

Policy: 1205.8, Notice to Appear Affidavit

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Distribution Group: Sworn Employees

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I. PURPOSE

This policy establishes procedures for officers to appropriately distribute Notice to Appear affidavits.

II. POLICY

The Notice to Appear (“NTA”) 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.

Except as listed in Sections 2 and 3 below, the Notice to Appear affidavit should be used in lieu of a custodial arrest for all State misdemeanors as well as City ordinances. As explained in Section 5, all defendants must appear in court after being issued a Notice to Appear.

III. DEFINITIONS

None

IV. PROCEDURES

1. WHEN TO ISSUE

Pursuant to Amended Administrative Order Governing Notices to Appear for Criminal Offenses, Orange County 2022-02-01, ordered on September 1, 2022, NTA's should be issued for a violation of 1) a misdemeanor of the first or second degree, 2) a misdemeanor criminal traffic offense, or 3) a county or municipal ordinance UNLESS:

1. The charge relates to prostitution, domestic battery/ domestic violence, violation of a domestic injunction, or driving under the influence; or
2. An exception in Section 2 or 3 below applies.

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. The Officer has reason to believe the subject constitutes an unreasonable risk of injuring themselves or others if allowed to remain at liberty.
- d. The subject has no ties with the jurisdiction sufficient to assure the subject's appearance at court or there is a substantial risk that the subject will refuse to respond to the notice or citation.
- e. The Officer has reason to believe that the subject is wanted in any jurisdiction.
- f. Subject has previously failed to appear or violated conditions of any pretrial release program, or a capias has been issued.
- g. The arrest is for prostitution (or prostitution-related offense), DUI, domestic violence, or a violation of an injunction.
- h. The subject is currently on any criminal court release conditions.

3. DISCRETION TO MAKE CUSTODIAL ARREST

The arresting officer shall have the discretion to book the defendant into the BRC if the officer determines that any of the following exist:

- a. The subject is known to be a habitual offender.
- b. The alleged crime is of a violent nature or indicates a reckless disregard for others' safety.
- c. The nature of the subject is clearly violent or disorderly.
- d. The Officer believes that the subject will repeat the offense if allowed to remain at liberty.

- e. The subject has no verifiable address.
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 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.
- f. The subject does not reside in Orange County or a contiguous county.
- g. The Officer has reason to believe the subject meets Baker Act/Marchman Act/Mentally ill criteria.

4. POSSIBLE RELEASE ON OWN RECOGNIZANCE (ROR)

Pursuant to Amended Administrative Order Governing Notices to Appear for Criminal Offenses, Orange County 2022-02-01, ordered on September 1, 2022, if a person is arrested (when they otherwise qualified for NTA) because they failed to identify themselves or they had previously failed to respond to a notice or summons or had violated a PTR program, the Orange County Corrections staff shall evaluate them to determine eligibility outlined in Administrative Order 2022-02-01 for ROR.

Any person booked on a worthless check warrant may be released ROR once Orange County Corrections staff determines they are eligible.

5. MANDATORY COURT APPEARANCES IN ALL CASES

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.

6. 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 (NTA):

- a. Incident Reports - Officers Shall complete an Incident Offense Report when issuing a Notice to Appear. The NTA paperwork shall be attached to the documents section of the report.
- b. OPD Arrest Reports - Officers shall complete an OPD Arrest Report when issuing a Notice to Appear.

- c. Supplementary Documentation - All other supplementary documentation can be attached to the documents section of the Incident Offense Report.

7. 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.

8. 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's 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. 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 by OPD contract courier services 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.

8.1 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 changes and notify the defendant at arraignment.

9. LIMITED RIGHT TO SEARCH WHEN ISSUING A NOTICE TO APPEAR

Because there is no physical arrest, the right to “search incident arrest” is not present when issuing a NTA. Therefore, officers issuing an NTA 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.

The decision to issue an NTA should be made prior to conducting a search incident to arrest. Officers should not issue an NTA if a search of the arrestee has occurred incident to a physical custodial arrest. However, a NTA may still be issued in situations where the officer conducts a search **based upon probable cause** rather than a search incident to arrest:

- The odor of marijuana emanating from a person provides probable cause for an officer to search the person. If marijuana is located pursuant to the search, an officer may either issue a NTA or make a physical custodial arrest
- There is probable cause to search based upon the report of a retail theft and a search is conducted and stolen items are found; an officer may either issue a NTA or make a physical custodial arrest

As in all cases, if there is reasonable suspicion to believe the individual is armed, the officer may conduct a “pat-down” search of the individual.

V. FORMS AND APPENDICES

ATTACHMENT A-Notice to Appear Affidavit

VI. REFERENCES

This policy rescinds Policy and Procedure 1205.7

Related Policies: Not Applicable

Related Laws: Not Applicable