

FROM ARREST TO RELEASE, OR NOT!

Circuit Judge James Craner

FROM ARREST TO RELEASE, OR NOT!

- Arrest
- Initial Appearance
- Release

ROR

Cash

Surety

FROM ARREST TO RELEASE, OR NOT!

Factors for consideration

903.046, Florida Statute

F.R.Civ.P. 3.131

FROM ARREST TO RELEASE, OR NOT!

- Surety bonds
 - ✓ History
 - ✓ How they work
 - ✓ Duties of surety; movie
 - ✓ Laws/statutes
- Future of bonding/trends nationwide
- Q&A

ARREST

Standard:

Probable cause to arrest exists when the totality of the facts and circumstances within officer's knowledge would warrant a reasonable person to believe that it is more likely than not that the defendant committed a crime. *GOMEZ v. STATE*, 155 So.3d 1184 (4th DCA 2014).

- ✓ On site
- ✓ Warrant

ARREST

What is it? It is what we think it is; cuffs on, going to jail.

- ✓ Approximately 125 arrests in Orange County daily; more on weekends and holidays.

Greatest number of arrests on what day?

ARREST

Enter Booking & Release Center (BRC) at the Orange County Jail, John Young Parkway and you are booked. Then removed to processing for 1-2 days.

✓ Yes entitled to make calls.

Will attend first court appearance- known as initial appearance or first appearance- IA's.

INITIAL APPEARANCE (IA)

Florida Rule of Criminal Procedure 3.130 (24 hours).

➤ A judge is on duty 7/365

Judge does 5 things:

- ✓ Defendant is identified
- ✓ Notice of charges/probable cause
- ✓ Rights (silence, counsel, communicate with counsel)
- ✓ Pretrial release
- ✓ Next court date

RELEASE

ROR, Cash, Surety

ROR: Release On Recognizance—signature bond (“I promise to appear at all future court dates”).

Cash: If bond is \$1500, you post \$1500 cash with the clerk, which depositor will get back if defendant appears in court for all appearances until discharged.

Surety: An insurance policy. A bondsman, who works under an insurance company, guarantees the defendant’s appearance in court for all appearances until the defendant is discharged, or the surety pays the bond to the clerk.

RELEASE

ROR, Cash, Surety

F.R.Cr.P. 3.131 -- There is a presumption of release on nonmonetary conditions:

- ✓ ROR
- ✓ Restrict travel
- ✓ Place defendant in custody of designated person or organization to supervise
- ✓ Bail bond
- ✓ Any other condition

FACTORS FOR CONSIDERATION

Florida Statute section 903.046 and F.R.Cr.P. 3.131; two purposes of bail: assure integrity of judicial system and protect the citizenry

Dyson v. Campbell—all factors are relevant, not just one, such as inability to post bond.

FACTORS FOR CONSIDERATION

1. Nature of offense & weight of evidence against defendant
2. Ties to the community, employment history
3. Financial resources and mental condition
4. Past and present conduct: Failure to appear (FTA's) and flight
5. Danger to community (newer consideration, since 1960's)
6. Source of funds used to post bail/ bond
7. Defendant currently on release
8. Street drug value
9. Danger to the victims
10. Probable cause to believe the defendant committed a new crime while on release
11. Any other factors
12. Enhancement; reclassification—new
13. Sex offender registrant—new

SURETY BONDS

Family contacts surety company.

Family meets with surety company at surety's office to complete interview form. **Example**

Family pays premium—10% of the bond, the cost to retain the surety.

The surety agreement is a three-party agreement between the surety, the defendant and the court.

The surety drops the bond/guarantee/power at the county jail.
Example

ORANGE COUNTY BAIL BOND COMPANIES

REV. 10.1.15

Bail Bonds By Ellis	Orlando	407.255.2445	Central Florida Bonding	Orlando	407.841.3646	Bail Bonds by Tina House	Orlando	407.841.7100
Baron Bail Bonds	Orlando	407.843.2000	Check Out Time Bail Bonds	Orlando	407.425.6889	Big Mike's Bail Bonds	Orlando	407.948.6944
A&P Bail Bonds	Orlando	407.422.8000	Chelsa Williams Bail Bonds	Orlando	407.442.2735	Troubles Bail Bonds	Orlando	407.540.1313
A. Tomlinson Bail Bonds	Orlando	407.649.0088	Choose Bail Bail Bonds	Orlando	407.442.2667	Affordabail Bail Bonds	Orlando	407.849.0466
Adams Bail Bonds	Orlando	407.254.0075	Allied Bail Bonds	Orlando	407.740.7882	Pak It Up Bail Bonds	Orlando	407.254.5554
Adkins Bail Bonds	Ocoee	407.654.8878	Apopka Bail Bonds	Apopka	407.886.8555	Whooz Next Bail Bonds	Orlando	407.298.9990
All Star Bail Bonds	Orlando	407.423.7827	Art's Bail Bonds	Orlando	407.418.1169	Bail Mother Bail Bonds	Orlando	407.985.5421
Torries Bail Bonds	Orlando	407.447.2274	Big City Bail Bonds	Orlando	407.745.4666	Native Bail Bonds	Apopka	407.886.8800
1887 Bail Bonds	Orlando	407.999.8484	A-1 Action Bail Bonds	Orlando	407.540.0600	No Collateral Bail Bonds	Orlando	407.425.1000
365 Bail Bonds	Orlando	407.438.1330	AA Waylene Bail Bonds	Orlando	407.839.0300	Orange County Bail Bonds	Orlando	407.255.2442
33rd Street Bail Bonds	Orlando	407.425.3303	Reyna's Bail Bonds	Orlando	407.428.1126	Peoples Champ Bail Bonds	Orlando	407.730.8224
Polakoff Bail Bonds	Orlando	407.422.6666	Shelly Glenn Bail Bonds	Orlando	407.278.5656	Look Out Bail Bonds	Orlando	407.985.4707
Professional Bail Bonds	Orlando	407.420.6500	Signature Bail Bonds	Orlando	407.422.3000	Reliable Bail Bonds	Orlando	407.849.2222
Quick Out Bail Bonds	Apopka	407.886.7845	The Bondsman Inc. Bail Bonds	Orlando	407.423.2245	Celebrity Bail Bonds	Orlando	407.757.2643
Mike Snapp Bail Bonds	Orlando	407.246.0919	AA Castel Bail Bonds	Orlando	407.523.0311	Better Days Bail Bonds	Orlando	407.423.0063
Monerief Bail Bonds	Orlando	407.423.2000	Nates Bail Bonds	Orlando	407.316.8181	Markham T. Roberts Bail Bonds	Orlando	407.812.7213
Const 2 Coast Bail Bonds	Orlando	407.488.4406	Dan Raven Bail Bonds	Orlando	407.420.6946	AA Bail Bonds	Orlando	407.423.5557
Dina Edwards Bail Bonds	Orlando	407.841.2245	Orlando City Bail Bonds	Orlando	407.255.2447	Almighty Bail Bonds	Orlando	407.425.5111
Dos Mujeres Bail Bonds	Orlando	407.418.1111	Alpha & Omega Bail Bonds	Orlando	407.290.0080	Jim Cole Bail Bonds	Orlando	407.422.2245
Bail 2 Go Bail Bonds	Orlando	407.254.5554	1st Aide Bail Bonds	Melbourne	321.300.5101	Joe Von Waldner Bail Bonds	Orlando	407.425.7200

OUT OF COUNTY BAIL BOND COMPANIES

Magic Bail Bonds	Sanford	407.322.0000	A Triple X Bail Bonds	Daytona	386.675.6924
ASAP Bail Bonds	Sanford	407.279.3322	Engel Bail Bonds	Sanford	407.339.0688
Coach Franklin Bail Bonds	Sanford	407.321.2663	Juan's Bail Bonds	Sanford	407.491.2060
Susan Profit Bail Bonds	Sanford	407.322.7877	Quick Release Bail Bonds	Sanford	407.688.4343
Emily's Bail Bonds	Sanford	407.328.4464	USA Latino Bail Bonds	Kissimmee	407.932.2663
MacDonald Bail Bonds	Kissimmee	407.870.7331	Sanford Bail Bonds	Sanford	407.915.4525
A-1 Kim Palmer Bail Bonds	Sanford	407.688.8223	Freedom Bail Bonds	Sanford	407.792.5255
Affordable Bail Bonds	Sanford	407.915.4343	AA Above the Limit Bail Bonds	Palm Bay	407.948.6944
Seminole County Bail Bonds	Sanford	407.915.4510	Honey Bail Bonds	Tavares	407.731.0363
R&R Bail Bonds	Kissimmee	407.925.5749	Conni's Bail Bonds	Longwood	407.369.2789

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You, the undersigned Defendant ("Defendant" or "you"), hereby represent and warrant that the following declarations made and answers given are true, complete and correct and are made for the purpose of inducing Accredited Surety and Casualty Company, Inc. ("Surety") to issue, or cause to be issued, bail bond(s) or undertaking(s) for you (singularly or collectively the "Bond"), using power of attorney number(s) (if known) _____, in the total amount of _____ Dollars (\$_____) in the _____ Court of _____

1. DEFENDANT'S NAME AND ADDRESS

Name _____ Nickname/Alias _____
FIRST MIDDLE LAST
Home Phone _____ Cell Phone _____ Work Phone _____
Email _____
Current Home Address _____
How Long _____ ☐ Rent or ☐ Own Landlord _____
Former Home Address _____ How Long _____ ☐ Rent or ☐ Own Landlord _____
How Long Resided In Current City _____ How Long In Current State _____

2. PERSONAL DESCRIPTION

Date of Birth _____ Where Born _____ Sex ☐ Male ☐ Female Race _____
CITY & STATE
Social Security # _____ Driver's License # _____ Issuing State _____
Height _____ Weight _____ Eye Color _____ Hair Color _____ Scars, Marks, Tattoos _____ Complexion _____
How Long in U.S. _____ U.S. Citizen ☐ Yes ☐ No Nationality _____ Alien # _____
Any Medical Conditions/Disabilities _____
Union _____ Local # _____ Military Service Branch _____ Active ☐ Yes ☐ No Discharge Date _____

3. ARREST INFORMATION

Date of Arrest _____ Booking Name (if different) _____ Arresting Agency _____
Jail Location _____ Booking # _____
Charges _____

Previous Arrests:	CHARGES	DATE	WHERE

Pending Charges in Other Counties _____

Are You On Probation ☐ Yes ☐ No Parole/Probation Officer Name And Phone # _____

Are You Now Under Any Bond ☐ Yes ☐ No Have You Ever Failed To Appear In Court ☐ Yes ☐ No

Bonded Before By _____ When _____

4. EMPLOYMENT

All Occupations For The Past 5 Years _____
Current Employer Name _____ How Long _____ Position _____
Supervisor's Name _____ Work Phone _____
Most Recent Former Employer Name _____ How Long _____ Position _____
Supervisor's Name _____ Work Phone _____
Next Most Recent Former Employer Name _____ How Long _____ Position _____
Supervisor's Name _____ Work Phone _____

WARNING: THIS FORM CONTAINS "UV" FIBERS, MICROPRINT SIGNATURE LINES, BLUE BACKGROUND AND A SECURITY VOID BACKGROUND PATTERN



POWER OF ATTORNEY
ACCREDITED SURETY AND CASUALTY COMPANY, INC.

A Randall & Quilter Group Company
P.O. Box 140855 • Orlando, FL 32814 • 800-432-2799 • bail.service@accredited-inc.com

POWER NUMBER

BB - 5777025

POWER LIMIT

\$6,000.00

THIS POWER EXPIRES IF NOT USED BY: December 31, 2019

KNOW ALL MEN BY THESE PRESENTS that ACCREDITED SURETY AND CASUALTY COMPANY, INC., a corporation duly organized and existing under the laws of the State of Florida and by the authority of a resolution adopted by the Board of Directors does hereby make, constitute and appoint the named agent its true and lawful Attorney-in-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety, **a bail bond only**. Authority of such Attorney-in-Fact is limited to appearance bonds only and cannot be construed to guarantee defendant's future and lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.

This Power of Attorney is for use with a Bail Bond only. Not valid if used in connection with Federal or Immigration Bonds. A separate Power of Attorney must be attached to each bond executed. This power is void if altered or erased, if used with other powers of this company or in combination with powers from any other surety company, or if used to furnish bail in excess of the stated face amount of this power. This Power of Attorney must be filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in the Power of Attorney the name of the person on whose behalf this bond was given.

THE OBLIGATION OF THE COMPANY SHALL NOT EXCEED THE SUM OF: SIX THOUSAND (\$6,000) DOLLARS

Date Executed MONTH _____ DAY _____ YEAR 20 _____

Bond Amount _____ Gross Premium Charged _____

Defendant **VOID**

DOB _____ SS# (If Required) _____

Appearance Date & Time _____

State _____ City _____

County _____ Court _____

Case # _____

Offense _____

FOR STATE USE ONLY
NOT VALID FOR IMMIGRATION OR FEDERAL BONDS

COURT COPY - ORIGINAL

IN WITNESS WHEREOF, said ACCREDITED SURETY AND CASUALTY COMPANY, INC. by virtue of authority conferred by its Board of Directors, has caused these presents to be sealed with its corporate seal, signed by its President, on this 6th day of December, 2016

Todd M. Campbell
Todd M. Campbell, President



Agent Name (Printed) _____ NP

Agent Signature _____ NP

Agent License No. _____ NP

Agent Mail Address _____

City _____ State _____ Zip _____

SURETY BONDS

The defendant is released from jail, meets the surety, attends court, and is later discharged.

If the defendant fails to appear (FTA's), the court forfeits and estreats the bond (used interchangeably-'forfeit' is court order to act; 'estreat' is clerk's action to take the money/collateral).

Surety law governed by Florida Statute sections 903.26, .27, .28 and .31, generally.

FORFEITURE OF BOND

Florida Statute section 903.26

Forfeiture and Estreature defined:

Forfeiture: the court directing the clerk to take action.

Estreature: the action the clerk takes –take ownership of money.

72 hours notice to surety for defendant to appear. If defendant FTA's, forfeit and estreat the bonds to the clerk.

FORFEITURE OF BOND

Florida Statute section 903.26

Court shall discharge a forfeiture within 60 days if:

1. Impossible for defendant to appear due to circumstances beyond his control.
2. Defendant in jail, institution, hospital, immigration detention facility, was deported or is deceased (at time or within 60 days after FTA).
3. Defendant is arrested or surrendered within 60 days of FTA with a hold on defendant.
4. A finding by the court that the state is unwilling to extradite defendant within 30 days after surety's request.

FORFEITURE OF BOND

Florida Statute section 903.26

If any of these events occurred, the surety can file a motion to set aside the forfeiture and estreature and they start over.

If no action in 60 days, goes into judgment.

FORFEITURE OF BOND

Florida Statute section 903.27

If forfeiture is not paid or discharged within 60 days, the clerk shall enter a judgment against the surety.

Surety cannot write a bond after 35 days if judgment remains unpaid.

Surety may file a motion to stay the judgment within 35 days.

Condition of motion: pay the bond to clerk in escrow (unless set aside within 35 days).

FORFEITURE OF BOND

Florida Statute section 903.27

What are the bases for the court to set aside the judgment?

F.R.Civ.P. 1.540:

Mistake, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, Judgment is Void, Judgment has been satisfied or it is no longer equitable that the judgment should have prospective application.

FORFEITURE OF BOND

Florida Statute section 903.28

Remission: getting money back!

- Surety has up to 2 years to get some or all back
- Surrender or apprehension within 90 days , 100% remission
- Surrender or apprehension within 180 days, 95% remission
- Surrender or apprehension within 270 days, 90% remission
- Surrender or apprehension within 1 year, 85% remission
- Surrender or apprehension within 2 years, 50% remission

Application must have affidavits appended to it, setting forth the facts on which it is founded.

CANCELING OF BOND

Florida Statute section 903.31

- Original bond expires after 36 months
- Original bond does not apply:
 - After withhold, Adjudication of guilt, After acquittal, Deferred sentence, PSI, Appeals, PTI program, Mental health facility, Others
- Court cannot reinstate original bond once forfeited without approval of surety
- If no charges within 365 days of arrest, bond canceled.

TRENDS/CONCERNS IN BAILBONDS

Many states outlaw the use of commercial bail bonds. They are:

Illinois

Kentucky

Oregon

Wisconsin

Nebraska

Maine

Massachusetts

Washington D.C.

California (October 2019)

TRENDS/CONCERNS IN BAILBONDS

Alternatives: **Pretrial service programs** [pending bill]

- First program implemented in Washington D.C. In 1966.
- Uncertainty regarding programs, due to steep deficits and strong bail industry.
- Some studies show it is much cheaper to utilize pretrial services programs (\$7.00 per day vs \$115.00 per day for incarcerating defendants in jail--2005) and reduces jail overcrowding. Others suggest it is not cheaper and does not reduce overcrowding, and promotes substantially more failures to appear and increased lengths of time before re-arrest.

TRENDS/CONCERNS IN BAILBONDS

Proponents of use of bail bondsman:

- ✓ Saves jurisdictions money; private sector does job at no cost to taxpayer
- ✓ Decreases FTA rates
- ✓ Bail agents assist LEO's, defendants

Opponents of use of bail bondsman:

- ✓ Penalizes low income individuals
- ✓ Subverts justice system because a high risk individual can bond out

Risk assessment index/matrix

Needs to be done quickly and accurately and fairly

Requires resources and staffing

HOT TOPICS IN BONDING

- 1) Bond void after 3 years no matter what! See above, and Forman vs. Tay, 180 So.3d 1221 (4DCA 2015) (it expires and no one need do anything).
- 2) Leaving jurisdiction for substantial assistance or with court's approval **may void bond!** (Vacation, substantial assistance, to return home pending court, etc). U.S. vs. Galvez-Uriarte, 709 F.2d 1323 (9th Cir., 1983)(bond subject to discharge when court permits defendant to return to Mexico [his country of citizenship] pending court dates). See also: U.S. vs. Aguilar, 813 F. Supp. 727 (N.D. Cali., 1993)(after bond posted, government entered into a plea agreement permitting defendant to travel outside jurisdiction of court). Fix: Mandate surety file written document in court file authorizing it!
- 3) Bond is discharged when defendant referred to PTD! I say referred, not accepted.
- 4) Court takes pleas and postpones sentence—bond is discharged! Need to know if parties agree that surety will remain on bond (and get letter in court file), or defendant is ROR'd, or defendant is to be remanded to post new bond(s). F.S. sec. 903.31
- 5) Defendant does NOT have to be returned to your jail. Big misunderstanding. Surety may be responsible for costs, though. F.S. sec. 903.21.

HOT TOPICS IN BONDING

6) If state charges defendant with something other than what the surety bonded him/her out on, the surety may be absolved of liability, due to increase (or decrease) and seriousness of the charges. See American Bankers, supra. Consider additional charges, different but greater charges, or lesser charges. We see it often now in battery, DWLS, petty theft, etc. Bond on misdemeanor, state filed felony: Discharge. Issue: is it a material and or substantial change to the bond contract? But see: Fireline Bailbonds vs. Brock, 110 So.3d 311 (2DCA 2013)(adding a charge does not require discharge of all bonds because each bond is a separate contract).

7) What if defendant is in jail in another jurisdiction and the (other) facility inadvertently releases him/her even though they have an active capias? Act of state: Discharge and set aside estreatment.

8) Death is different and timing means everything! Defendant dies before FTA: Discharge and remit. Taylor, supra. Defendant dies after FTA: no discharge; no remission. Allstar, supra. But see : 903.26 (a) – (h). But see: FS sec. 903.26.

9) State refuses to extradite defendant who has FTA'd. Surety discharged. Surety Continental Heritage vs Orange County, 798 So.2d 837 (5DCA 2001)(surety entitled to remission where **state** refuses to extradite defendant from out of country). But see: Curlycan Bailbonds vs. State, 933 So.2d 122 (3DCA 2006)(surety is not entitled to remission if a foreign country does not extradite because it is not an act of the state).

HOT TOPICS IN BONDING

10) Bondsman will re-bond a defendant who has FTA'd on a new bond. Some might ask WHY? It's a business. New bond; new premium.

11) If defendant's attorney asks court to eliminate PTR as a condition of release (and court does it), it may increase the surety's risk (fewer eyes watching defendant; surety relied on bond plus PTR when he accepted risk and bonded defendant). Fix: have surety agree in writing before eliminating PTR as a condition.

12) Def in federal custody/ INS hold.... Al Estes Bail bond, 845 So.2d 254 (2DCA 2003).

13) If the court reinstates the bond without the surety's consent and the defendant FTA's thereafter, the surety is discharged. American Bankers vs. State, 45 So.3d 540 (5DCA 2010).

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