

IN THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA  
ADMINISTRATIVE ORDER NO. 4.04

**JESSICA LUNSFORD ACT AND ANTI-MURDER ACT CASES**

**Whereas**, sections 903.0351 and 948.06, Florida Statutes (2008), and Florida Rule of Criminal Procedure 3.790, require courts in Florida to identify high-risk sex offenders and violent felony offenders of special concern who are charged with violating the terms of their felony probation or community control; and

**Whereas**, Florida law requires that certain persons who have been arrested be detained without bail, pending determination by a court of competent jurisdiction as to whether that person poses a “danger to the public” or not, see, e.g. Jessica Lunsford Act, § 948.06(4), Florida Statutes (2008); Anti-Murder Act, §§ 903.0351, 948.06(8), Florida Statutes (2008); Fla. R. Crim. P. 3.790(2)-(3); and

**Whereas**, section 948.061(2), Florida Statutes (2008), requires the county jail of the county in which a high-risk sex offender is arrested to ensure that local, state, and national criminal histories will be provided to the Court at first appearances ; and

**Whereas**, section 948.064(2), Florida Statutes (2008), requires the county in which a violent felony offender of special concern is booked to ensure that local, state, and national criminal histories will be provided to the Court at first appearances ; and

**Whereas**, it is necessary to provide a simple explanation of the statutory criteria for identifying which cases are subject to the Jessica Lunsford Act and Anti-Murder Act, which cases require a “danger to the public” determination, and how judges should handle these cases in the Eighth Judicial Circuit, now; It is therefore

**ORDERED** that:

The procedure for disseminating criminal histories of defendants at first appearances,

and the procedure for handling high-risk sex offender cases and violent felony offender of special concern cases in each of the counties of the Eighth Judicial Circuit, shall be as follows:

**1. REVIEW OF CRIMINAL HISTORIES:**

Prior to or during every first appearance hearing, the court officers designated in paragraph 6, below, shall review the criminal histories of each defendant at every first appearance, using information available from the Florida Crime Information Center (FCIC), the National Crime Information Center (NCIC), the Judicial Inquiry System (JIS), and local law enforcement records, in order to determine whether any defendant is subject to the requirements of the Jessica Lunsford Act (“JLA”) or the Anti-Murder Act (“AMA”).

**2. IDENTIFICATION OF JLA CASES:**

The statutory criteria which define the circumstances under which the JLA applies to a defendant (a “JLA case”), or does not apply to a defendant, are:

a. Defendant must be under supervision.

To qualify as a JLA case, the defendant appearing before the Court must be under supervision (felony probation or community control). If the defendant is not under supervision, then the case before the Court is *not* a JLA case.

b. Defendant is under supervision for a sex crime.

The case before the Court is a JLA case if the defendant appearing before the Court is:

- (1) Under supervision for any criminal offense proscribed in chapter 794, Florida Statutes (Sexual Battery, including Attempts & Solicitations); or
- (2) Under supervision for any criminal offense proscribed in chapter 800, Florida Statutes, under the following subsections:
  - 800.04(4) (Lewd or Lascivious Battery) (victim is between 12 years of age and 16 years of age)
  - 800.04(5) (Lewd or Lascivious Molestation) (victim is less than 16 years of age)

- 800.04(6) (Lewd or Lascivious Conduct) (victim is less than 16 years of age)
- 827.071 (Sexual Performance by Child) (victim is less than 18 years of age)
- 847.0145 (Selling or Buying of Minors) (victim is less than 18 years of age)

c. Defendant is under supervision for any other crime.

The case before the Court is a JLA case, whether or not the defendant appearing before the Court is under supervision for a sex crime, if the defendant is under felony supervision for *any* crime *and* the defendant is:

- (1) A registered (or “designated”) sexual predator; or
- (2) A registered (or “designated”) sexual offender; or
- (3) Under supervision for a criminal offense for which, but for the effective dates of these statutes, he or she would meet the statutory criteria for:
  - Sexual Predator designation under section 775.21; or
  - Sexual Offender designation under section 943.0435; or
  - Sexual Offender Registration & Reporting under section 944.607

**3. HANDLING A JLA CASE:**

In every case in which the JLA applies to a defendant (a “JLA defendant”) appearing before the Court, the following procedures must be followed:

a. Identification of JLA defendants.

At first appearance hearings, the court officers designated in paragraph 6, below, shall notify the first appearance judge of the identity of every JLA defendant by making an announcement in open court, or by filing a written notice with the Court and providing a copy of the notice to the first appearance judge, prior to the first appearance hearing. The JLA defendant’s case file and the first appearance documents shall be stamped by the first appearance judge with a stamp which reads: “Jessica Lunsford Act Issues.”

b. “Danger to the public” determination; when a hearing is required.

Before a JLA defendant may be released from custody, with or without bail, at first

appearance or at a bond motion hearing, the Court must first conduct a hearing and make a determination, supported by *written findings*, that the defendant *is not a danger to the public*. At the hearing, the defendant shall have the right to be heard in person or through counsel, to present witnesses and evidence, and to cross-examine witnesses. In determining the danger posed by the defendant's release, the court may consider:

- (1) the nature and circumstances of the violation and any new law offenses charged;
- (2) the defendant's past and present conduct, including convictions of crimes;
- (3) any record of arrests without conviction for crimes involving violence or sexual crimes;
- (4) any other evidence of allegations of unlawful sexual conduct or the use of violence by the defendant;
- (5) the defendant's family ties, length of residence in the community, employment history, and mental condition;
- (6) the defendant's history and conduct during the probation and community control supervision from which the violation arises and any other previous supervisions, including disciplinary records of previous incarcerations;
- (7) the likelihood that the defendant will engage again in a criminal course of conduct;
- (8) the weight of the evidence against the defendant; and,
- (9) any other facts the court considers relevant.

c. No bond pending "danger to the public" hearing.

The first appearance judge shall order that every JLA defendant be held without bail pending a properly noticed "danger to the public" hearing as required by section 948.06(4), Florida Statutes (2008). This "danger to the public" hearing shall be scheduled if and when defense counsel files a motion to set bail or other appropriate motion. In its discretion, the Court may conduct a "danger to the public" hearing at first appearance (but only by stipulation of both the State and the defense), but it will be extremely rare for such to occur because "danger to the public" hearings require research and preparation by the State and the defense.

d. New law offense and JLA defendant, but not (yet) filed VOP or VOCC affidavit.

A JLA defendant may come to first appearance on a new law violation when the new law violation is so recent that an arrest for violation of probation (VOP) or violation of community control (VOCC) has not yet occurred. A JLA defendant in this situation is eligible for pre-trial release. In this circumstance, a “danger to the public hearing” is not required on the new law violation, because “danger to the public” hearings only apply to JLA defendants who are charged with and arrested for violations of probation or community control.

However, since the new law violation will likely result in a VOP or VOCC, the defendant may pose a flight risk or danger to the public while awaiting arrest. The first appearance judge should consider this circumstance when making his or her pre-trial release determination.

Therefore, when conducting a first appearance for a JLA defendant charged with a new law offense as described above, first appearance judges should consider all pre-trial release conditions and criteria, including consideration of whether electronic monitoring might be appropriate to ensure the defendant’s appearance in court and protect the public pending resolution of the JLA defendant’s case(s), including future VOP/VOCC cases. The first appearance judge should affix the “Jessica Lunsford Issues” stamp to the documents pertaining to the new law violation case.

**4. IDENTIFICATION OF AMA CASES:**

The statutory criteria which define the circumstances under which the AMA applies to a defendant (an “AMA case”), or does not apply to a defendant, are:

a. Defendant must be under supervision.

To qualify as an AMA case, the defendant appearing before the Court must be under supervision (felony probation or community control). If the defendant is not under supervision, then the case before the Court is *not* an AMA case.

b. Defendant’s violation of probation must not be for a monetary condition.

If the defendant's violation of probation is for failure to pay costs, failure to pay fines, or failure to make restitution payments, then the case before the Court is *not* an AMA case.

c. Defendant is a violent felony offender of special concern.

The case before the Court is an AMA case if:

- (1) The defendant is on felony probation or community control for a qualifying offense committed on or after March 12, 2007, and is before the Court for a new arrest or non-monetary violation of probation or community control.
- (2) The defendant is on felony probation or community control for any offense committed on or after March 12, 2007, AND has a prior conviction for a qualifying offense, AND is before the Court for a new arrest or non-monetary violation of probation or community control.
- (3) The defendant is on felony probation or community control for any offense committed on or after March 12, 2007, AND the defendant violates by committing a qualifying offense AND is before the Court for the qualifying offense arrest.
- (4) The defendant is on felony probation or community control AND has been previously designated a HABITUAL VIOLENT FELONY OFFENDER, as defined in section 775.084(1)(b), Florida Statutes, AND has committed a qualifying offense AND is before the Court for the qualifying offense arrest.
- (5) The defendant is on felony probation or community control AND has been previously designated a THREE TIME VIOLENT FELONY OFFENDER, as defined in section 775.084(1)(c), Florida Statutes, AND has committed a qualifying offense AND is before the Court for the qualifying offense arrest.
- (6) The defendant is on felony probation or community control AND has been previously designated a SEXUAL PREDATOR, as defined in section 775.21, Florida Statutes, AND has committed a qualifying offense AND is before the Court for the qualifying offense arrest.

d. A list of qualifying offenses is attached to this administrative order as ATTACHMENT "A".

## 5. HANDLING AN AMA CASE:

In every case in which the AMA applies to a defendant (an “AMA defendant”) appearing before the Court, the following procedures must be followed:

a. Identification of AMA defendants.

At first appearance hearings, the court officers designated in paragraph 6, below, shall notify the first appearance judge of the identity of every AMA defendant by making an announcement in open court, or by filing a written notice with the Court and providing a copy of the notice to the first appearance judge, prior to the first appearance hearing. The AMA defendant’s case file and the first appearance documents shall be stamped by the first appearance judge with a stamp which reads: “Anti-Murder Act Issues.”

b. Defendant must remain in custody pending the resolution of the probation or community control violation.

In the case of an alleged violation of probation or community control, other than a failure to pay costs, fines, or restitution, an AMA defendant must remain in custody. Bail, or any other form of pre-trial release, shall not be granted until the resolution of the probation-violation hearing or the community-control-violation hearing.

c. Probation-Violation Hearing or Community-Control-Violation Hearing.

If the Court determines, after conducting a probation-violation hearing or community-control-violation hearing, that an AMA defendant has committed a violation of probation or community control, other than a failure to pay costs, fines, or restitution, the Court shall:

- (1) Make written findings as to whether or not the AMA defendant poses a danger to the community. In determining the danger to the community posed by the AMA defendant’s release, the Court shall base its findings on one or more of the following criteria:
  - (a) The nature and circumstances of the violation and any new law offenses charged.

- (b) The offender's present conduct, including criminal convictions.
  - (c) The offender's amenability to non-incarcerative sanctions. This determination should be based on the AMA defendant's conduct during the current supervision, as well as his or her conduct during any previous supervision.
  - (d) The weight of the evidence against the offender.
  - (e) Any other facts the Court considers relevant.
- (2) Decide whether to revoke the probation or community control.
- (a) If the Court finds that the AMA defendant poses a danger to the community, the Court shall revoke the defendant's probation and shall sentence the defendant up to the statutory maximum, or longer if permitted by law.
  - (b) If the Court finds that the AMA defendant does not pose a danger to the community, the Court may revoke, modify, or continue the probation or community control OR may place the probationer into community control.
- d. The Court shall not dismiss the probation or community control violation warrant pending against an AMA defendant without holding a recorded violation-of-probation hearing at which both the State and the AMA defendant are represented.

**6. DISSEMINATION OF JLA AND AMA INFORMATION FOR FIRST APPEARANCES:**

The responsibility for dissemination of criminal histories and identification of JLA and AMA defendants at first appearance in the counties of the Eighth Judicial Circuit is as follows:

a. Alachua County:

The Department of Court services shall be responsible for reviewing the criminal history of each defendant and notifying the presiding judge of any JLA or AMA cases, as required in paragraph 1 above. This service shall be provided at every first appearance,

including on weekends and holidays. The Alachua County Department of the Jail shall send to the Florida Department of Law Enforcement (FDLE) the scanned fingerprints of each person booked into the Alachua County jail. If a person is identified as a high-risk sex offender or violent felony offender of special concern, the FCIC will generate a Florida administrative message which is sent to the Alachua County Sheriff's Office.

b. Baker County:

The Baker County Sheriff's Office shall provide the presiding judge with a copy of the criminal history of each defendant at every first appearance hearing, and shall notify the judge of any JLA or AMA cases, as required in paragraph 1, above. Every Monday through Friday, the Sheriff's Office and the Office of the State Attorney shall review the criminal histories and notify the judge of any JLA or AMA cases. On weekends and holidays, this responsibility shall be fulfilled by the Baker County Sheriff's Office. If a defendant is a high-risk sex offender or a violent felony offender of special concern, the file shall be "flagged" by highlighting the history of the defendant. The booking report shall be stamped "Jessica Lunsford Act" or "Anti-Murder Act" with a red-ink stamp.

c. Bradford County:

The Bradford County Sheriff's Office booking officer on duty during first appearances shall review the criminal history of each defendant at every first appearance hearing, and shall notify the presiding judge of any JLA or AMA cases, as required in paragraph 1, above. A criminal history report shall be attached to the arrest mittimus and a notation shall be made if the person is a high-risk sex offender or a violent felony offender of special concern. If the presiding judge attends the first appearance by telephone, the deputy on duty shall provide all the relevant information of the judge by appropriate electronic means satisfactory to the judge.

d. Gilchrist County:

The Gilchrist County Sheriff's Office shall provide the presiding judge with the criminal history of each defendant at every first appearance hearing, and shall notify the presiding judge of any JLA or AMA cases, as required by paragraph 1, above. This

information shall be included with the arrest mittimus and shall be provided to the presiding judge. If the defendant is a high-risk sex offender or a violent felony offender of special concern, that information is included in the probable cause statement and shall be provided to the judge.

e. Levy County:

The Levy County Sheriff's Office shall provide the presiding judge with the criminal history of each defendant at every first appearance hearing, and shall notify the judge of any JLA or AMA cases, as required in paragraph 1, above. Every Monday through Friday, the Sheriff's Office and the Office of the State Attorney shall review the criminal histories and notify the judge of any JLA or AMA cases. On weekends and holidays, this responsibility shall be fulfilled by the Levy County Sheriff's Office. The fingerprints of each person booked shall be sent to FDLE. If there is a potential JLA or AMA case on the docket, the criminal history of that defendant shall be highlighted and delivered to the judge.

f. Union County:

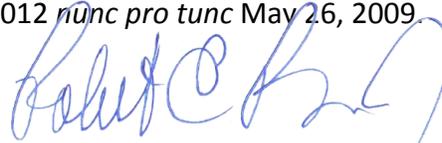
The Union County Sheriff's Office shall ensure that the jail provides the presiding first appearance judge with a copy of the criminal history of each defendant at every first appearance hearing, and shall notify the judge of any JLA or AMA cases, as required by paragraph 1, above.

**7. PRIOR ORDER:**

This order supersedes Administrative Order 4.1300, dated 10 April 2007.

This order renumbers and reformats prior Administrative Order No. 4.1300(A) entitled "Jessica Lunsford Act and Anti-Murder Act Cases."

**ORDERED ON** this 5<sup>th</sup> day of October, 2012 *nunc pro tunc* May 26, 2009.



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Robert E. Roundtree, Jr., Chief Judge

## **ATTACHMENT "A"**

\*Pursuant to section 948.06(8)(c), Florida Statutes, the following crimes are "qualifying offenses" under the Anti-Murder Act:

- (a) Kidnapping or attempted kidnapping under section 787.01, false imprisonment of a child under the age of 13 under section 787.02(3), or luring or enticing a child under section 787.025(2)(b) or (c);
- (b) Murder or attempted murder under section 782.04, attempted felony murder under section 782.051, or manslaughter under section 782.07;
- (c) Aggravated battery or attempted aggravated battery under section 784.045;
- (d) Sexual battery or attempted sexual battery under sections 794.011(2), (3), (4), or (8)(b) or (c);
- (e) Lewd or lascivious battery or attempted lewd or lascivious battery under section 800.04(4), lewd or lascivious molestation under section 800.04(5)(b) or (c)2., lewd or lascivious conduct under section 800.04(6)(b), or lewd or lascivious exhibition under section 800.04(7)(c), or lewd or lascivious exhibition on computer under section 847.0135(5)(b);
- (f) Robbery or attempted robbery under section 812.13, carjacking or attempted carjacking under section 812.13, or home invasion robbery or attempted home invasion robbery under section 812.135;
- (g) Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under section 825.1025;
- (h) Sexual Performance by a child or attempted sexual performance by a child under section 827.071;

- (i) Computer pornography under section 847.0135(2) or (3), transmission of child pornography under section 847.0137, or selling or buying of minors under section 847.0145;
- (j) Poisoning food or water under section 859.01;
- (k) Abuse of a dead human body under section 872.06;
- (l) Any first-degree felony or a second-degree felony burglary offense or attempted burglary offense under section 810.02(2) or (3);
- (m) Arson or attempted arson under section 806.01(1);
- (n) Aggravated assault under section 784.021;
- (o) Aggravated stalking under section 784.048(3), (4), (5), or (7);
- (p) Aircraft piracy under section 860.16;
- (q) Unlawful throwing, placing, or discharging of a destructive device or bomb under section 790.161(2), (3), or (4);
- (r) Treason under section 876.32;
- (s) Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state.