

**IN THE SECOND JUDICIAL CIRCUIT OF
FLORIDA**

OFFICE OF THE CHIEF JUDGE

**ADMINISTRATIVE ORDER 2021-06
FIRST AMENDMENT**

**IN RE: PRE-BOND MENTAL HEALTH SCREENING ASSESSMENT IN THE SECOND JUDICIAL
CIRCUIT OF FLORIDA**

WHEREAS, section 903.046(2)(c), Florida Statutes provides, in pertinent part, "When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider: . . . (c) The defendant's . . . mental condition": and

WHEREAS, rule 3.131(b)(3), Florida Rules of Criminal Procedure provides, in pertinent part, "in determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider . . . the defendant's . . . mental condition."; and

WHEREAS, section 907.041, Florida Statutes requires that defendants released under the supervision of a pretrial release program must first be subject to investigation or verification of the defendant's mental condition; and

WHEREAS, rule 3.131(b)(3), Florida Rules of Criminal Procedure requires the presiding judge during first appearance to impose conditions of release that will reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process; and

WHEREAS, [because] judges are not required by Florida law to possess mental health licensure or credentials, a mental health screening assessment by a licensed clinical or forensic psychologist may provide meaningful information and professional judgment beyond a judge's qualifications to assist in satisfying the presiding judge's responsibility to consider the defendant's mental condition and set reasonable conditions of pretrial release; and

WHEREAS, the Second Judicial Circuit of Florida (hereinafter Second Circuit), under the administrative supervision of the chief judge, has for decades provided a mental health screening assessment by a licensed clinical or forensic psychologist at the court's expense as a necessary method of obtaining reliable information to inform pretrial release decisions; and

WHEREAS, the mental health screening assessment interview and report of the licensed clinical or forensic psychologist is intended to contain only mental health information of:

- The methods used for the interview and assessment;
- Advise of rights including the right to refuse to participate in the interview;
- Description of the defendant's appearance, speech patterns and age;
- Mental health records reviewed and sources of information;
- Psychotropic medications previously prescribed;
- History of substance abuse offenses and treatment;
- Ideation of self-harm or harm to other; and
- Recommendations to the court;

and

WHEREAS, pretrial release decisions must be made timely in recognition of the detainee's liberty interest as required by constitutions, statute and rule – and the mental health screening is necessarily limited in recognition of the time limits imposed; and

WHEREAS, the mental health screening assessment by a licensed clinical or forensic psychologist is not a basis to obtain statements of the detainee related to criminal accusations or waiver of the constitutional right to silence;

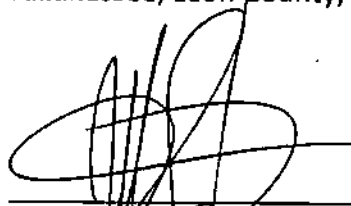
It is therefore **ORDERED** by the Chief Judge that:

- I. The Second Circuit shall, if practicable and at the court's expense, provide a timely mental health screening assessment by a licensed clinical or forensic psychologist to detainees deemed by the presiding judge at first appearance to present behavior suggestive of serious mental illness.
- II. During first appearance, counsel for the detainee or the State may request a mental health screening assessment for the purposes of pretrial release decisions.
- III. During first appearance, the presiding judge is authorized to order a mental health screening assessment at the request of counsel or on the judge's initiative.
- IV. The presiding first appearance judge is referred to Rhody v. McNeil, 344 So.3d 530 (Fla. 1st DCA 2022) ("A trial court, and the court alone, can decide whether to defer ruling on bail. . . . And the trial court must actually exercise its discretion. That is, the judge must make a reasoned decision based on personal judgment and the case's circumstances.") regarding deferring pretrial release decisions if necessary to complete the mental health screening assessment.
- V. The mental health screening assessment shall report the detainee's mental status, mental health history to the extent known, recommendations for pretrial

release conditions and whether a full competency evaluation should be ordered. The mental health screening assessment is not for the purpose of investigating any alleged offense and the professional administering the mental health screening assessment is directed not to report the facts of any alleged offense.

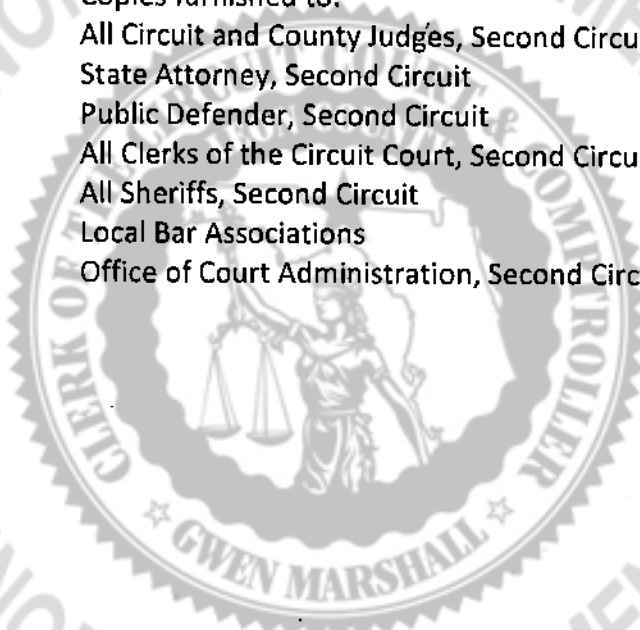
- VI. Recommendations for pretrial release conditions may include all available alternatives provided by rule or statute and shall consider release on recognizance, non-monetary release on condition of compliance with an established treatment plan, transfer to a mental health receiving facility and release to a willing, available competent third party such as a parent or other family member.
- VII. Psychologists conducting the mental health screening assessments shall be on the Second Circuit's existing list of approved and duly qualified providers.
- VIII. Nothing in this administrative order is intended to conflict with or displace applicable law or rule of court or constrain the exercise of any judge's discretion as provided by law. The sole purpose of this administrative order is to provide a resource to the judges of the Second Circuit to assist in satisfying the judge's lawful responsibilities.

DONE and ORDERED in chambers in Tallahassee, Leon County, Florida, this 10th day of February 2023.



JONATHAN SJOSTROM
Chief Judge

- Copies furnished to:
- All Circuit and County Judges, Second Circuit
 - State Attorney, Second Circuit
 - Public Defender, Second Circuit
 - All Clerks of the Circuit Court, Second Circuit
 - All Sheriffs, Second Circuit
 - Local Bar Associations
 - Office of Court Administration, Second Circuit



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