

# Supreme Court of Florida

## ORIGINAL

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No. 81,545

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AMENDMENTS TO FLORIDA RULES OF CRIMINAL  
PROCEDURE 3.133, 3.692, 3.986, 3.987 AND 3.989.

[December 23, 1993]

PER CURIAM.

The Florida Bar Criminal Procedure Rules Committee petitions this Court to amend Florida Rules of Criminal Procedure 3.133, 3.692, 3.986, 3.987, and 3.989.<sup>1</sup> We have jurisdiction. Art. V, § 2(a), Fla. Const.

The only comments received in connection with this petition were addressed to the proposed amendments to rule 3.692, Petition to Seal and Expunge, and rule 3.989, Seal and Expunge Forms. The Committee's proposed amendments to these rules incorporate the

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<sup>1</sup> The proposed amendments were approved by the Board of Governors.

new provisions of sections 943.0585, .059, Florida Statutes (Supp. 1992). In accordance with the statutory provisions, the proposed amendments require that a petition to expunge or seal be accompanied by a certificate of eligibility issued by the Florida Department of Law Enforcement (FDLE). By issuing the certificate, FDLE certifies that the applicant meets the various statutory requirements.

Anthony C. Musto and Steven M. Goldstein, members of the Criminal Rules Committee, filed comments directed to the Committee's recommendations as to rules 3.692 and 3.989. Musto and Goldstein point out that the new statutes are the result of a series of efforts by FDLE that began in 1991 with a letter to then Chief Justice Shaw expressing concern that FDLE was not receiving sufficient information to be able to notify the appropriate state attorneys of the existence of circumstances that would prohibit expunging or sealing of records. The matter was referred to the Rules Committee, which unanimously rejected FDLE's proposal.

According to Musto and Goldstein, the Committee felt the notice problem was due to lack of communication between FDLE, the prosecutors, and law enforcement agencies that must be served with copies of the petition and supporting affidavits, under the current rule. The Committee believed that even if rule changes were needed in order to address FDLE's concerns, there was no need to require certification by that agency. The problem could be addressed simply by amending the rule to include a requirement

that notice be given to FDLE or by building into the rule a delay between the time a petition is filed and the time the court rules.

FDLE took its proposal to the Legislature, which adopted the new statutes. FDLE then returned to the Committee, again seeking the rules amendment. A majority of the Committee agreed to submit the proposed amendments.

After thoroughly reviewing the proposed amendments, the newly enacted statutes, and the comments filed in connection with the amendments, we decline to approve the Committee's recommended changes to rules 3.692 and 3.989. We agree with the Committee's original conclusion that FDLE's concerns can be addressed by less extreme measures than the procedures adopted by the Legislature. These concerns can be effectively dealt with by requiring that a copy of the petition to expunge or seal be served on the prosecuting attorney (either the state attorney, the special prosecutor, or the statewide prosecutor); the arresting police agency; and FDLE and by delaying the hearing on the petition thirty days from service of the copies. Such procedural requirements will give FDLE notice of the filing of a petition as well as sufficient time to notify the appropriate prosecuting authority of the existence of circumstances that would preclude the sealing or expunction of the petitioner's records.

We have attached amendments reflecting these changes to rules 3.692 and 3.989. To the extent the procedural aspects of sections 943.0585, .059, Florida Statutes (Supp. 1992), are

inconsistent with rules 3.692 and 3.989, the rules shall supersede the statutes. See Johnson v. State, 336 So. 2d 93 (Fla. 1976).

The attached amendments to rules 3.133, 3.986, and 3.987, which are in accordance with the Committee's recommendations, change the rules in the following respects. The amendments to rule 3.133, Pretrial Probable Cause Determination and Adversary Preliminary Hearings, conforms the rule to the time limits set forth in County of Riverside v. McLaughlin, 111 S. Ct. 1661, L. Ed. 2d 49 (1991). The rule as amended requires that in all cases in which the defendant is in custody, a nonadversary probable cause determination be held within 48 hours from the defendant's arrest. It also provides that after a showing of extraordinary circumstances the proceedings may be continued for not more than 24 hours beyond the 48-hour period and that if extraordinary circumstances still exist, the proceedings may be continued for an additional 24 hours.

The amendments to rule 3.986 revise the form for restitution order by addition of a checkoff box for the phrase: "For which amount let execution issue." If this box is checked, a victim entitled to restitution may record the order and initiate proceedings to collect the amount due. The amendments to rule 3.987, Form for Motion for Postconviction Relief, revise the list of grounds that may be raised by rule 3.850 motion.

Accordingly, rules 3.133, 3.692, 3.986, 3.987, and 3.989 are amended as reflected in the appendix to this opinion. The new

language is indicated by underscoring; deletions are indicated by strike-through type. Rules 3.133, 3.986, and 3.987 shall become effective January 1, 1994, at 12:01 a.m. However, the amendments to rules 3.692 and 3.989 shall not become effective until after the Criminal Rules Committee reviews the amendments and files comments for this Court's further consideration. The Committee shall file its comments within ninety days from the date of this opinion. Interested parties also may file comments on the amendments to rules 3.692 and 3.989 within the ninety-day period.

It is so ordered.

BARKETT, C.J., and McDONALD, SHAW, KOGAN and HARDING, JJ., concur.  
GRIMES, J., concurs in part and dissents in part with an opinion.  
OVERTON, J., concurs in part and dissents in part, and would adopt the proposals of the committee without modification.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

GRIMES, J., concurring in part, dissenting in part.

In 1974, the legislature first enacted a statute providing for the expunction of criminal records under certain circumstances. Ch. 74-206, Laws of Fla. In Johnson v. State, 336 So. 2d 93 (Fla. 1976), this Court held that the statute provided a valid substantive right to qualified persons to have their criminal records closed from public view. At the same time, we concluded that "to permit a law to stand wherein the legislature requires the destruction of judicial records would permit an unconstitutional encroachment by the legislative branch on the procedural responsibilities granted exclusively to this Court." Id. at 95. We sustained the statute in part but held it unconstitutional to the extent it encroached upon the judiciary's control of its own records. In order to effectuate the legislative intent, we adopted Florida Rule of Criminal Procedure 3.692 which permitted the criminal records of those who qualified to be removed from the official records of the court but provided for the retention of these records in a nonpublic index subject to further order of the court.

Because of its view that certain records have been improvidently closed, the legislature recently enacted new statutes on the expunction and sealing of criminal records which redefine the eligibility for this relief and require as a condition precedent a certificate of eligibility issued by the Florida Department of Law Enforcement (FDLE). §§ 943.0585, 943.059, Fla. Stat. (1992). The Florida Criminal Procedure Rules

Committee has now submitted to us an amendment to rule 3.692 which is consistent with the new statutes. The committee's proposal preserves that portion of the rule mandated by Johnson v. State which permits the court to retain sealed or expunged records in its nonpublic index.

If the legislature has the substantive right to decide the circumstances under which a person can seek to seal or expunge his or her records, I see no reason why the legislature cannot create the condition precedent of obtaining the approval of the Florida Department of Law Enforcement. By eliminating this requirement for eligibility, we are effectively declaring unconstitutional a portion of the statute, thereby improperly encroaching upon the legislative branch in much the same manner as it sought to do when it originally directed the courts to destroy the records which qualified for expungement. Furthermore, in eliminating the need for this certificate, it appears that we are also eliminating some of the other substantive prerequisites for sealing or expunction because sections 943.0585(2) and 943.059(2) require the applicant to prove certain matters to FDLE not otherwise set forth in the statutes.

Ordinarily, court records are open for public inspection. However, as noted in Johnson, courts have always exercised their discretion to seal certain records from public view when the ends of justice would be served. Rule 3.692 continues to preserve this authority. The amendment to the rule proposed by the

committee simply recognizes that the legislature has established new prerequisites for persons who wish to petition for the sealing or expunction of their records. We have no business interfering with this substantive right.

I suspect it will come as some surprise that upon the complaint of just two lawyers to the proposed rule change, a portion of the statute has been declared invalid without any notice to or input from the State or FDLE. I would approve all of the amendments submitted by the committee, as written.



APPENDIX

RULE 3.133. PRETRIAL PROBABLE CAUSE DETERMINATIONS AND  
ADVERSARY PRELIMINARY HEARINGS

(a) Nonadversary Probable Cause Determination.

(1) **Defendant in Custody.** In all cases in which the defendant is in custody, a nonadversary probable cause determination shall be held before a magistrate within ~~72~~48 hours from the time of the defendant's arrest; provided, however, that this proceeding shall not be required when a probable cause determination has been previously made by a magistrate and an arrest warrant issued for the specific offense for which the defendant is charged. The magistrate ~~for good cause~~ after a showing of extraordinary circumstance may continue the proceeding for not more than 24 hours beyond the ~~72~~48-hour period. The magistrate, after a showing that an extraordinary circumstance still exists, may continue the proceeding for not more than 24 additional hours following the expiration of the initial 24-hour continuance. This determination shall be made if the necessary proof is available at the time of the first appearance as required under rule 3.130, but the holding of this determination at that time shall not affect the fact that it is a nonadversary proceeding.

(2) **Defendant on Pretrial Release.** A defendant who has been released from custody before a probable cause determination is made and who is able to establish that the pretrial release conditions are a significant restraint on his or her liberty may file a written motion for a nonadversary probable cause determination setting forth with specificity the items of significant restraint that a finding of no probable cause would eliminate. The motion shall be filed within 21 days from the date of arrest, and notice shall be given to the state. A magistrate who finds significant restraints on the defendant's liberty shall make a probable cause determination within 7 days from the filing of the motion.

(3) **Standard of Proof.** Upon presentation of proof, the magistrate shall determine whether there is probable cause for detaining the arrested person pending further proceedings. The defendant need not be present. In determining probable cause to detain the defendant, the magistrate shall apply the standard for issuance of an arrest warrant, and the finding may be based on sworn complaint, affidavit, deposition under oath, or, if necessary, on testimony under oath properly recorded.

(4) **Action on Determination.** If probable cause is found, the defendant shall be held to answer the charges. If probable cause is not found or the specified time periods are not complied with, the defendant shall be released from custody unless an information or indictment has been filed, in which event the defendant shall be released on recognizance subject to the condition that he or she appear at all court proceedings or shall be released under a summons to appear before the appropriate court at a time certain. Any release occasioned by a failure to comply with the specified time periods shall be by order of the magistrate on a written application filed by the defendant with notice sent to the state or by a magistrate without a written application but with notice to the state. The magistrate shall order the release of the defendant after it is determined that the defendant is entitled to release and after the state has a reasonable period of time, not to exceed 24 hours, in which to establish probable cause. A release required by this rule does not void further prosecution by information or indictment but does prohibit any restraint on liberty other than appearing for trial. A finding that probable cause does or does not exist shall be made in writing, signed by the magistrate, and filed, together with the evidence of such probable cause, with the clerk of the court having jurisdiction of the offense for which the defendant is charged.

**(b) Adversary Preliminary Hearing.**

(1) **When Applicable.** A defendant who is not charged in an information or indictment within 21 days from the date of arrest or service of the capias on him or her shall have a right to an adversary preliminary hearing on any felony charge then pending against the defendant. The subsequent filing of an information or indictment shall not eliminate a defendant's entitlement to this proceeding.

(2) **Process.** The magistrate shall issue such process as may be necessary to secure attendance of witnesses within the state for the state or the defendant.

(3) **Witnesses.** All witnesses shall be examined in the presence of the defendant and may be cross-examined. Either party may request that the witnesses be sequestered. At the conclusion of the testimony for the prosecution, the defendant who so elects shall be sworn and testify in his or her own behalf, and in such cases the defendant shall be warned in advance of testifying that anything he or she may say can be used against him or her at a subsequent trial. The defendant may be cross-examined in the same manner as other witnesses, and any witnesses offered by the defendant shall be sworn and examined.

(4) **Record.** At the request of either party, the entire preliminary hearing, including all testimony, shall be recorded

verbatim stenographically or by mechanical means and at the request of either party shall be transcribed. If the record of the proceedings, or any part thereof, is transcribed at the request of the prosecuting attorney, a copy of this transcript shall be furnished free of cost to the defendant or the defendant's counsel.

(5) **Action on Hearing.** If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall cause the defendant to be held to answer to the circuit court; otherwise, the magistrate shall release the defendant from custody unless an information or indictment has been filed, in which event the defendant shall be released on recognizance subject to the condition that he or she appear at all court proceedings or shall be released under a summons to appear before the appropriate court at a time certain. Such release does not, however, void further prosecution by information or indictment but does prohibit any restraint on liberty other than appearing for trial. A finding that probable cause does or does not exist shall be made in writing, signed by the magistrate, and, together with the evidence received in the cause, shall be filed with the clerk of the circuit court.

(c) **Additional Nonadversary Probable Cause Determinations and Preliminary Hearings.** If there has been a finding of no probable cause at a nonadversary determination or adversary preliminary hearing, or if the specified time periods for holding a nonadversary probable cause determination have not been complied with, a magistrate may thereafter make a determination of probable cause at a nonadversary probable cause determination, in which event the defendant shall be retained in custody or returned to custody upon appropriate process issued by the magistrate. A defendant who has been retained in custody or returned to custody by such a determination shall be allowed an adversary preliminary hearing in all instances in which a felony offense is charged.

#### Committee Notes

1968 Adoption. (Notes are to former rule 1.122.)

(a) Substantially the same as section 902.01, Florida Statutes; the word "examination" is changed to "hearing" to conform to modern terminology.

(b) through (j) Substantially the same as sections 902.02 through 902.10, 902.13, and 902.14, Florida Statutes, except for exchange of "hearing" for "examination."

(k) Parts of section 902.11, Florida Statutes, and all of section 902.12, Florida Statutes, were omitted because of

conflict with case law: *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964); *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963).

(l) Taken from Federal Rule of Criminal Procedure 5(c). Previously Florida had no statute or rule defining what the magistrate should do at the conclusion of the preliminary hearing.

(m) Substantially the same as section 902.18, Florida Statutes, except "without delay" changed to "within 7 days." Some specific time limit was felt necessary because of frequent delay by magistrates while defendants remain in jail.

**1972 Amendment.** The ABA Standards on Pre-Trial Release provide for a person arrested to be taken before a committing magistrate without unreasonable delay for immediate judicial consideration of the release decision. The committee determined that, since a determination of probable cause at this immediate hearing presents difficult logistical problems for the state and defense counsel, the question of probable cause should be decided at a later preliminary hearing. For this reason, subdivisions (c), (d), and (e) of the former rule have been deleted in favor of the hearing provision now contained in rule 3.130.

(a) A revised version of former rule 3.122(a).

(b) New. Establishes the time period in which the preliminary hearing must take place.

(c)(1) Substantially the same as former rule 3.122(b). Amended to provide for advice of counsel relative to waiver and for written waiver.

(c)(2) Amended to delete provisions relating to recording of proceedings as same are now contained in subdivision (h).

(d) Same as prior rule 3.122(g).

(e) Same as prior rule 3.122(h).

(f) Substantially the same as prior rule 3.122(i); language modernized by slight changes.

(g) Same as prior rule 3.122(j).

(h) New rule to provide for record of proceedings.

(i) Same as prior rule 3.122(l).

(j) Substantially the same as prior rule 3.122(m). Time period for transmission of papers is reduced. (2) provides for transmission of any transcript of proceedings.

**1977 Amendment.** The rule corrects several deficiencies in the prior rule:

(1) In the prior rule no specific mechanism was provided to effect the release which is allowed. This revision provides such a mechanism and coordinates the mechanism with the additional procedures created by subdivision (c).

(2) Once a determination of no probable cause was made and the defendant was released, no method was provided for reversing the process in those instances in which the determination is palpably in error or in instances in which it is later possible to establish probable cause.

(3) The prior rule allowed the unconditioned release of a defendant without the possibility of recapture simply because of a technical failure to abide by the rather arbitrary time limits established for the conduct of a nonadversary probable cause determination and regardless of the ability to establish probable cause. The new rule allows a determination or redetermination of probable cause to be made in instances in which to do so is sensible. The defendant is protected by the provision allowing an adversary preliminary hearing as a check against any possible abuse.

#### **Court Comment**

**1975 Amendment.** This is a complete rewrite of the preliminary hearing rule.

**RULE 3.692. PETITION TO SEAL OR EXPUNGE**

(a) Requirements of Petition. All relief sought by reason of ~~Sections~~ 943.0585-943.059, Florida Statutes ~~(1981)~~, shall be by petition in writing, filed with the clerk. ~~Such~~The petition shall state the grounds ~~upon~~ which it is based and the official records to which it is directed and shall be supported by an affidavit of the party seeking relief, which affidavit shall state with particularity the statutory grounds and the facts in support of ~~such~~the motion. A copy of the completed petition and affidavit shall be served ~~upon~~ the prosecuting attorney, ~~and upon~~ the arresting authority, and the Florida Department of Law Enforcement. The hearing on the petition shall be held 30 days after service of the copies of the petition and affidavit. Notice and hearing shall be as provided in Rule 3.590(c).

(b) State's Response; Evidence. The ~~State~~ may traverse or demur to ~~such~~the petition and affidavit. The court may receive evidence on any issue of fact necessary to the decision of the petition.

(c) Written Order. If the petition is granted the court shall enter its order in writing so stating and further setting forth the records and agencies or departments to which it is directed.

(d) Copies of Order. ~~Upon~~ the receipt of ~~such~~the order the clerk shall furnish a certified copy thereof to each agency or department named therein excepting the court.

(e) Clerk's Duties. In regard to the official records of the court including the court file of the cause, the clerk shall:

(1) ~~Remove~~ from the official records of the court, excepting the court file, all entries and records subject to ~~such~~the order; provided that if it shall not be practical to remove ~~such~~the entries and records, then to make certified copies thereof and thereafter expunge by appropriate ~~names~~means ~~such~~the original entries and records-;

(2) ~~Seal~~ such the entries and records, or certified copies thereof, together with the court file and retain the same in a non-public index subject to further order of the court- (~~See~~ Johnson v. State, 336 So.2d 93 (Fla. 1976)-);

(3) ~~In~~ multi-defendant cases, ~~the clerk shall~~ make a certified copy of the contents of the court file ~~which~~that shall be sealed pursuant to ~~subsections~~subdivision (2). Thereafter all references to the petitioner shall be expunged from the original court file.

(f) Costs. All costs of certified copies involved herein

shall be borne by the movant, unless ~~he be~~ the movant is indigent.

#### **Committee Notes**

**1984 Amendment.** Substantially the same as the former rule. The statutory reference in (1) was changed to cite the current statute and terminology was changed accordingly. Subsection division (f) of the former rule was deleted ~~since because~~ it dealt with substantive matters covered by Section 943.058, of the Florida Statutes (1981).

**RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE.**

(a) **Sufficiency of Forms.** The forms as set forth below, or computer generated formats that duplicate these forms, shall be used by all courts. Variations from these forms do not void a judgment, sentence, order, or fingerprints that are otherwise sufficient.

(b) **Form for Judgment.**

- \_\_\_\_\_ Probation Violator
- \_\_\_\_\_ Community Control Violator
- \_\_\_\_\_ Retrial
- \_\_\_\_\_ Resentence

In the Circuit Court,  
 \_\_\_\_\_ Judicial Circuit, in and for  
 \_\_\_\_\_ County, Florida  
 Division \_\_\_\_\_  
 Case Number \_\_\_\_\_

State of Florida

v.

\_\_\_\_\_ Defendant

**JUDGMENT**

The defendant, \_\_\_\_\_, being personally before this court represented by \_\_\_\_\_, the attorney of record, and the state represented by \_\_\_\_\_, and having

\_\_\_\_\_ been tried and found guilty by jury/by court of the following crime(s)

\_\_\_\_\_ entered a plea of guilty to the following crime(s)

\_\_\_\_\_ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree Of Crime	Case Number	OBTS Number
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____



\_\_\_\_\_ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

\_\_\_\_\_ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794) or lewd and lascivious conduct (ch. 800) the defendant shall be required to submit blood specimens.

\_\_\_\_\_ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

DONE AND ORDERED in open court in \_\_\_\_\_ County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Judge

State of Florida

v.

\_\_\_\_\_  
Defendant

Case Number \_\_\_\_\_

**FINGERPRINTS OF DEFENDANT**

\_\_\_\_\_  
R. Thumb      R. Index      R. Middle      R. Ring      R. Little

\_\_\_\_\_  
L. Thumb      L. Index      L. Middle      L. Ring      L. Little

Fingerprints taken by: \_\_\_\_\_  
Name Title

I HEREBY CERTIFY that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, \_\_\_\_\_, and that they were placed thereon by the defendant in my presence in open court this date.

\_\_\_\_\_  
Judge

(c) Form for Charges, Costs, and Fees.

In the Circuit Court,  
\_\_\_\_\_ Judicial Circuit, in and for  
\_\_\_\_\_ County, Florida  
Division \_\_\_\_\_  
Case Number \_\_\_\_\_

State of Florida

v.

\_\_\_\_\_  
Defendant

**CHARGES/COSTS/FEEES**

The defendant is hereby ordered to pay the following sums if checked:

- \_\_\_\_\_ \$50.00 pursuant to section 960.20, Florida Statutes (Crimes Compensation Trust Fund).
- \_\_\_\_\_ \$3.00 as a court cost pursuant to section 943.25(3), Florida Statutes (Criminal Justice Trust Fund).
- \_\_\_\_\_ \$2.00 as a court cost pursuant to section 943.25(13), Florida Statutes (Criminal Justice Education by Municipalities and Counties).
- \_\_\_\_\_ A fine in the sum of \$\_\_\_\_\_ pursuant to section 775.0835, Florida Statutes. (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as part of a sentence to section 775.083, Florida Statutes, are to be recorded on the sentence page(s).)
- \_\_\_\_\_ \$20.00 pursuant to section 939.015, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).
- \_\_\_\_\_ A 10% surcharge in the sum of \$\_\_\_\_\_ pursuant to section 775.0836, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).
- \_\_\_\_\_ A sum of \$\_\_\_\_\_ pursuant to section 27.3455,

Florida Statutes (Local Government Criminal Justice Trust Fund).

\_\_\_\_\_ A sum of \$\_\_\_\_\_ pursuant to section 939.01, Florida Statutes (Prosecution/Investigative Costs).

\_\_\_\_\_ A sum of \$\_\_\_\_\_ pursuant to section 27.56, Florida Statutes (Public Defender Fees).

\_\_\_\_\_ Restitution in accordance with attached order.

\_\_\_\_\_ Other \_\_\_\_\_

DONE AND ORDERED in open court in \_\_\_\_\_ County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Judge

**(d) Form for Sentencing.**

Defendant \_\_\_\_\_ Case Number \_\_\_\_\_ OBTS Number \_\_\_\_\_

**SENTENCE**

(As to Count \_\_\_\_\_)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, \_\_\_\_\_, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

\_\_\_\_\_ and the court having on (date) \_\_\_\_\_ deferred imposition of sentence until this date

\_\_\_\_\_ and the court having previously entered a judgment in this case on (date) \_\_\_\_\_ now resentences the defendant

\_\_\_\_\_ and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

It Is The Sentence Of The Court That:

\_\_\_\_\_ The defendant pay a fine of \$ \_\_\_\_\_, pursuant to section 775.083, Florida Statutes, plus \$ \_\_\_\_\_ as the 5% surcharge required by section 960.25, Florida Statutes.

\_\_\_\_\_ The defendant is hereby committed to the custody of the Department of Corrections.

\_\_\_\_\_ The defendant is hereby committed to the custody of the Sheriff of \_\_\_\_\_ County, Florida.

\_\_\_\_\_ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable):

\_\_\_\_\_ For a term of natural life.

\_\_\_\_\_ For a term of \_\_\_\_\_.

\_\_\_\_\_ Said SENTENCE SUSPENDED for a period of \_\_\_\_\_ subject to conditions set forth in this order.

If "split" sentence complete the appropriate paragraph

\_\_\_\_\_ Followed by a period of \_\_\_\_\_ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

\_\_\_\_\_ However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_ the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of \_\_\_\_\_ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

**SPECIAL PROVISIONS**  
(As to Count \_\_\_\_\_)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm

\_\_\_\_\_ It is further ordered that the 3-year minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking

\_\_\_\_\_ It is further ordered that the \_\_\_\_\_ mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance  
Within 1,000 Feet of School

\_\_\_\_\_ It is further ordered that the 3-year minimum imprisonment provision of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender

\_\_\_\_\_ The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent Felony Offender

\_\_\_\_\_ The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of \_\_\_\_\_ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement Protection Act

\_\_\_\_\_ It is further ordered that the defendant shall serve a minimum of \_\_\_\_\_ years before release in accordance with section 775.0823, Florida Statutes.

Capital Offense

\_\_\_\_\_ It is further ordered that the defendant shall serve no

less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle, Shotgun, Machine Gun

\_\_\_\_\_ It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.

Continuing Criminal Enterprise

\_\_\_\_\_ It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Taking a Law Enforcement Officer's Firearm

\_\_\_\_\_ It is further ordered that the 3-year mandatory minimum imprisonment provision of section 775.0857(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction

\_\_\_\_\_ The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Jail Credit

\_\_\_\_\_ It is further ordered that the defendant shall be allowed a total of \_\_\_\_\_ days as credit for time incarcerated before imposition of this sentence.

Prison Credit

\_\_\_\_\_ It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Consecutive/Concurrent as to Other Counts

It is further ordered that the sentence imposed for this count shall run (check one) \_\_\_\_\_ consecutive to \_\_\_\_\_ concurrent with the sentence set forth in count \_\_\_\_\_ of this case.

Consecutive/Concurrent as to Other Convictions

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) \_\_\_\_\_ consecutive to \_\_\_\_\_ concurrent with (check one) the following:

\_\_\_\_\_ any active sentence being served.

\_\_\_\_\_ specific sentences: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the event the above sentence is to the Department of Corrections, the Sheriff of \_\_\_\_\_ County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

In imposing the above sentence, the court further recommends

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

DONE AND ORDERED in open court at \_\_\_\_\_  
County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Judge

(e) Form for Order of Probation.

In the \_\_\_\_\_ Court  
of \_\_\_\_\_ County, Florida  
Case Number \_\_\_\_\_

State of Florida

v.

\_\_\_\_\_  
Defendant

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant, \_\_\_\_\_, being now present before me, and you having

(check one)

- \_\_\_ entered a plea of guilty to
- \_\_\_ entered a plea of nolo contendere to
- \_\_\_ been found guilty by jury verdict of
- \_\_\_ been found guilty by the court trying the case without a jury of the offense(s) of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 1: Judgment Of Guilt

\_\_\_ The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on probation for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

\_\_\_ Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on probation for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Probation During Portion Of Sentence

It is hereby ordered and adjudged that you be  
\_\_\_ committed to the Department of Corrections  
\_\_\_ confined in the County Jail

for a term of \_\_\_\_\_ with credit for \_\_\_\_\_ jail time. After you have served \_\_\_\_\_ of the term you shall be placed on probation for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.



\_\_\_\_\_ confined in the County Jail  
for a term of \_\_\_\_\_ with credit for \_\_\_\_\_ jail  
time, as a special condition of probation.

It is further ordered that you shall comply with the  
following conditions of probation during the probationary period.

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.
- (2) You will pay the State of Florida the amount of \$\_\_\_\_\_ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
- (5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation.
- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.
- (9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will pay restitution, costs, and/or fees in

accordance with the attached orders.

- (11) You will report in person within 72 hours of your release from confinement to the probation office in \_\_\_\_\_ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at \_\_\_\_\_.

#### SPECIAL CONDITIONS

- \_\_\_\_\_ You must undergo a (drug/alcohol) evaluation and, if treatment is deemed necessary, you must successfully complete the treatment.
- \_\_\_\_\_ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.
- \_\_\_\_\_ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.
- \_\_\_\_\_ You will not associate with \_\_\_\_\_ during the period of probation.
- \_\_\_\_\_ You will not contact \_\_\_\_\_ during the period of probation.
- \_\_\_\_\_ Other \_\_\_\_\_

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

It is further ordered that when you have been instructed as to the conditions of probation, you shall be released from

custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

Date \_\_\_\_\_ Probationer \_\_\_\_\_

Instructed by \_\_\_\_\_

Original: Clerk of the Court  
Certified Copies: Probationer  
Florida Department of Corrections,  
Probation and Parole Services

**(f) Form for Community Control.**

In the \_\_\_\_\_ Court  
of \_\_\_\_\_ County, Florida  
Case Number \_\_\_\_\_

State of Florida

v.

\_\_\_\_\_  
Defendant

**ORDER OF COMMUNITY CONTROL**

This cause coming on this day to be heard before me, and you, the defendant, \_\_\_\_\_, being now present before me, and you having

(check one)

\_\_\_\_\_ entered a plea of guilty to

\_\_\_\_\_ entered a plea of nolo contendere to  
\_\_\_\_\_ been found guilty by jury verdict of  
\_\_\_\_\_ been found guilty by the court trying the case without  
a jury of the offense(s) of \_\_\_\_\_  
\_\_\_\_\_

SECTION 1: Judgment of Guilt

\_\_\_\_\_ The court hereby adjudges you to be guilty of the above  
offense(s).

Now, therefore, it is ordered and adjudged that you be  
placed on community control for a period of \_\_\_\_\_ under the  
supervision of the Department of Corrections, subject to Florida  
law.

SECTION 2: Order Withholding Adjudication

\_\_\_\_\_ Now, therefore, it is ordered and adjudged that the  
adjudication of guilt is hereby withheld and that you be placed  
on Community Control for a period of \_\_\_\_\_ under the  
supervision of the Department of Corrections, subject to Florida  
law.

SECTION 3: Community Control During Portion Of Sentence

It is hereby ordered and adjudged that you be  
\_\_\_\_\_ committed to the Department of Corrections  
\_\_\_\_\_ confined in the County Jail

for a term of \_\_\_\_\_ with credit for \_\_\_\_\_ jail  
time. After you have served \_\_\_\_\_ of the term, you shall  
be placed on community control for a period of \_\_\_\_\_  
under the supervision of the Department of Corrections, subject  
to Florida law.

\_\_\_\_\_ confined in the County Jail

for a term of \_\_\_\_\_ with credit for \_\_\_\_\_ jail  
time, as a special condition of community control.

It is further ordered that you shall comply with the  
following conditions of community control during the community  
control period.

- (1) Not later than the fifth day of each month, you will

make a full and truthful report to your officer on the form provided for that purpose.

- (2) You will pay the State of Florida the amount of \$\_\_\_\_\_ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry, or own any firearm. You will not possess, carry, or own other weapons without first procuring the consent of your officer.
- (5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your community control.
- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your community control status, and support any dependents to the best of your ability as directed by your officer.
- (9) You will promptly and truthfully answer all inquiries directed to you by the court or your officer and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will report to your officer at least 4 times a week, or, if unemployed full time, daily.
- (11) You will perform \_\_\_\_\_ hours of public service work as directed by your officer.
- (12) You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work, or any other special

activities approved by your officer.

- (13) You will pay restitution, costs, and/or fees in accordance with the attached orders.
- (14) You will report in person within 72 hours of your release from confinement to the probation office in \_\_\_\_\_ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at \_\_\_\_\_.

#### SPECIAL CONDITIONS

- \_\_\_\_\_ You must undergo a (drug/alcohol) evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.
- \_\_\_\_\_ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.
- \_\_\_\_\_ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.
- \_\_\_\_\_ You will not associate with \_\_\_\_\_ during the period of community control.
- \_\_\_\_\_ You will not contact \_\_\_\_\_ during the period of community control.
- \_\_\_\_\_ You will maintain an hourly accounting of all your activities on a daily log which you will submit to your officer on request.
- \_\_\_\_\_ You will participate in self-improvement programs as determined by the court or your officer.
- \_\_\_\_\_ You will submit to electronic monitoring of your whereabouts as required by the Florida Department of Corrections.
- \_\_\_\_\_ Other \_\_\_\_\_

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your community control, or may extend the period of community control as authorized by law, or may discharge you from further supervision or return you to a program of regular probation supervision. If you violate any of the conditions and sanctions of your community control, you may be arrested, and the court may adjudicate you guilty if adjudication of guilt was withheld, revoke your community control, and impose any sentence that it might have imposed before placing you on community control.

It is further ordered that when you have reported to your officer and have been instructed as to the conditions of community control, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office, and forthwith provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

Date \_\_\_\_\_ Community controller \_\_\_\_\_

Instructed by \_\_\_\_\_

Original: Clerk of the Court  
Certified Copies: Community Controllee  
Florida Department of Corrections,  
Probation and Parole Services

(g) Form for Restitution Order.

In the Circuit Court,  
\_\_\_\_\_ Judicial Circuit in and for  
\_\_\_\_\_ County, Florida  
Division \_\_\_\_\_  
Case Number \_\_\_\_\_

State of Florida

v.

\_\_\_\_\_  
Defendant

**RESTITUTION ORDER**

By appropriate notation, the following provisions apply to the sentence imposed in this section:

\_\_\_ Restitution is not ordered as it is not applicable.

\_\_\_ Restitution is not ordered due to the financial resources of the defendant.

\_\_\_ Restitution is not ordered due to \_\_\_\_\_.

\_\_\_ Due to the financial resources of the defendant, restitution of a portion of the damages is ordered as prescribed below.

\_\_\_ Restitution is ordered as prescribed below.

\_\_\_ Restitution is ordered for the following victim.  
(Victim refers to the aggrieved party, aggrieved party's estate, or aggrieved party's next of kin if the aggrieved party is deceased as a result of the offense. In lieu of the victim's address and phone number, the address and phone number of the prosecuting attorney, victim's attorney, or victim advocate may be used.)

\_\_\_\_\_  
Name of victim

\_\_\_\_\_  
Name of attorney or advocate  
if applicable

Address \_\_\_\_\_

City, State, and Zip Code \_\_\_\_\_



Phone Number \_\_\_\_\_

\_\_\_\_\_ The sum of \$\_\_\_\_\_ for medical and related services and devices relating to physical, psychiatric, and psychological care, including non-medical care and treatment rendered in accordance with a recognized method of healing.

\_\_\_\_\_ The sum of \$\_\_\_\_\_ for necessary physical and occupational therapy and rehabilitation.

\_\_\_\_\_ The sum of \$\_\_\_\_\_ to reimburse the victim for income lost as a result of the offense.

\_\_\_\_\_ The sum of \$\_\_\_\_\_ for necessary funeral and related services if the offense resulted in bodily injury resulting in the death of the victim.

\_\_\_\_\_ The sum of \$\_\_\_\_\_ for damages resulting from the offense.

\_\_\_\_\_ The sum of \$\_\_\_\_\_ for \_\_\_\_\_

It is further ordered that the defendant fulfill restitution obligations in the following manner:

\_\_\_\_\_ Total monetary restitution is determined to be \$\_\_\_\_\_ to be paid at a rate of \$\_\_\_\_\_ per (check one) \_\_\_\_\_ month \_\_\_\_\_ week \_\_\_\_\_ other (specify) \_\_\_\_\_ and is to be paid ~~through the~~ (check one) \_\_\_\_\_ through the clerk of the circuit court, \_\_\_\_\_ to the victim's designee, or \_\_\_\_\_ through the Department of Corrections, with an additional 4% fee of \$\_\_\_\_\_ for handling, processing, and forwarding the restitution to the victim(s).

\_\_\_\_\_ For which sum let execution issue.

DONE AND ORDERED at \_\_\_\_\_ County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Judge

Original: Clerk of the Court  
Certified Copy: Victim

### Committee Notes

**1980 Amendment.** The proposed changes to rule 3.986 are housekeeping in nature. References to the Department of Offender Rehabilitation have been changed to Department of Corrections to reflect a legislative change. See section 20.315, Florida Statutes (Supp. 1978). The reference to "hard labor" has been stricken as the courts have consistently held such a condition of sentence is not authorized by statute. See, e.g., *McDonald v. State*, 321 So.2d 453, 458 (Fla. 4th DCA 1975).

RULE 3.987. MOTION FOR POSTCONVICTION RELIEF

MODEL FORM FOR USE IN MOTIONS FOR  
POSTCONVICTION RELIEF PURSUANT TO  
FLORIDA RULE OF CRIMINAL PROCEDURE 3.850

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

State of Florida )  
 )  
 v. ) Criminal Division  
 )  
 \_\_\_\_\_ ) Case No.: \_\_\_\_\_  
 (your name) ) (the original case number)  
 )  
 \_\_\_\_\_ )

MOTION FOR POSTCONVICTION RELIEF

Instructions - Read Carefully

(1) This motion must be legibly handwritten or typewritten, signed by the defendant, and contain either the first or second oath set out at the end of this rule. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the **facts** that you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted in support of your **legal** claims (as opposed to your factual claims), they should be submitted in the form of a separate memorandum of law. This memorandum should have the same caption as this motion.

(3) No filing fee is required when submitting a motion for postconviction relief.

(4) Only the judgment of one case may be challenged in a single motion for postconviction relief. If you seek to challenge judgments entered in different cases, or different courts, you must file separate motions as to each such case. The single exception to this is if you are challenging the judgments

in the different cases that were consolidated for trial. In this event, show each case number involved in the caption.

(5) Your attention is directed to the fact that you must include all grounds for relief, and all facts that support such grounds, in the motion you file seeking relief from any judgment of conviction.

(6) When the motion is fully completed, the original must be mailed to the clerk of the court whose address is \_\_\_\_\_  
\_\_\_\_\_. (county where sentence was imposed) \_\_\_\_\_ County  
Courthouse, \_\_\_\_\_ \_\_\_\_\_ (address of clerk) \_\_\_\_\_, Florida.

MOTION

1. Name and location of the court that entered the judgment of conviction under attack: \_\_\_\_\_  
\_\_\_\_\_

2. Date of judgment of conviction: \_\_\_\_\_

3. Length of sentence: \_\_\_\_\_

4. Nature of offense(s) involved (all counts): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. What was your plea? (check only one)

(a) Not guilty \_\_\_\_\_

(b) Guilty \_\_\_\_\_

(c) Nolo contendere \_\_\_\_\_

(d) Not guilty by reason of insanity \_\_\_\_\_

If you entered one plea to one count and a different plea to another count, give details:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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6. Kind of trial: (check only one)

(a) Jury \_\_\_\_\_

(b) Judge only without jury \_\_\_\_\_

7. Did you testify at the trial or at any pretrial hearing?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, list each such occasion: \_\_\_\_\_

---

8. Did you appeal from the judgment of conviction?

Yes \_\_\_\_\_ No \_\_\_\_\_

9. If you did appeal, answer the following:

(a) Name of court: \_\_\_\_\_

(b) Result: \_\_\_\_\_

(c) Date of result: \_\_\_\_\_

(d) Citation (if known): \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc., with respect to this judgment in **this** court?

Yes \_\_\_\_\_ No \_\_\_\_\_

11. If your answer to number 10 was "yes," give the following information (applies only to proceedings in **this** court):

(a) (1) Nature of the proceeding: \_\_\_\_\_

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(2) Grounds raised: \_\_\_\_\_

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(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes \_\_\_\_\_ No \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(b) As to any second petition, application, motion, etc., give the same information:

(1) Nature of the proceeding: \_\_\_\_\_  
\_\_\_\_\_

(2) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes \_\_\_\_\_ No \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc., with respect to this judgment in any other court?

Yes \_\_\_\_\_ No \_\_\_\_\_

13. If your answer to number 12 was "yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Nature of the proceeding: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Grounds raised: \_\_\_\_\_

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(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(b) As to any second petition, application, motion, etc., give the same information:

(1) Name of court: \_\_\_\_\_

(2) Nature of the proceeding: \_\_\_\_\_

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---

(3) Grounds raised: \_\_\_\_\_

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(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(c) As to any third petition, application, motion, etc., give the same information:

(1) Name of court: \_\_\_\_\_

(2) Nature of the proceeding: \_\_\_\_\_

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(3) Grounds raised: \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

14. State **concisely** every ground on which you claim that the judgment or sentence is unlawful. Summarize **briefly** the **facts** supporting each ground. If necessary, you may attach pages stating additional grounds and the **facts** supporting them.

For your information, the following is a list of the most frequently raised grounds for postconviction relief. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds that you may have other than those listed. However, **you should raise in this motion all available grounds** (relating to this conviction) on which you base your allegations that your conviction or sentence is unlawful.

DO NOT CHECK ANY OF THESE LISTED GROUNDS. If you select one or more of these grounds for relief, you must allege facts. The motion will not be accepted by the court if you merely check (a) through (±i).

(a) Conviction obtained by plea of guilty or nolo contendere that was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

~~(b) Conviction obtained by use of coerced confession.~~

~~(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.~~

~~(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.~~

~~(e) Conviction obtained by a violation of the privilege against self incrimination.~~



~~(f)~~—Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(~~g~~) Conviction obtained by a violation of the protection against double jeopardy.

~~(h)~~ Conviction obtained by action of a grand or petit jury that was unconstitutionally selected or impanelled.

(~~i~~) Denial of effective assistance of counsel.

(~~j~~) Denial of right of appeal.

(~~k~~) Lack of jurisdiction of the court to enter the judgment or impose sentence (such as an unconstitutional statute).

(~~l~~) Sentence in excess of the maximum authorized by law.

(h) Newly discovered evidence.

(i) Changes in the law that would be retroactive.

A. Ground 1: \_\_\_\_\_

Supporting FACTS (tell your story **briefly** without citing cases or law):

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B. Ground 2: \_\_\_\_\_

Supporting FACTS (tell your story **briefly** without citing cases or law):

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C. Ground 3: \_\_\_\_\_

Supporting FACTS (tell your story **briefly** without citing cases or law):

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D. Ground 4: \_\_\_\_\_

Supporting FACTS (tell your story **briefly** without citing cases or law):

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15. If any of the grounds listed in 14 A, B, C, and D were not previously presented on your direct appeal, state **briefly** what grounds were not so presented and give your reasons they were not so presented:

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16. Do you have any petition, application, appeal, motion, etc., now pending in any court, either state or federal, as to the judgment under attack?

Yes \_\_\_\_\_ No \_\_\_\_\_

17. If your answer to number 16 was "yes," give the following information:

(a) Name of court: \_\_\_\_\_

(b) Nature of the proceeding: \_\_\_\_\_

(c) Grounds raised: \_\_\_\_\_

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(d) Status of the proceedings: \_\_\_\_\_

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18. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein.

(a) At preliminary hearing: \_\_\_\_\_

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(b) At arraignment and plea: \_\_\_\_\_

---

(c) At trial: \_\_\_\_\_

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(d) At sentencing: \_\_\_\_\_

\_\_\_\_\_

(e) On appeal: \_\_\_\_\_

\_\_\_\_\_

(f) In any postconviction proceeding: \_\_\_\_\_

\_\_\_\_\_

(g) On appeal from any adverse ruling in a postconviction proceeding: \_\_\_\_\_

\_\_\_\_\_

WHEREFORE, movant requests that the court grant all relief to which the movant may be entitled in this proceeding, including but not limited to (here list the nature of the relief sought):

1. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Such other and further relief as the court deems just and proper.

OATH  
(Complete 1 or 2)

1. Notarized Oath.

STATE OF FLORIDA                    )  
  )  
COUNTY OF \_\_\_\_\_          )

Before me, the undersigned authority, this day personally appeared \_\_\_\_\_, who first being duly

sworn, says that he or she is the defendant in the above-styled cause, that he or she has read the foregoing motion for postconviction relief and has personal knowledge of the facts and matters therein set forth and alleged and that each and all of these facts and matters are true and correct.

\_\_\_\_\_  
(your signature)

SWORN AND SUBSCRIBED TO before me this \_\_\_\_\_ day of

\_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC or other person  
authorized to administer an oath

(print, type, or stamp commissioned  
name of notary public)

Personally known \_\_\_\_\_ or produced identification \_\_\_\_\_

Type of Identification produced \_\_\_\_\_

2. Unnotarized Oath.

Under penalties of perjury, I declare that I have read the foregoing motion and that the facts stated in it are true.

\_\_\_\_\_  
(your signature)



hereby swear ~~and/or~~ affirm that: ~~I have never been adjudicated guilty of a criminal offense or a comparable ordinance violation and I have frankly discussed this with my counsel in depth and he has explained to me the meaning of all of the terms in this Affidavit.~~

1. I fully understand the meaning of all of the terms of this affidavit.

2. I have never been adjudicated guilty of a criminal offense or a comparable ordinance violation.

~~1.3. That~~ I was arrested on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ (arresting agency), and I have not been adjudicated guilty of the charges stemming from that arrest or the alleged criminal activity surrounding my arrest.

4. I am eligible for the relief requested, to the best of my knowledge and belief, and do not have any other petition to expunge or seal pending before any court.

~~2.5. That~~ I have never secured a prior records expunction or sealing under any law.

3.6. (For use in expungement Ppetitions only.) That ~~my~~ record of arrest for this date has been sealed for at least ten (+10+) years; or an indictment or information was not filed against me for the above criminal transaction; or an indictment or information filed against me was dismissed by the prosecutor or the court.

\_\_\_\_\_  
~~Defendant~~/Petitioner

Sworn to and subscribed before me this \_\_\_\_\_ day of

\_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, or other person  
authorized to administer an oath

\_\_\_\_\_  
Printed, typed, or stamped  
commissioned name of Notary Public

Personally known \_\_\_\_\_ or produced identification

Type of identification produced \_\_\_\_\_

My Ecommission Eexpires:



(b) Order to Expunge.

~~IN THE CIRCUIT COURT OF THE~~  
~~\_\_\_\_\_ JUDICIAL CIRCUIT,~~  
~~IN AND FOR \_\_\_\_\_~~  
~~COUNTY, FLORIDA~~

CASE NUMBER: \_\_\_\_\_  
DIVISION \_\_\_\_\_  
In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case Number: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, \_\_\_\_\_ )  
\_\_\_\_\_ )  
Plaintiff, \_\_\_\_\_ )  
\_\_\_\_\_ )  
v. \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
Defendant/Petitioner \_\_\_\_\_ )  
\_\_\_\_\_ )

ORDER TO EXPUNGE PURSUANT TO  
~~FLORIDA STATUTE~~SECTION 943.0585, ~~FLORIDA STATUTES~~  
AND ~~FRC~~FLORIDA RULE OF CRIMINAL PROCEDURE 3.692

THIS CAUSE having come on to be heard before me this date upon ~~the Defendant's~~a Ppetition to ~~Expunge~~ certain records of the ~~Defendant's~~petitioner's arrest on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ (arresting agency), for \_\_\_\_\_ (charges), and the ~~C~~court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

1. ~~That t~~The ~~Defendant~~petitioner has never previously been adjudicated guilty of a criminal offense or a comparable ordinance violation.

2. ~~That t~~The ~~Defendant~~petitioner was not adjudicated guilty

of charges stemming from the arrest or criminal activity to which this expunction ~~P~~petition pertains.

3. ~~That t~~The ~~Defendant~~petitioner has not secured a prior records expunction or sealing.

4. ~~That t~~This record has either been sealed for at least ~~ten~~ ~~(10)~~ years; or no indictment or information was ever filed in this case against the ~~Defendant~~petitioner; or an indictment or information filed against the defendant was dismissed by the prosecutor or the court. ~~Whereupon it is thereby~~

ORDERED AND ADJUDGED that ~~said~~the ~~P~~petition to ~~E~~expunge is hereby granted. All ~~C~~court records pertaining to the above-styled case shall be ~~expunged~~sealed in accordance with the procedures set forth in ~~Florida Statute 943.058 and FRCP~~Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the ~~C~~clerk of this ~~C~~court shall forward a certified copy of this ~~O~~order to the ~~State Attorney~~ (check one) state attorney, special prosecutor, statewide prosecutor, \_\_\_\_\_ (arresting agency), and the Sheriff of \_\_\_\_\_ County, who will comply with the procedures set forth in ~~Florida Statute~~section 943.0585, Florida Statutes, and appropriate regulations of the Department of Law Enforcement, and who will further forward a copy of this ~~O~~order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that \_\_\_\_\_ (arresting agency) shall expunge all information concerning indicia of arrest or criminal history record information ~~reference~~regarding this ~~Defendant~~petitioner in accordance with the procedures set forth in ~~Florida Statute~~section 943.0585, Florida Statutes, and ~~FRCP~~Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the ~~P~~etitioner \_\_\_\_\_.

DONE AND ORDERED in Chambers at \_\_\_\_\_ County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Circuit Court Judge

(c) Order to Seal.

~~IN THE CIRCUIT COURT OF THE~~  
~~\_\_\_\_\_ JUDICIAL CIRCUIT,~~  
~~IN AND FOR \_\_\_\_\_~~  
~~COUNTY, FLORIDA~~

CASE NUMBER: \_\_\_\_\_  
DIVISION \_\_\_\_\_  
In the Circuit Court of the \_\_\_\_\_  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, \_\_\_\_\_ )  
\_\_\_\_\_ )  
Plaintiff, \_\_\_\_\_ )  
\_\_\_\_\_ )  
v. \_\_\_\_\_ )  
\_\_\_\_\_ )  
Defendant/Petitioner \_\_\_\_\_ )  
\_\_\_\_\_ )

ORDER TO SEAL RECORDS PURSUANT TO  
~~FLORIDA STATUTE~~SECTION 943.059, FLORIDA STATUTES,  
AND ~~FRC~~FLORIDA RULE OF CRIMINAL PROCEDURE 3.692

THIS CAUSE having come on to be heard before me this date upon ~~Defendant's~~petitioner's ~~P~~petition to ~~S~~seal ~~R~~records concerning the ~~petitioner's~~ arrest on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, by the \_\_\_\_\_ (arresting agency), and the ~~C~~court having heard argument of counsel and being otherwise advised in the premises, the court hereby finds:

1. ~~That t~~The ~~Defendant~~petitioner has never been previously adjudicated guilty of a criminal offense or comparable ordinance violation.
2. ~~That t~~The ~~Defendant~~petitioner was not adjudicated guilty of charges stemming from the arrest or criminal activity to which the instant ~~P~~petition pertains.
3. ~~That t~~The ~~Defendant~~petitioner has not secured a prior records expunction or sealing; whereupon it is ~~thereby~~

ORDERED AND ADJUDGED that the ~~P~~petition to ~~S~~seal ~~R~~records be and the same hereby is granted. All ~~C~~court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in ~~Florida Statute 943.058, and FRCP~~Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the ~~C~~lerk of this ~~C~~court shall forward a certified copy of this ~~O~~order to the ~~State Attorney~~ (check one)            state attorney,            special prosecutor,            statewide prosecutor,            (arresting agency), and the Sheriff of            County, who will comply with the procedures set forth in ~~Florida Statute~~section 943.0589, Florida Statutes, and appropriate regulations of the Department of Law Enforcement, and who will further forward a copy of this ~~O~~order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that            (arresting agency) shall seal all information concerning indicia of arrest or criminal history record information ~~reference~~regarding this ~~Defendant~~petitioner in accordance with the procedures set forth in ~~Florida Statute~~section 943.0589, Florida Statutes, and ~~FRCP~~Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the ~~Petitioner~~          .

DONE AND ORDERED in Chambers at            County, Florida, this        day of           , 19      .

\_\_\_\_\_  
Circuit Court Judge

(d) Petition to Expunge or Seal.

~~IN THE CIRCUIT COURT OF THE~~  
~~\_\_\_\_\_ JUDICIAL CIRCUIT,~~  
~~IN AND FOR \_\_\_\_\_~~  
~~COUNTY, FLORIDA~~

CASE NUMBER: \_\_\_\_\_  
DIVISION \_\_\_\_\_

~~STATE OF FLORIDA,~~ \_\_\_\_\_ )

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida  
Case Number: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, \_\_\_\_\_ )  
\_\_\_\_\_)  
Plaintiff, \_\_\_\_\_ )  
\_\_\_\_\_)  
vs. \_\_\_\_\_ )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
Defendant-Petitioner \_\_\_\_\_ )  
\_\_\_\_\_)

PETITION TO EXPUNGE OR SEAL

~~COMES NOW~~ ~~the Defendant-petitioner,~~ \_\_\_\_\_, by  
and through ~~his~~ the undersigned attorney, ~~and~~ petitions this  
Honorable Court, pursuant to Florida Rule of Criminal Procedure  
3.692, and Florida Statute section \_\_\_\_\_ 943.0585, or \_\_\_\_\_ section  
943.59 Florida Statutes, to \_\_\_\_\_ expunge/seal \_\_\_\_\_ all criminal  
history record information in the custody of any criminal justice  
agency and the official records of the court concerning ~~his~~ the  
petitioner's arrest on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by  
\_\_\_\_\_ (arresting agency), for \_\_\_\_\_ (charges), and as  
grounds therefor ~~would~~ show:

1. ~~That~~ On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the  
Defendant-petitioner, \_\_\_\_\_, a \_\_\_\_\_ (race/sex),  
whose date of birth is \_\_\_\_\_ (date of birth), was arrested  
by \_\_\_\_\_ (arresting agency), and charged with  
\_\_\_\_\_ (charges).

2. ~~That~~ The Defendantpetitioner has not been adjudicated guilty of any of the charges stemming from this arrest or alleged criminal activity.

3. The petitioner has not been previously adjudicated guilty of a criminal offense or a comparable ordinance violation.

~~3-4. That~~ The Defendantpetitioner has not secured a prior records expunction or sealing under ~~this~~ §section 943.0585, or 943.059, Florida Statutes, former section 943.058, Florida Statutes, former §section 893.14, Florida Statutes, or former §section 901.33, Florida Statutes, or any other law, rule, or authority.

~~4-5.~~ (To be used only when requesting expunction.) Such record has been sealed under ~~this~~ §section 943.059, Florida Statutes, former section 943.058, Florida Statutes, former §section 893.14, Florida Statutes, or former §section 901.33, Florida Statutes, for at least ten (10) years; or there has not been an indictment or information filed against the Defendantpetitioner who is the subject of this criminal history record information; or an indictment or information filed against the petitioner who is the subject of this criminal history information was dismissed by the prosecutor or the court.

WHEREFORE, the Defendantpetitioner, \_\_\_\_\_, moves ~~this Honorable Court~~ to \_\_\_\_\_ expunge/seal \_\_\_\_\_ any criminal history record information and any official court records ~~reference~~ regarding his/her arrest by \_\_\_\_\_ (arresting agency), for \_\_\_\_\_ (charges), on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been served upon \_\_\_\_\_ (name of prosecuting authority), (check one) \_\_\_\_\_ State Attorney for the \_\_\_\_\_ Judicial Circuit, in and for \_\_\_\_\_ County, \_\_\_\_\_ Special Prosecutor, \_\_\_\_\_ Statewide Prosecutor); \_\_\_\_\_ (arresting agency); and \_\_\_\_\_ (Sheriff of County where Defendant was arrested, if different); and the Florida Department of Law Enforcement, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Name:  
Address:  
City/State:  
Telephone Number:  
Fla. Bar No.:

**Committee Notes**

1984 Adoption. In order to have uniformity throughout the State, the committee proposes these forms for Petition to Expunge or Seal, Order to Seal, and Order to Expunge and Affidavit. These also should be a great asset to counsel and an invaluable asset to the clerks and FDLE, etc., who will be receiving Orders in the future. The subcommittee working on these proposed forms has contacted law enforcement agencies, clerks, etc., for their input as to these proposed forms.

Original Proceeding - Florida Rules of Criminal Procedure

John F. Harkness, Jr., Executive Director and Nancy F. Etheridge, Legal Editor, CLE Publications, The Florida Bar, Tallahassee, Florida; and William P. White, III, Chair, Criminal Procedure Rules Committee, Jacksonville, Florida; and William C. Vose, Member, Criminal Procedure Rules Committee, Orlando, Florida,

for Petitioner