apply for modification of bail by showing good cause and with at least 3 hours' notice to the attorney for the defendant.

(3) If any trial court fixes bail and refuses its reduction before trial, the defendant may institute habeas corpus proceedings seeking reduction of bail. If application is made to the supreme court or district

court of appeal, notice and a copy of such application shall be given to the attorney general and the state attorney. Such proceedings shall be determined promptly.

(e) Bail Before Conviction; Condition of Undertaking.

(1) If a person is admitted to bail for appearance for a preliminary hearing or on a charge that a judge is empowered to try, the condition of the undertaking shall be that the person will appear for the hearing or to answer the charge and will submit to the orders and process of the judge trying the same and will not depart without leave.

(2) If a person is admitted to bail after being held to answer by a judge or after an indictment or information on which the person is to be tried has been filed, the condition of the undertaking shall be that the person will appear to answer the charges before the court in which he or she may be prosecuted and submit to the orders and process of the court and will not depart without leave.

(f) Revocation of Bail. The court in its discretion for good cause, any time after a defendant who is at large on bail appears for trial, may commit the defendant to the custody of the proper official to abide by the judgment, sentence, and any further order of the court.

(g) Arrest and Commitment by Court. The court in which the cause is pending may direct the arrest and commitment of the defendant who is at large on bail when:

- (1) there has been a breach of the undertaking;
- (2) it appears that the defendant's sureties or any of them are dead or cannot be found or are insufficient or have ceased to be residents of the state; or
- (3) the court is satisfied that the bail should be increased or new or additional security required.

The order for the commitment of the defendant shall recite generally the facts on which it is based and shall direct that the defendant be arrested by any official authorized to make arrests and that the defendant be committed to the official in whose custody he or she would be if he or she had not been given bail, to be detained by such official until

legally discharged. The defendant shall be arrested pursuant to such order on a certified copy thereof, in any county, in the same manner as on a warrant of arrest. If the order provided for is made because of the failure of the defendant to appear for judgment, the defendant shall be committed. If the order is made for any other cause, the court may determine the conditions of release, if any.

(h) Bail after Recommitment. If the defendant applies to be admitted to bail after recommitment, the court that recommitted the defendant shall determine conditions of release, if any, subject to the limitations of (b) above.

(i) Qualifications of Surety after Order of Recommitment. If the defendant offers bail after recommitment, each surety shall possess the qualifications and sufficiency and the bail shall be furnished in all respects in the manner prescribed for admission to bail before recommitment.

(j) Issuance of Capias; Bail Specified. On the filing of either an indictment or information charging the commission of a crime, if the person named therein is not in custody or at large on bail for the offense charged, the judge shall issue or shall direct the clerk to issue, either immediately or when so directed by the prosecuting attorney, a capias for the arrest of the person. If the person named in the indictment or information is a child and the child has been served with a promise to appear under the Florida Rules of Juvenile Procedure, capias need not be issued. Upon the filing of the indictment or information, the judge shall endorse the amount of bail, if any, and may authorize the setting or modification of bail by the judge presiding over the defendant's first appearance hearing. This endorsement shall be made on the capias and signed by the judge.

(k) Summons on Misdemeanor Charge. When a complaint is filed charging the commission of a misdemeanor only and the judge deems that process should issue as a result, or when an indictment or information on which the defendant is to be tried charging the commission of a misdemeanor only, and the person named in it is not in custody or at large on bail for the offense charged, the judge shall direct the clerk to issue a summons instead of a capias unless the judge has reasonable ground to believe that the person will not appear in response to a summons, in which event an arrest warrant or a capias shall be issued with the amount of bail endorsed on it. The



summons shall state substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the judge issuing the summons or the judge having jurisdiction of the offense at a time and place stated in it.

(1) Summons When Defendant Is Corporation. On the filing of an indictment or information or complaint charging a corporation with the commission of a crime, whether felony or misdemeanor, the judge shall direct the clerk to issue or shall issue a summons to secure its appearance to answer the charge. If, after being summoned, the corporation does not appear, a plea of not guilty shall be entered and trial and judgment shall follow without further process.

Committee Notes

1968 Adoption.

- (a) Same as section 903.01, Florida Statutes.
- (b) Same as section 903.04, Florida Statutes.
- (c) Same as section 903.02, Florida Statutes.
- (d) Same as section 903.12, Florida Statutes.
- (e) Substantially same as section 903.13, Florida Statutes.
- (f) Same as section 903.19, Florida Statutes.
- (g) Same as section 918.01, Florida Statutes.
- (h) Substantially same as section 903.23, Florida Statutes.
- (i) Same as section 903.24, Florida Statutes.
- (j) Same as section 903.25, Florida Statutes.
- (k) and (l) Formerly rule 3.150(c). These proposals contain the essentials of present sections 907.01, 907.02, and 901.09(3), Florida Statutes, a change of some of the terminology being warranted for purpose of clarity.
- (m) Formerly rule 3.150(c). This proposal contains all of the essentials of section 907.03, Florida Statutes, and that part of section 901.14, Florida Statutes, pertaining to postindictment or postinformation procedure. A charge by affidavit is provided. Although subdivision (g) is the same as section 918.01, Florida Statutes, its constitutionality was questioned by the subcommittee, constitutional right to bail and presumption of innocence.



1972 Amendment. Same as prior rule except (b), which is new. (k), (l), and (m) are taken from prior rule 3.150.

1977 Amendment. This proposal amends subdivision (b)(4) of the present rule [formerly rule 3.130(b)(4)] to expand the forms of pretrial release available to the judge. The options are the same as those available under the federal rules without the presumption in favor of release on personal recognizance or unsecured appearance.

This proposal leaves it to the sound discretion of the judge to determine the least onerous form of release which will still insure the defendant's appearance.

It also sets forth the specific factors the judge should take into account in making this determination.

1983 Amendment. Rule 3.131(d) is intended to replace former rule 3.130(f) and therefore contemplates all subsequent modifications of bail including all increases or reductions of monetary bail or any other changes sought by the state or by the defendant.

Court Comment

1977 Amendment. Subdivision (a) was repealed by Chapter 76-138, §2, Laws of Florida, insofar as it was inconsistent with the provision of that statute. Subdivision (a) has been amended so as to comply with the legislative act.