

IN THE CIRCUIT COURT OF
THE EIGHTEENTH JUDICIAL
CIRCUIT OF FLORIDA

ADMINISTRATIVE ORDER NO. :
04-48
SUPERSEDES 95-27

**IN RE: DOMESTIC VIOLENCE - PROCEDURE FOR ORDERS TO SHOW CAUSE AND
PROSECUTION OF VIOLATIONS OF INJUNCTIONS FOR PROTECTION
(DOMESTIC, REPEAT, SEXUAL AND DATING VIOLENCE)**

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WHEREAS, it is the intent of the legislature as expressed in Section 741.2901, 741.2902, 741.30, and 741.31, 784.046, and 784.047 Florida Statutes, that criminal prosecution shall be the favored method of enforcing compliance with injunctions for protection against domestic violence; and

WHEREAS, the legislature acknowledges the Court's inherent right to enforce compliance with injunctions for protection against domestic violence through indirect criminal contempt; and

WHEREAS, the legislature directs the Court, the Clerk of the Circuit Court, and the State Attorney to develop procedures for the receipt and processing of violations of injunctions for protection against domestic, repeat, sexual, and dating violence, it has become necessary to review and revise existing procedures to conform with these new laws:

IT IS ORDERED:

1. Persons who obtain a domestic, repeat, sexual, or dating violence injunction or seek enforcement of a domestic, repeat, sexual, or dating violence injunction through criminal or civil contempt should be informed of the above changes in the law. The State Attorney has

agreed to develop a form to be distributed by the Clerk of the Circuit Court that informs the victim that under the new law it is the intent of the legislature that criminal prosecution is the favored method of enforcing the following injunction violations:

- a) Refusing to vacate the dwelling that the parties share;
- b) Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- c) Committing an act of domestic, repeat, sexual, or dating violence against the petitioner;
- d) Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- e) Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly unless the injunction specifically allows indirect contact through a third party.

The following additional criminal conditions apply to domestic violence injunctions only:

- f) Going to, or being within 500 feet of the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- g) Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- h) Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- i) Refusing to surrender firearms or ammunition if ordered to do so by the court.

The victim shall be advised on the said form that if an arrest has not been made, the complaint filed with the Clerk alleging any of these violations will be referred to the local law enforcement agency where the acts are alleged to have occurred so the allegations can be investigated as a crime. If an arrest has already been made, the Clerk of the Circuit Court cannot take a complaint for the above violations.

2. If an arrest has not already been made, allegations of a crime specified in Section 741.31(4), or 784.047 Florida Statutes, may be filed with the Clerk of the Circuit Court requesting that an Order to Show Cause be issued by the judge. The affidavit shall immediately be forwarded to the State Attorney (along with a copy of the injunction) and the assigned judge. The affidavit and injunction shall also be forwarded to the appropriate law enforcement agency for investigation. No later than twenty (20) days after receiving the initial report, the local law enforcement agency shall complete their investigation and forward the report to the State Attorney.
3. Upon receipt of the affidavit, the State Attorney shall determine within thirty (30) working days whether it will proceed to file criminal charges, or prepare a motion for order to show cause as to why the respondent should not be held in criminal contempt, or prepare both as alternative findings, or file notice that the case remains under investigation or is pending subject to some other action.
4. The State Attorney is ordered pursuant to Rule 3.840, Florida Rules of Criminal Procedure, to review and prosecute all crimes of indirect criminal contempt. Should the State Attorney determine that indirect criminal contempt is the appropriate method of prosecution of any alleged violation of an injunction for protection against domestic violence, it shall prepare and present an Order to Show Cause to the Court for its further review and action.
5. If the State Attorney requests an Order to Show Cause for indirect criminal contempt, the same shall be prepared and presented to the Court for consideration. On issuance by the Court, arraignment of the respondent on the Order to Show Cause shall be on the date, time, and place ordered by the judge in the Order to Show Cause.
6. The hearing on the Order to Show Cause for indirect criminal contempt shall be on the date, time, and place ordered by the Court at the arraignment when the respondent enters a plea of not guilty. It is the intent of this order that the arraignment and hearing on the order to show cause be separate proceedings so that the State and Defense will be properly prepared for trial. The court shall give due consideration to the existing

schedules of the State Attorney, Public Defender, and/or private attorney in establishing a date and time for the trial.

7. Allegations of Civil Contempt may be filed by affidavit with the Clerk of the Circuit Court requesting that an Order to Show Cause be issued by the judge. Examples of Civil Contempt include, but are not limited to the issues of child support, custody or visitation rights with the minor children, and rights of ownership of personal property. The court will review an affidavit for any allegations which are not a criminal violation under 741.31(4), or 784.047 Florida Statutes.
8. The clerk shall provide a separate affidavit form for allegations of civil contempt so that these civil issues may promptly be reviewed by the court. However, the clerk shall also provide the court with a copy of any pending affidavit for criminal contempt or arrest form for violation of injunction so that the court will be informed of any pending review of criminal allegations by the State Attorney. The clerk shall forward the affidavit for civil contempt to the assigned judge. Any subsequent hearing for civil contempt shall be scheduled by the assigned judge.
9. The State Attorney's Office shall not be involved in matters of Civil Contempt and the Public Defender's Office shall not be appointed.
10. Nothing in this Order shall prevent a judge from treating any alleged violation of Injunction for Protection against Domestic Violence as a Civil Contempt Motion, or from initiating an Order to Show Cause for indirect Criminal Contempt.

DONE AND ORDERED this 29th day of October, 2004.

JAMES E.C. PERRY
JAMES E.C. PERRY
CHIEF JUDGE

DISTRIBUTION:

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