

IN THE CIRCUIT OR COUNTY COURT OF THE 4TH JUDICIAL CIRCUIT IN
AND FOR CLAY, DUVAL AND NASSAU COUNTIES, FLORIDA

GLOSSARY OF LEGAL TERMS

A FORM: Sworn statement by arresting officers of circumstances surrounding arrest. Used by Magistrate at first appearance hearing to determine probable cause for arrest. The bond set at the first appearance hearing may be based on charges listed on the A-Form.

ACQUITTAL: A finding of not guilty entered by a judge or jury that results in the release or discharge of the defendant.

ADJUDICATION: A process by which a court enters a conviction of a defendant for either a felony or misdemeanor.

AFFIANT: A person making an affidavit.

AFFIDAVIT: A written statement sworn to before a notary or officer of the court.

ALIAS CAPIAS: An arrest warrant generally issued by a judge in felony court due to the defendant's failure to appear in court at a scheduled proceeding. An alias capias may not be issued unless the defendant received notice, oral or written, of the scheduled proceeding.

ALLEN CHARGE: An instruction read to a deadlocked jury designed to "encourage" the jury to continue to deliberate in hopes of reaching a verdict.

APPEAL: A procedure by which a decision of a lower court is reviewed by a higher court. Appeals of misdemeanor cases are taken to the Circuit Court sitting in its appellate jurisdiction. Circuit Court cases are appealed to the District Court of Appeal, except for cases in which the death penalty is imposed. Death penalty cases are appealed directly to the Supreme Court of Florida.

ARREST: The apprehension and restraint of a person charged with a crime.

ARRAIGNMENT: A formal proceeding during which the defendant is informed of the charges against him and the defendant enters a plea to the charges if filed. At this proceeding, the defendant may also demand discovery and seek additional time in which to file formal motions directed at the sufficiency of the charging document.

ARTHUR HEARING: A hearing held to consider the question of bond for defendants charged with offenses that do not permit bond as a matter of right. Those offenses are punishable by death or life imprisonment. To maintain the defendant in a "no bond" status, the State must establish that the "proof [of the defendant's guilt] is evident and the presumption is great." That standard is higher than beyond a reasonable doubt. Should the court find that the State has met its burden, the court may nevertheless exercise its discretion in favor of setting a bond for the defendant.

BAIL/BOND: Amount of money set by the court for the release of a person accused of a crime. Intended to be sufficient to secure the defendant's presence at trial. Surety bond requires the defendant to pay 10% of the face amount of the bond to the bondsman as a premium. This amount is not refundable. The bondsman generally requires collateral for the remainder of the bond amount. A cash bond may be deposited with the clerk of the court to secure the defendant's release. This amount is completely refundable upon the disposition of the defendant's case. There is a preference in the rules of criminal procedure for release of the defendant on non-monetary conditions.

BENCH WARRANT: Same as alias capias. In Miami-Dade, used almost exclusively in county court.

BLIND FILING SYSTEM: System employed by the clerk's office to assign cases on a random, rotational basis among the sitting judges. Designed to prevent either party from forum shopping.

BOUND DOWN: An announcement generally made by the prosecutor at arraignment in felony court, indicating that the State has filed a misdemeanor charge against the defendant in county court.

BOUND OVER: An expression used generally to indicate that a juvenile's case has been transferred to circuit court for handling as an adult.

BURGLARY: Entering or remaining in a structure or conveyance with the intent to commit an offense therein.

"C 4" MOTION: A sworn motion to dismiss pursuant to Fla. R. Crim. P. 3.190 (c)(4). The motion, sworn to by the defendant, alleges that there are no material, disputed facts and that the material, undisputed facts fail to establish a prima facie case of guilt of the crime charged.

CTS: Credit for time served. The defendant will receive sentencing credit for the time spent in jail, prior to trial, on the pending case.

CALENDAR: Daily roster of the cases to be heard in court. The calendar generally has an arraignment section, a miscellaneous section devoted to motion hearings and probation violation hearings and a section of the cases set for trial.

CAPITAL OFFENSE: A crime for which the possible punishment is death. (Note: a defendant is not entitled to bond as a matter of right when charged with a capital offense. An Arthur hearing may be requested for consideration of bond in such cases).

CHALLENGE FOR CAUSE: Challenge made against juror during jury selection, when the juror's statements during voir dire indicate that there is a reasonable doubt as to whether the juror can be fair or can follow the law. Each side has an unlimited number of challenges for cause.

CHARGE CONFERENCE: A hearing outside the presence of the jury at which the State, Defense and the Court determine which instructions on the law are to be read to the jury to enable the jury to return a verdict.

CIRCUMSTANTIAL EVIDENCE: Evidence of an indirect nature. To be sufficient to convict, circumstantial evidence must exclude every reasonable hypothesis of innocence suggested by the evidence.

COMMITMENT ORDER: An order remanding someone into the custody of a correctional or forensic mental facility.

COMMON LAW CERTIORARI: Generally, State sought appellate review of a trial court order that the State contends departs from the essential requirements of the law. State must show that no adequate remedy available by appeal.

COMMUNITY CONTROL: House arrest. Sentence in lieu of state prison that requires a defendant to stay at home, except for hours to be spent at work or in school, for a minimum period of one year.

CONCURRENT SENTENCES: Two or more sentences imposed upon a defendant that are to be served at the same time.

CONSECUTIVE SENTENCES: Two or more sentences imposed upon a defendant; the defendant cannot begin serving the second or any subsequent sentence until he has concluded serving the first.

CONSPIRACY: An agreement between two or more persons to commit an illegal act together. In Florida, a conspiracy to commit a crime is ranked one degree lower than the completed crime.

CONTEMPT OF COURT: Any act calculated to embarrass, hinder or obstruct a court in the administration of justice or calculated to lessen the court's authority. A willful disobedience of a court order. Punishable by up to 6 months in jail.

CORPUS DELICTI: Generally, the occurrence of a specific type of injury or loss accomplished through the criminal agency of someone. Applicable to every crime. No confession of a defendant can be introduced without evidence, independent of the confessions, of the corpus delicti.

COTERMINOUS SENTENCES: Sentences imposed in two separate cases that are ordered to conclude at the same time.

DEPOSITION: A method of pre-trial discovery which consists of a sworn statement taken in question and answer form, as in court, with opportunity given to the opposing party to be present and to cross examine. Generally, the deposition is recorded steno graphically. Pursuant to the Rules of Criminal Procedure, the Rules of Civil Procedure govern the scope and manner of taking of the deposition.

DISCOVERY: Pre-trial process that generally enables a party to learn essential information about the other party's case.

DISMISSED WITH PREJUDICE: an order entered by the court, which concludes a pending case and prevents the State from refiling charges.

DISMISSED WITHOUT PREJUDICE: An order entered by a court, which concludes a pending case but provides leave for the State to re-file charges.

DRUG COURT: A separate "court" set up to divert cases of defendants who have demonstrated drug problems and are amenable to treatment. The drug court places defendants in custodial or outpatient drug treatment settings. Defendants who successfully complete treatment are frequently rewarded by a dismissal of their cases.

ESTREAT BOND: Withdrawal of a bond by order of the court.

EXPUNGEMENT: Requested by a defendant who has been acquitted, had a withholding of adjudication, or who has successfully completed probation and has no prior convictions, to erase and seal his arrest from public record. Records of the arrest held by law enforcement agencies may not be erased.

EXTRADITION: The process of returning a fugitive from one state to another that wants the defendant to answer to criminal charges.

FELONIES: Offenses punishable by more than one year in prison.

HABEAS CORPUS: A writ requiring that a person be brought to court to determine the legality of the person's confinement.

HABITUAL OFFENDER: A designation that the State may request upon motion, if your client has the requisite prior record, that permits the trial court to double the maximum sentence that may ordinarily be imposed for each crime charged. A defendant sentenced as a habitual offender

generally serves a greater percentage of his sentence than a defendant receiving a straight sentence.

INCOMPETENT: A finding made by a court, after mental examination of the defendant, that indicates that due to the defendant's mental condition, he is unable to understand the proceedings against him and/or unable to adequately assist his counsel in the preparation of his defense.

INFORMATION: Charging document sworn to by State Attorney that is issued after receipt of sworn testimony by the Prosecutor.

JUDGMENT OF ACQUITTAL: A judicial ruling that may be made at the close of the State's case or at the close of all the evidence that the evidence is legally insufficient to sustain a conviction on the charges brought.

MANDAMUS: A writ issuing from a superior court directing that a judge perform a non-discretionary act.

MANDATE: A directive from a court of superior jurisdiction commanding a lower court to enforce a judgment, sentence or ruling.

MIRANDA WARNINGS: Warnings given to a suspect by a police officer regarding the suspect's right to remain silent and right to counsel. Must be given to the suspect before the suspect is subjected to custodial interrogation.

MISDEMEANOR: Offense punishable by less than by one year.

MITIGATION: Reduction of penalty previously imposed by court. Motion must be filed and heard within 60 days of imposition of sentence or within 60 days of return of appellate mandate.

NO ACTION: Generally, an announcement by the State at the arraignment that the State is not filing a charging document. (in some instances, "dropping the case") The State may subsequently file a charging document as long as it is within the speedy trial rule limitations.

NOLLE PROSSE: Announcement by the State, after the filing of formal charges, that the State will not further prosecute one or all pending counts.

NOLO CONTENDERE: Plea entered by the defendant, meaning the defendant neither admits nor denies the charges, but does not contest the facts of the case.

PARDON POWER: Power of the jury to acquit the defendant or to find him guilty of a lesser offense, even though the evidence is legally sufficient to sustain the defendant's guilt on the crime charged.

PEREMPTORY CHALLENGE: Challenge made during jury selection by either side to prevent a juror from sitting on the panel to hear the defendant's case. A defendant is entitled to 6 peremptory challenges in a felony case, unless the crime charged bears a possible penalty of life or death, in which case the defendant is entitled to 10 challenges.

POLLING THE JURY: A practice whereby the jurors are asked individually whether they assented and still assent to the verdict.

PRE-SENTENCE INVESTIGATION (PSI): Investigation conducted by the Department of Corrections (Probation), at the behest of the court, in which the investigating officer conducts a background check of the defendant and interviews the victim and counsel, in furtherance of making a sentencing recommendation to the court. Required as a pre-requisite to habitual offender sentencing.

PRE-TRIAL INTERVENTION (PTI): Diversion program run by the State Attorney's Office in which first time offenders charged with third degree felonies may receive counseling. Upon successful completion of the program, the defendant can have his case nolle prossed by the State. If the defendant fails to successfully complete the program, the defendant's case is placed back on the court calendar.

PRE-TRIAL RELEASE: Program run by the local sheriff's office or Department of Corrections and Rehabilitation which accepts responsibility to supervise release and appearance of defendants in court pending trial, without the necessity of bond.

PRIMA FACIE CASE: That quantum of proof of each element of the offense charged legally sufficient to survive a motion for judgment of acquittal made at the close of the State's case.

PROBABLE CAUSE: A requisite element of a valid search and seizure or arrest which consists of the existence of facts and circumstances within one's knowledge and of which one has reasonable trustworthy information, sufficient to warrant one of reasonable caution to believe that a crime has been committed (in the context of an arrest) or that property subject to seizure is at a designated location (in the context of a search).

PROBATION: After a finding of guilt, period during which the defendant is released but subject to court imposed conditions of supervision.

PROBATION VIOLATION HEARING (PVH): Hearing conducted by the court at which the State may demonstrate by the greater weight of the evidence that the defendant has violated the conditions of probation. The defendant is entitled to discovery in preparation for the PVH.

PROHIBITION: Writ sought from an appellate court in which the petitioner seeks to preclude the trial court from acting in excess of its jurisdiction.

RELEASE ON RECOGNIZANCE (ROR): A condition under which an individual is released in lieu of bail, upon one's promise to appear.

RESTITUTION: Generally, imposed as a condition of probation requiring the defendant to reimburse the victim for financial losses resulting from the charged crime.

RICHARDSON HEARING: A hearing held by a court once it is revealed that a party has violated the rules of discovery. The court must inquire as to whether the violation was substantial or trivial, and whether the aggrieved party has been procedurally prejudiced as a result of the violation.

RULE TO SHOW CAUSE: Generally, a court order obtained by one party directing the other party to demonstrate good cause why the relief requested by the first party should not be granted. Frequently obtained by defendants who seek to have witnesses explain why they have failed to appear pursuant to subpoena at scheduled depositions. Witnesses who fail to give good cause may be held in contempt.

SELF DEFENSE: The use of reasonable force to protect an individual, property or others, when one reasonably believes imminent harm will be suffered.

SENTENCING GUIDELINES/PUNISHMENT CODE: Numerical system of sentencing designed to make sentences for similar defendants uniform throughout the state.

SEQUESTRATION OF THE JURY: Jurors who are kept together and guarded from improper contact with others until they have concluded their deliberations. A jury that will continue their deliberations overnight may be sequestered at the request of the defendant.

SEQUESTRATION OF WITNESSES: “Invoking the rule”. A court order requiring all witnesses who may testify to be excluded from the courtroom until they are called. The witnesses are further admonished by the court not to discuss their testimony with other witnesses or persons.

SEVERANCE: Separation of two offenses or two defendants for separate trials, where trying the charges or defendants together would be unfair.

SOUNDING: Calendar held by the court in advance of a trial week to determine the readiness of individual cases for trial. It is also the arraignment in juvenile court.

SPEEDY TRIAL: Generally provides that a defendant in a felony case must be brought to trial within 175 days. Allows the State a 15-day recapture period to bring to trial those defendants who have not received a trial within the time period allotted by the rule.

STATEMENT OF PARTICULARS: Request made by the defendant to have the State supply the defense with more specific information regarding the facts of the offense charged.

SUBPOENA: A court order requiring a witness to appear and give testimony.

SUPERSEDEAS BOND: Bail set after conviction allowing the defendant to continue on release pending appeal. Discretionary with the court.

SWORN MOTION TO DISMISS: See “C 4” Motion.

VOIR DIRE: To speak the truth. The process of questioning the prospective jury by the court and the parties to determine the suitability of each prospective juror for service.

WILLIAMS RULE EVIDENCE: Evidence of prior criminal conduct or bad acts admitted when relevant to show motive, opportunity, intent or design.

WITHHOLD ADJUDICATION: A finding of guilt but a judgment of conviction is not entered. A defendant who has received a “withhold” in a felony case is not a convicted felon.

WORK FURLOUGH: When an inmate of a jail or prison is permitted to leave the place of incarceration to work during the day.