


## COMMITTEE MEMORANDUM

**TO:** Public Safety and Neighborhood Quality of Life Committee Members

**FROM:** Rafael A. Paz, City Attorney 

**DATE:** June 21, 2023

**SUBJECT:** Discussion Regarding The Revocation Of Pretrial Release, And Court-Ordered Pretrial Detention, For Those Defendants Violating Their Conditions Of Release Based Upon The Court Finding Probable Cause To Believe That Such Defendants Committed New Law Violation(S) While Out Of Custody On Pretrial Conditions Of Release, And To Further Discuss The Utilization Of Stay Away Orders For Those Repeat And/Or Violent Offenders Committing Criminal Offenses Within The City Of Miami Beach

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### HISTORY:

On June 22, 2022, Commissioner Steven Meiner placed a referral to the Public Safety and Neighborhood Quality of Life Committee ("PSNQLC") on the City Commission agenda to discuss the possibility of revoking pretrial release and court-ordered pretrial detention, for those defendants violating their conditions of release based upon such defendants committing new law violation(s) while out of custody on pretrial conditions of release. Commissioner Meiner further requested to discuss the utilization of stay away orders for those repeat and/or violent offenders committing criminal offenses within the City of Miami Beach.

### ANALYSIS

The City's Municipal Prosecutor is directly responsible for prosecuting those individuals charged exclusively with violating one or more of the City's criminal ordinances. However, the Miami-Dade State Attorney's Office ("SAO") remains the prosecutorial entity responsible for the prosecution of those offenders arrested for the commission of any felony, misdemeanor, and/or County ordinance violation(s) committed within the City (and within Miami-Dade County). The Miami-Dade SAO also prosecutes cases where any felony, misdemeanor, and/or County ordinance violation is charged along with any City ordinance violation(s).

Pursuant to the Florida Rules of Criminal Procedure, unless charged with a capital offense or an offense punishable by life imprisonment, every person charged with a state law violation or violation of any municipal or county ordinance, shall be entitled to pretrial release on reasonable conditions. Typically, a violation of one or more of the City's criminal ordinance(s) will result in a release on one's own recognizance ("ROR") for the Defendant. Similarly, in sole misdemeanor(s) and/or County ordinance violation(s) committed within the City, pretrial release will likely consist of the defendant being release ROR.

However, a defendant who commits a felony offense will typically be issued a standard bond amount, which can be deposited with the local jail (often through a bail bondsman) and is held

until the defendant has fulfilled all of his or her court obligations. Once the bond is posted, the defendant is released from custody while awaiting future court dates until his or her case is resolved. As such, Defendants who commit new law violation(s) while out on pretrial release will generally appear before a new judge (in order to determine probable cause for the alleged, new law violation) and/or the judge presiding under the previous case (to possibly revoke the original bond or issue more stringent conditions of release). Florida law expressly authorizes the court in its discretion, for good cause, to revoke the bail of a defendant and may commit the defendant to custody.

Importantly, the Miami-Dade SAO and the Judges of the Miami-Dade County Court have considerable discretion pertaining to the pretrial release conditions of those criminal cases involving misdemeanor and felony offenses, with the exception of capital offenses and offenses punishable by life imprisonment. In circumstances where a defendant is out on pretrial release for a violation of the City's criminal ordinance(s) and/or sole misdemeanor offenses, and that defendant commits a new law violation (of the City's criminal ordinance(s) or misdemeanor offense(s)), the Judges of the Miami-Dade County Court are unlikely to hold the defendant in custody or issue an elevated bond on either charge.

With regard to stay away orders, prior to the end of 2020, judges in the County Court of the Eleventh Judicial Circuit in and for Miami-Dade County would regularly issue standalone stay away orders to defendants in conjunction with the closure of their criminal cases. However, on November 25, 2020, the Eleventh Judicial Circuit Court, in its appellate capacity, in the case of *Eric Freshman v. The State of Florida*, held that judges have no authority to issue standalone stay away orders because there is no express statutory provision which would allow them to do so, even when pursuant to a plea agreement by the parties. As such, stay away orders are only appropriate as a condition of pretrial release, and are further limited to particular victims and location, while the case is open and active, or alternatively as a condition of probation or community control.

#### **CONCLUSION:**

The City Attorney's Office stands ready to further discuss these matters, and address any issues, at the June 21, 2023 PSNQLC meeting.

#### **Applicable Area**

Citywide

#### **Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?**

No

#### **Does this item utilize G.O. Bond Funds?**

No

#### **Strategic Connection**

Neighborhoods – Prosecution of criminal offenders.

MAF/YL/bhs