

**ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE**  
**1205.7, NOTICE TO APPEAR AFFIDAVIT**

EFFECTIVE:	6/02/16
RESCINDS:	1205.6
DISTRIBUTION:	ALL EMPLOYEES
REVIEW RESPONSIBILITY:	PATROL SERVICES BUREAU COMMANDER
ACCREDITATION CHAPTERS:	2
CHIEF OF POLICE:	JOHN W. MINA

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**POLICY:**

The Notice to Appear affidavit (available in the Quartermaster Unit—see Appendix A) is used to permit officers and supervisors better use of patrol time, reduce officer downtime, streamline the booking process, reduce the time necessary to complete booking procedures, and ease the burden of overcrowded jails and crowded court dockets in Orange County.

The following sections explain the purpose of issuing Notice to Appear (NTA) affidavits and outline the requirements for a violator to be eligible to receive a Notice to Appear affidavit in lieu of a custodial arrest. The Notice to Appear affidavit may be used for all State misdemeanors as well as City ordinances, except as listed in Sections 2. As explained in Section 3, all defendants must appear in court after being issued a Notice to Appear.

**1. WHEN TO ISSUE**

Members ARE ENCOURAGED TO issue a Notice to Appear affidavit to all arrestees 18 years of age and over who have violated a State misdemeanor or local ordinance except traffic violators. The arrestee must be identified and have an address. If the situation involves one of the items listed in Section 2, a Notice to Appear shall not be issued. Instead, a custodial arrest shall be made, and the prisoner shall be transported and booked.

**1.1 MISDEMEANOR AND CITY ORDINANCE VIOLATIONS BY TRANSIENT PERSONS**

At-large filings for transient or homeless defendants are strongly discouraged. For misdemeanor and ordinance violation cases, the court is not permitted to issue a bench warrant until there is proof that a summons (or NTA) has actually been served on the defendant. If a misdemeanor charge is submitted with an inadequate address, or the individual is transient or homeless, the Clerk's summons will not be able to be served on the individual and the court will not be authorized to issue a *capias* or bench warrant for the defendant. For cases involving transient or homeless individuals, a physical arrest (if authorized by law) should be made, or an arrest warrant should be obtained based upon the probable cause for the misdemeanor offense.

**2. WHEN NOT TO ISSUE**

In each of the following situations, a custodial arrest shall be made, with the prisoner transported and booked into the Booking and Release Center (BRC):

- a. Subject fails or refuses to provide identification or give necessary information.
- b. Subject refuses to sign the Notice to Appear affidavit.
- c. Officer has reason to believe the subject may injure themselves or others if allowed to remain at liberty (do not issue a Notice to Appear for domestic violence).

- d. The offense committed is of a violent nature.
- e. Subject exhibits disorderly or violent behavior.
- f. Officer believes that the subject will repeat the offense if allowed to remain at liberty.
- g. Subject has previously failed to appear or a capias has been issued.
- h. The arrest is for prostitution or a lewd act.
- i. The arrest is for a violation listed below;

#### 2.1 MISDEMEANOR VIOLATIONS REQUIRING CUSTODIAL ARREST

The following misdemeanor violations are excluded from the use of a Notice to Appear:

- a. Criminal traffic violations, including DUI.
- b. Cases involving injury to persons (because restitution may be an issue).
- c. Cases involving lewdness or prostitution (because blood testing for HIV is an issue).
- d. Weapons cases, such as carrying a concealed weapon and improper exhibition of a weapon.
- e. Battery.
- f. Worthless checks.
- g. Stalking.
- h. Disorderly intoxication.
- i. Unlawful assembly.
- j. Domestic violence.
- k. Child abuse.
- l. Child neglect.
- m. Obstruction/Resisting.
- n. Public employee crime.
- o. Obscenity/Pornography.
- p. Affrays.

### **3. MANDATORY COURT APPEARANCES IN ALL CASES**

Pursuant to Amended Administrative Order 2003-39-23, ordered on April 28, 2016, **all** notices to appear require a mandatory court appearance. Defendants are no longer allowed to waive their appearance and pay a fine for any criminal charge.

When filling out the Notice to Appear affidavit, officers must select and fill out the "Mandatory Court Appearance" box. The date and time of the court appearance must be written in this section. Officers must also orally instruct the defendant to appear on the date/time specified on the face of the Notice to Appear Instruction Sheet.

The date of the court appearance will be set per the calendar issued monthly on OPD Online under Calendars and Schedules, denoting the dates for court returnable misdemeanor criminal violations and misdemeanor traffic citations where the offender has not been transported to BRC for processing.

The location will be the Orange County Courthouse, 425 North Orange Avenue, Rm 250, Orlando, FL, 32801.

### **4. SUPPLEMENTARY REPORTS**

The following sections explain the use of incident reports, property supplement reports, witness/victim statements, and tasking sheets when issuing a Notice to Appear:

- a. Incident Reports - The Notice to Appear shall serve as the official incident report. There will be no need to complete an Incident Offense Report.
- b. Property Supplement Reports - All supplementary documentation must be completed and attached to the Notice to Appear any time property is stolen or recovered.

- c. Witness/Victim Statements - Witness/victim statements must be completed whenever statements of witnesses or victims are available.

## **5. NOTARIZING THE NOTICE TO APPEAR**

The issuing officer shall swear to the validity of the information contained in the Notice to Appear in the presence of another officer.

The officer acting as a notary shall notarize the Notice to Appear in accordance with Department procedures for notaries.

## **6. SUBMISSION OF PACKAGE**

When an employee's name is initially listed in a Notice to Appear, the employee number shall be listed immediately following every employee name. For example, the entry would appear as follows: Officer John Doe 9999. The employee number is only required for the first entry of the employee(s) name in the document.

After the Notice to Appear affidavit is completed and the Notice to Appear Instruction Sheet is signed by the defendant, the issuing officer will give the defendant a copy of both the Notice to Appear and the Notice to Appear Instruction Sheet. The defendant does not receive a copy of the narrative section (second page). The defendant's copy of the Notice to Appear does not have to be notarized or sworn to by the officer. The officer must ensure that the probable cause for the incident is listed in the narrative section of the Notice to Appear. This is all the prosecutor and judge have with which to make a charge decision or take a plea. If the probable cause is not clearly articulated or the NTA is illegible, the NTA will be dismissed.

The issuing officer shall turn over to his or her supervisor all remaining copies of the Notice to Appear (four copies of each page), all related supplementary reports, sworn victim and witness statement(s), witness names and addresses, defendant statement(s) (written and verbal), video and audio recording copies, photographic or other physical evidence information, lab submissions, etc. The supervisor shall check them for completeness and accuracy, and forward them to the Criminal Intake Unit for processing. The Notice to Appear shall be delivered to the Clerk of the Court within seven days of issuance. All supplemental paperwork shall be turned in. Video surveillance and copies of receipts obtained will be submitted to Property and Evidence. Statements and other miscellaneous paperwork shall be submitted to the supervisor.

### **6.1 CORRECTIONS OR CHANGES**

A Notice to Appear containing incorrect charges or insufficient facts or elements may be corrected without contacting the defendant to correct his or her copy of the Notice to Appear.

If it is necessary to rewrite the Notice to Appear due to the extent or nature of the changes, staple the original and corrected copy of the Notice to Appear together and submit both of them. The State Attorney or City Prosecutor will amend the charges and notify the defendant at arraignment.

## **7. SEARCHING ARRESTEES**

Officers issuing a Notice to Appear do not have the right to search a person, vehicle, or other items in the same manner as would be allowed incident to any custodial arrest. In order to search a person to whom a Notice to Appear is issued, the officer must have:

- a. Reasonable suspicion to believe the individual is armed, in which case the officer may conduct a "pat-down" search of the individual or the vehicle, if appropriate; or

- b. Probable cause to believe that the individual possesses evidence of a crime or contraband, in which case the officer may search the individual or such other areas, if a warrantless search is otherwise lawful. See the current issue of Training Bulletin 1312, Search and Seizure, Warrantless Searches and Searches of Property, for additional information regarding searches of persons to whom a Notice to Appear is issued.

Appendix A  
Page 1

ORANGE COUNTY									
<input type="checkbox"/> NOTICE TO APPEAR					<input type="checkbox"/> SUMMONS / CITATION				
AGENCY: <input type="checkbox"/> S.O. <input type="checkbox"/> P.D.				CASE #:					
ORI - FL048:				ZONE/BEAT/DISTRICT/AREA:					
DAY OF WEEK		MONTH		DAY		YEAR		TIME AM <input type="checkbox"/> PM <input type="checkbox"/>	
NAME (PRINT) FIRST		MIDDLE		LAST					
STREET									
CITY				STATE		ZIP			
PHONE NUMBER:			DATE OF BIRTH:		RACE	SEX	HGT	WGT	
PLACE OF BIRTH:			CITIZENSHIP:			NDIC/FCIC CHECK? Yes <input type="checkbox"/> No <input type="checkbox"/>			
DEFENDANT IDENTIFICATION (DL, DAVID, MILITARY ID, ETC.)									
VEH. YEAR:		MAKE		STYLE		COLOR:			
VEH. TAG NUMBER:			STATE:		YEAR TAG EXPIRES:				
INFLUENCE - ALCOHOL: Yes <input type="checkbox"/> No <input type="checkbox"/> UNK <input type="checkbox"/>				INFLUENCE - DRUGS: Yes <input type="checkbox"/> No <input type="checkbox"/> UNK <input type="checkbox"/>					
LOCATION OF OCCURRENCE:						GPS POSITION:			
The undersigned has probable cause to believe the above defendant did commit the following offense:						Index Fingerprint <div style="border: 1px solid black; padding: 5px; display: inline-block;">                         RIGHT  <input type="checkbox"/>                          LEFT  <input type="checkbox"/> </div>			
<input type="checkbox"/> Possession of Drug Paraphernalia, F.S. 893.147(1) <input type="checkbox"/> Possession of Cannabis < 20 grams, F.S. 893.13(6)(b) <input type="checkbox"/> Petit Theft (Retail), F.S. 812.014(3)(a) <input type="checkbox"/> Petit Theft (Taxi Cab), F.S. 812.014(3)(a) <input type="checkbox"/> Possession of Alcohol by Person under 21, F.S. 562.111 <input type="checkbox"/> Possession of Alcohol in Public Place (Street/Sidewalk/Alley) <input type="checkbox"/> City <input type="checkbox"/> County Ord. _____ <input type="checkbox"/> Soliciting W/O Permit <input type="checkbox"/> City <input type="checkbox"/> County Ord. _____ <input type="checkbox"/> _____ F.S.: _____ <input type="checkbox"/> City <input type="checkbox"/> County Ord. _____ <input type="checkbox"/> _____ F.S.: _____ <input type="checkbox"/> City <input type="checkbox"/> County Ord. _____									
CO-DEFENDANT:						<input type="checkbox"/> ARRESTED <input type="checkbox"/> AT LARGE			
CO-DEFENDANT:						<input type="checkbox"/> ARRESTED <input type="checkbox"/> AT LARGE			
WITNESS? Yes <input type="checkbox"/> No <input type="checkbox"/>			EVIDENCE? Yes <input type="checkbox"/> No <input type="checkbox"/>			TYPE:			
I AGREE TO APPEAR AT THE TIME AND PLACE DESIGNATED BELOW, AS INDICATED ON THE INCLUDED FORMS, TO ANSWER THE LISTED CHARGE(S) OR PAY THE SUBSCRIBED FINE. I UNDERSTAND THAT IF I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED BY THIS NOTICE TO APPEAR, OR PAY THE LISTED FINE ON OR BEFORE THE DATE SET ABOVE, I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST WILL BE ISSUED.									
<input type="checkbox"/> Court Appearance (You must appear at the location and time listed below UNLESS you elect to pay the fine as provided in the INSTRUCTIONS AND WAIVER page.) <input type="checkbox"/> Court Appearance (You MUST appear at the location and time listed below.)									
For Mandatory Appearances or to contest this charge you MUST appear at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. on the _____ day of _____, 20____, at the Clerk of Court location below.									
Clerk of Court Locations: <input type="checkbox"/> 1111 N. Rock Springs Road, Apopka, FL 32712; 407-836-2007 <input type="checkbox"/> 475 W. Story Road, Ocoee, FL 34761; 407-836-2007 <input type="checkbox"/> 450 N. Lakemont Avenue, Winter Park, FL 32792; 407-836-2007 <input type="checkbox"/> 425 N. Orange Avenue, Rm 250, Orlando, FL 32801; 407-836-2000									
DEFENDANT SIGNATURE: _____									
(Mandatory)									
ARRESTING OFFICER: _____						ID #: _____			
10-1858 (1/12) <b>CLERK OF COURT</b>									

Appendix A (Continued)  
Page 2

<b>COMPLAINT</b>	
<input type="checkbox"/> NOTICE TO APPEAR <input type="checkbox"/> SUMMONS / CITATION	
AGENCY: _____	CASE #: _____
Statement of facts concerning the violation committed by the defendant named on page 1 of the NTA/Summons/Citation: <i>(Use a supplemental report for additional narrative, if necessary.)</i>	
_____ _____	
NAME: <input type="checkbox"/> VICTIM <input type="checkbox"/> WITNESS <input type="checkbox"/> REPORTER <input type="checkbox"/> OTHER	DATE OF BIRTH: _____
ADDRESS: _____	PHONE - H W C OTHER: _____
NAME: <input type="checkbox"/> VICTIM <input type="checkbox"/> WITNESS <input type="checkbox"/> REPORTER <input type="checkbox"/> OTHER	DATE OF BIRTH: _____
ADDRESS: _____	PHONE - H W C OTHER: _____
<b>AFFIDAVIT</b>	
STATE OF FLORIDA COUNTY OF ORANGE  I swear/affirm the information contained in this form is true and correct.  _____ Officer Signature  ID #: _____	Sworn to and subscribed before me this undersigned authority this _____ day of _____, 20_____.  _____ Signature  _____ Print Name  Notary/LEO in performance of official duties  <input type="checkbox"/> Personally Known <input type="checkbox"/> Produced Identification Type: _____
<b>CLERK OF COURT</b>	

Appendix A (Continued)  
Page 3

CASE #:
AGENCY: <input type="checkbox"/> S.O. <input type="checkbox"/> P.D.

**INSTRUCTIONS AND WAIVER**

**Mandatory Court Appearance** - You MUST appear at \_\_\_\_\_  AM  
 PM

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at the Clerk of Court location checked below.

The following offenses require mandatory court appearances: injury or damage to property; animal cruelty; battery; petit theft; stalking; trespass; wearing masks and unlawful assembly; s. 843 obstruction/resisting; s. 870 affrays; s. 43.05 stealing passage to amusement parks; s. 43.26 failure to pay fare.

**Maximum Penalties**

Please be aware that the maximum fine and jail time for violations contained in this Notice to Appear will depend on the nature and type of offense. The most serious violations may be punishable by a fine of \$1000.00 and 1 year in jail. Should you choose to contest this Citation the court may impose any fine permitted by law for the violation you have committed, up to the maximums listed herein.

**Court Appearance Not Mandatory** - You MUST comply with EITHER A (pay the fine) or B (contest the citation):

A. **Pay the Fine:** *Contact the Clerk of the Court marked below, either in person or by phone to determine the amount of the fine. Do not send cash or personal checks.*

1. Complete the back of this form and mail it along with a money order or certified check, made payable to the "Clerk of the Court" to the location checked in Paragraph B under "Clerk of Court Locations."
2. You may appear in person with this completed form and either cash, a money order or certified check made payable to the "Clerk of the Court," at the location checked in Paragraph B under "Clerk of Court Locations."
3. You may appear in person with this completed form at the location checked in Paragraph B under "Clerk of Court Locations" and set up a payment plan through collection court.

The Clerk of Court Offices are open from 8:00AM to 5:00PM, Monday through Friday.

You must either pay the fine or contest the citation at least 7 days, but no more than 14 days, prior to the date listed in Section "B" below.

*If you are unable to pay the fine within the time provided, you must go to the Clerk of the Court to request a payment extension. Payment extensions are set by the Collection Court at a rate of thirty dollars (\$30.00) per month, due either on the 5th of the month or the 20th of the month, whichever occurs first after the date listed in section B (below).*

B. **Contest the Citation** - You MUST appear at \_\_\_\_\_  AM  
 PM

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at the Clerk of Court location below.

**Clerk of Court Locations:**

- 1111 N. Rock Springs Road, Apopka, FL 32712; 407-836-2007
- 475 W. Story Road, Ocoee, FL 34761; 407-836-2007
- 450 N. Lakemont Avenue, Winter Park, FL 32792; 407-836-2007
- 425 N. Orange Avenue, Rm 250, Orlando, FL 32801; 407-836-2000

Waiver Information on Reverse Side

**CLERK OF COURT**

Appendix A (Continued)  
Page 3 - Reverse Side

**WAIVER INFORMATION**

If this notice indicates that you have the option to pay a fine or appear in court and you choose to pay the fine, follow the instructions in Paragraph A "Pay the Fine" on the front of this page. This page **MUST** accompany your fine payment. This waiver must be completed in full or your waiver may not be accepted by the Clerk of the Court. Be sure to complete all of the information below:

- 1. I understand the nature of the charge(s) against me and hereby voluntarily enter my plea of guilty  or nolo contendere (no contest)
- 2. In doing so, I understand that I waive my right to counsel, the right to a trial before a judge or jury, the right to a continuance, and the right to appeal. Payment of this fine will result in withhold of adjudication.
- 3. By my signature, I acknowledge that I understand the above terms and conditions. I am not under duress, or the influence of alcohol or drugs. I also certify that my address listed below is correct.

Defendant's Signature (Required) \_\_\_\_\_

Date (Required) \_\_\_\_\_

Defendant's Printed Name (Required) \_\_\_\_\_

Defendant's Street Address (Required) \_\_\_\_\_

City/State/Zip (Required) \_\_\_\_\_

**MAKE MONEY ORDERS AND CERTIFIED CHECKS  
PAYABLE TO: CLERK OF THE COUNTY COURT.  
(NO PERSONAL CHECKS ACCEPTED. DO NOT MAIL CASH.)**

**Address:  
Clerk of the County Court  
425 North Orange Avenue, Room 250  
Orlando, FL 32801**

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**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Human Resources, Orange County Courthouse, 425 N. Orange Avenue, Suite 510, Orlando, Florida, (407) 836-2303, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.**

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*Instructions and Waiver on Reverse Side*