

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA  
RULES OF CRIMINAL PROCEDURE**

**CASE NO. SC11-**

**FAST TRACK REPORT OF THE  
CRIMINAL PROCEDURE RULES COMMITTEE**

Honorable Donald E. Scaglione, Chair of the Criminal Procedure Rules Committee (the “Committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this fast track report under *Fla. R. Jud. Admin.* 2.140(e), reporting rule changes necessitated by statutory amendments passed by the 2011 Florida Legislature. The proposed amendments have been reviewed by the Board of Governors of The Florida Bar through its Executive Committee following the committee’s approval. The votes are listed in Appendix A.

Because of the emergency nature of this report, the proposals have not been published for comment.

The text of the amendments is attached to this report in both full-page format (Appendix B) and two-column format (Appendix C).

The proposed amendments are the result of Chapter 2011-38 (CS/SB 844), which was approved by the Governor on May 9, 2011, and took effect October 1, 2011 (Appendix D).

The proposed amendments, and explanations of the changes, are as follows:

**Rule 3.130(b) First Appearance; Advice to Defendant**

Rule 3.130(b) currently requires the judge at first appearance to inform the defendant of the charge(s). The 2011 legislation created section 948.06(d)1.a., Florida Statutes, which requires the first appearance judge to inform the defendant of the charge, including an alleged violation of probation or community control as a result of a new law violation. In response to this statute, proposed rule 3.130(b) states, in pertinent part:

**(b) Advice to Defendant.** At the defendant’s first appearance the judge shall immediately inform the defendant of the charge,

including an alleged violation of probation or community control and provide the defendant with a copy of the complaint. . . .

**Rule 3.130(d) First Appearance; Pretrial Release**

The legislature also created specific procedures for first appearances regarding pretrial release for offenders with an alleged violation of probation or community control as a result of a new law violation. The law specifically states, in pertinent part:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

. . . .

(d)1. At a first appearance hearing for an offender who has been arrested for violating his or her probation or community control in a material respect by committing a new violation of law the court:

. . . .

b. May order the person to be taken before the court that granted the probation or community control if the person admits the violation.

2. If the probationer or offender does not admit the violation at the first appearance hearing, the court:

a. May commit the probationer or offender or may release the person with or without bail to await further hearing, notwithstanding s. 907.041, relating to pretrial detention and release; or

b. May order the probationer or offender to be brought before the court that granted the probation or community control.

3. In determining whether to require or set the amount of bail, notwithstanding s. 907.041, relating to pretrial detention and

release, the court may consider whether the probationer or offender is more likely than not to receive a prison sanction for the violation.

This paragraph does not apply to a probationer or offender on community control who is subject to the hearing requirements under subsection (4) or paragraph (8)(e).

Chapter 2011-38, Laws of Florida. This statute is incorporated into the proposed amendments to 3.130(d).

The Criminal Procedure Rules Committee requests that the Court amend the Florida Rules of Criminal Procedure as outlined in this report.

Respectfully submitted on December 15, 2011 by

/s/ Donald E. Scaglione  
Honorable Donald E. Scaglione, Chair  
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### **CERTIFICATIONS**

I certify that these rules were read against West's *Florida Rules of Court – State* (2011).

I certify that this report was prepared in MS Word using 14 point Times New Roman font.

/s/ Krys Godwin  
Krys Godwin  
Staff Liaison  
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