

**THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO. 06-1
(Court Administration)**

**ADMINISTRATIVE ORDER
NO. 06-01
(Rescinding Administrative Order No.
05-06)**

**IN RE: ESTABLISHMENT OF
REPEAT OFFENDER COURT
SECTIONS**

WHEREAS, pursuant to Section 775.0841, Florida Statutes, the Legislature has determined that a substantial and disproportionate number of serious crimes are committed in Florida by a relatively small group of multiple and repeat felony offenders; and

WHEREAS, as set forth in Section 775.0841, Florida Statutes, the Legislature has concluded that priority should be given to the prosecution of career criminals, and the Legislature supports increased efforts by the State to investigate and prosecute career criminals; and

WHEREAS, local rules, under the umbrella of Article V, Section 20(c)(10) of the Florida Constitution, create divisions or subdivisions within the circuit courts, this Administrative Order, pursuant to Florida Rules of Judicial Administration 2.050 and consistent with prior rulings of the Florida Supreme Court, has the express and exclusive objective of facilitating and advancing the efficient administration of justice in the Miami-Dade Circuit Criminal Courts; and

WHEREAS, consistent with Florida Supreme Court holdings, this Order merely creates sections of the circuit court's criminal division, a matter within the broad administrative authority of this circuit's Chief Judge; and

WHEREAS, the designation of specialized sections, within the criminal division, to hear cases limited to prison releasee reoffenders and/or habitual violent felony offenders and/or violent career criminals promotes the efficiency of judicial administration;

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Eleventh Judicial Circuit of Florida under Rule 2.050 of the Florida Rules of Judicial Administration, it is hereby **ORDERED** that:

I. ESTABLISHMENT OF REPEAT OFFENDER COURT SECTIONS

Section "70" and Section "71" are hereby established as Repeat Offender Court sections of the circuit court's criminal division to hear cases limited to prison releasee reoffenders and/or habitual violent felony offenders and/or violent career criminals.

II. RANDOM ASSIGNMENT

All cases pending on or filed after January 23, 2006, in which the State Attorney files a Designation or list indicating that at least one of the defendants meets the following criteria, shall be randomly assigned to sections "70" and "71" in the criminal division of the circuit court.

III. CRITERIA FOR ASSIGNMENT

In the initial operational stages of the Repeat Offender Court section, only life or first degree felonies under the following statutory criteria, will be assigned to these sections. Cases involving any homicide, and cases where the only qualifying offense is one pursuant to Florida Statute 893, however, will not be assigned to the sections in the initial operational stages. After periodic review by the Chief Judge, other felonies in accordance with Florida Statutes may also be assigned to the sections. The Office of the State Attorney and the Office of the Public Defender will be notified one month prior to the commencement of assignment of other felonies to the sections.

A. VIOLENT CAREER CRIMINAL

Violent career criminal criteria shall be in accordance with Fla. Stat. 775.084(1)(d) and (e), as amended from time to time, and which presently provide as follows:

- (d)1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:
- a. Any forcible felony, as described in s. 776.08;
 - b. Aggravated stalking, as described in s. 784.048(3) and (4);
 - c. Aggravated child abuse, as described in s. 827.03(2);
 - d. Aggravated abuse of an elderly person or disabled adult, as described in s. 825.102(2);

- e. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in s. 800.04;
 - f. Escape, as described in s. 944.40; or
 - g. A felony violation of chapter 790 involving the use or possession of a firearm.
- 2. The defendant has been incarcerated in a state prison or a federal prison.
 - 3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1, 1995, and:
 - a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
 - b. Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
 - 4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.
 - 5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any post-conviction proceeding.
 - (e) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

B. HABITUAL VIOLENT FELONY OFFENDER

Habitual Violent Felony Offender criteria shall be in accordance with Fla. Stat. 775.084(1)(b), as may be amended from time to time, and which presently provides as follows:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:
 - a. Arson;
 - b. Sexual battery;
 - c. Robbery;
 - d. Kidnapping;
 - e. Aggravated child abuse;
 - f. Aggravated abuse of an elderly person or disabled adult;
 - g. Aggravated assault with a deadly weapon;
 - h. Murder;
 - i. Manslaughter;
 - j. Aggravated manslaughter of an elderly person or disabled adult;
 - k. Aggravated manslaughter of a child;
 - l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - m. Armed burglary;
 - n. Aggravated battery; or
 - o. Aggravated stalking.

2. The felony for which the defendant is to be sentenced was committed:
 - a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
 - b. Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.
4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any post-conviction proceeding.

C. PRISON RELEASEE REOFFENDER

Prison Releasee Reoffender criteria shall be in accordance with Fla. Stat. 775.082(9)(a), as may be amended from time to time, and which presently provides:

1. Any defendant who commits, or attempts to commit:
 - a. Treason;
 - b. Murder;
 - c. Manslaughter;
 - d. Sexual battery;
 - e. Carjacking;
 - f. Home-invasion robbery;
 - g. Robbery;

- h. Arson;
- i. Kidnapping;
- j. Aggravated assault with a deadly weapon;
- k. Aggravated battery;
- l. Aggravated stalking;
- m. Aircraft piracy;
- n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- o. Any felony that involves the use or threat of physical force or violence against an individual;
- p. Armed burglary;
- q. Burglary of a dwelling or burglary of an occupied structure; or
- r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071;

within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

- 2. Prison releasee reoffender also means any defendant who commits or attempts to commit any offense listed in sub-subparagraphs (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

IV. PENDING CASES

- A. On or before January 23, 2006, a list of all pending cases in which the State Attorney is seeking transfer for one or more of the defendants therein, based on the criteria in paragraph III above, shall be filed with the Clerk. Co-defendants that would not otherwise be eligible for the section may seek severance after the transfer, pursuant to Fla. R. Crim. P. 3.152, and in compliance with Fla. R. Crim. P. 3.220. The court will consider the fact that the co-defendant would not otherwise be eligible for the section in determining whether to grant the severance.
- B. Upon receipt of the State Attorney's list, the Clerk shall transfer and randomly assign the pending cases to section "70" or "71".

V. CASES FILED AFTER JANUARY 23, 2006

- A. In cases filed on or after January 23, 2006, the State Attorney, prior to or at the defendant's arraignment, may file a Designation indicating the State's intent to seek enhanced or mandatory sentences and its good faith belief that at least one defendant in a specified case meets the criteria set forth in paragraph III above. Upon timely receipt of the State's Designation, the Clerk shall transfer and randomly assign the case to section "70" or "71". The State Attorney may establish its good faith belief that a defendant meets the criteria by attaching to the Designation a printout of the defendant's qualifying criminal convictions. Co-defendants that would not otherwise be eligible for the section may seek severance after the transfer, pursuant to Fla. R. Crim. P. 3.152, and in compliance with Fla. R. Crim. P. 3.220. The court will consider the fact that the co-defendant would not otherwise be eligible for the section in determining whether to grant the severance.
- B. Cases filed on or after January 23, 2006 shall be transferred to section "70" or "71," subsequent to a defendant's arraignment, when the State Attorney files a Designation indicating the State's intent to seek mandatory or enhanced sentences and its good faith belief that at least one defendant in a specified case meets the criteria set forth in paragraph III. The State Attorney may establish its good faith belief that a defendant meets the criteria by attaching to the Designation a printout of the defendant's qualifying criminal convictions. If, however, the case was filed and pending in another section for more than sixty (60) days prior to the filing of the Designation, then the case shall remain in the original section.
- C. Cases shall be transferred out of section "70" and "71" and randomly assigned upon timely motion by the defense or the state when it is shown by the movant that no defendant meets the criteria set forth in Paragraph III above.

VI. MULTIPLE CASES

If a defendant in a case assigned to section "70" or "71" has one or more felony cases pending in another section, the pending case(s) shall be transferred to section "70" or "71", without the necessity of any Motion or Order.

VII. POST-JUDGMENT MATTERS

All post-judgment matters, e.g., reversals of sentence or judgment, motions for post-conviction relief, Writs of Habeas Corpus, etc., resulting from cases assigned to a section "70" or "71" judge prior to the effective date of this order shall continue to be handled by that section "70" or "71" judge.

VIII. VIOLATION OF PROBATION

If a defendant in a case assigned to section "70" or "71" has one or more violations of probation or community control cases pending in another section, the pending case(s) shall be transferred to section "70" or "71" without the necessity of any Motion or Order.

Furthermore, Administrative Order No. 05-06 is hereby rescinded in its entirety and held for naught.

This Order shall take effect as of January 23, 2006 and shall remain in effect until further order of the Court.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, this _____ day of January, 2006.

**JOSEPH P. FARINA, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA**