

GENERAL ORDER

November 2023

Immediately

III-16

Distribution: All Employees

Subject: **NOTICE TO APPEAR AND DIVERSION PROGRAMS**

Index as:	Adult Pre-Arrest Diversion (APAD) Alternative to Physical Arrest APAD Arrest Alternative	Juvenile Diversion Notice to Appear Second Chance Program, Juvenile
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Accreditation Standards: 1.1.3, 1.2.6, 1.2.7, 44.2.1, 74.3.1

Cross Reference: [G.O. III-01, Field Contacts](#)
[G.O. III-06, Juvenile Procedures](#)
[Administrative Order No. 2020-019](#), Pinellas County Criminal Court – Amended Assignment of Misdemeanor Notice to Appear and Ordinance Violations
[City Code, Appendix A](#)
 Florida Rule of Criminal Procedure 3.125;
[Knowles v. Iowa](#), 525 U.S. 113 (1998)
[Pinellas County Uniform Fine Schedule \(for\) Local County/City Ordinance Violations](#)
 Sections 901.15 and 316.193, Florida Statutes

Replaces: G.O. III-16, Notice to Appear (March 12, 2019)

This Order consists of the following sections:

- I. [Policy](#)
- II. [Definitions](#)
- III. [Issuing a Notice to Appear](#)
- IV. [Adult Pre-Arrest Diversion Program \(APAD\)](#)

I. POLICY

A. It is the policy of this Department to refer eligible persons to a diversion program, issue a Notice to Appear, or take other actions provided by law in lieu of arrest to persons violating Municipal and County Ordinances and misdemeanor violations of State law; however, in any case where it is believed the release of the offender would endanger the peace or security of the community or the safety of the accused or another, the person may be taken into custody.

B. Barring circumstances or statutory requirements that would support a physical arrest:

1. Adult offenders will be screened for APAD eligibility.
2. A Notice to Appear will be issued to all adults who are charged with a misdemeanor or a violation of a Municipal or County Ordinance and meet the criteria listed in this Order.
3. Misdemeanor traffic offenders should be issued a *Uniform Traffic Citation* in lieu of a physical arrest.

4. Juveniles may be eligible for the Juvenile Second Chance Program. As appropriate, in lieu of a physical arrest, Officers are encouraged to refer juveniles who meet eligibility requirements for diversion, keeping in mind the Department's policy to "use the least coercive process while considering alternatives to address both the immediate situation, as well as the long-term effects of their decision, so as to preserve public safety and protect the health, welfare and constitutional rights of the young person." (See [G.O. III-06, Juvenile Procedures](#))

C. The "search incident to arrest" exception may authorize a warrantless search of an individual subject to a custodial arrest. There is no "search incident to citation" exception to the warrant requirement. A "search incident to arrest" should not occur after a decision has been made to issue a Notice to Appear in lieu of physical arrest. (See [Knowles v. Iowa](#), 525 U.S. 113 (1998).)

D. Section 901.29, Florida Statutes, states: "Even though a notice to appear is issued, a law enforcement officer will be authorized to take a person to a medical facility for such care as appropriate."

E. A Notice to Appear should not be issued in situations which, according to current practices, would ordinarily be handled by an oral warning and release.

II. DEFINITIONS

A. Adult Pre-Arrest Diversion Program (APAD) – A diversion program that allows a person who meets certain eligibility requirements to avoid a criminal arrest record for certain offenses.

B. Juvenile Second Chance Program – A program available to minors ages nine (9) to seventeen (17) years of age, with no prior criminal history, who are charged with any non-firearm-related misdemeanor or other criminal charges enumerated under program criteria. The primary objective is to redirect youths away from formal processing, within the Juvenile Justice System while still holding them accountable for their actions and teaching them how to make better choices.

C. Notice to Appear (NTA) – A written order issued by a law enforcement Officer in lieu of physical arrest, requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.

III. ISSUING A NOTICE TO APPEAR

A. When a Notice to Appear is issued, the Officer will utilize the most recent form titled "*County Court, Pinellas County, Florida, Notice to Appear/Ordinance Violation.*"

1. The information on the form will be complete and accurate.
2. The narrative of the offense will contain sufficient facts to show probable cause.

B. A Notice to Appear cannot be issued for violations not occurring in the Officer's presence, except those misdemeanors specifically authorized by Florida Law. (See §§ 901.15 and 316.193, Florida Statutes.)

C. This Order does not affect the issuance of citations for violations of traffic laws.

D. An Officer may issue a Notice to Appear in lieu of physical arrest for misdemeanors and local ordinance violations unless:

1. The accused fails to identify themselves sufficiently or supply the required information;
2. The accused refuses to sign the Notice to Appear;
3. The Officer has reason to believe the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others;
4. The accused has no ties with the jurisdiction (community) reasonably sufficient to assure their appearance or there is substantial risk that they will refuse to respond to the Notice;
5. The Officer has any suspicion that the accused may be wanted in any jurisdiction; or

6. It appears that the accused has previously failed to respond to a Notice or a Summons or has violated the conditions of any pretrial release program.

7. The offense committed and/or accused adult is not eligible for the APAD program.

E. At the time the Notice to Appear is issued, the accused is required to sign the front of the form in the space provided. The Officer will then give the accused the defendant's copy and release them from custody. All other copies will be turned into the Records Division.

F. Officers should consult Department, Court, and Municipal Resources to determine the proper date, time, court location, and fine for a municipal ordinance violation.

1. Officers will refer to a current version of the [City Code, Appendix A](#), and the [Pinellas County Uniform Fine Schedule \(for\) Local County/City Ordinance Violations](#) for fine and court information.

2. Officers will keep themselves informed of this information and enter the proper dates, times, and court location in the proper space on the Notice to Appear.

G. A properly completed Juvenile Affidavit, when appropriate, will be prepared as described in [G.O. III-06, Juvenile Procedures](#).

IV. ADULT PRE-ARREST DIVERSION PROGRAM (APAD)

A. If the person commits an eligible offense(s) and they are personally eligible for the program, the officer will make the APAD referral and will not make an arrest or issue a Notice to Appear without an objective and articulated reason. The reason for non-referral to APAD must be documented in the arrest report and affidavit.

B. Program Criteria:

1. The following offenses are eligible for the program:
 - a. Possession of ten (10) grams or less of marijuana, or up to twenty (20) grams of marijuana if it is clearly established that the marijuana is intended solely for personal use and it does not appear ready for sale
 - b. Possession of marijuana paraphernalia
 - c. Possession of alcohol by a person under 21 years of age
 - d. Petit theft \$750 or less
 - e. Retail theft \$750 or less
 - f. Misdemeanor criminal mischief (vandalism under \$1,000)
 - g. Misdemeanor assault (not domestic/dating violence related)
 - h. Misdemeanor battery with no or very minor injuries to the victim (not domestic/dating violence related)
 - i. Disorderly conduct / disorderly intoxication
 - j. Trespass
 - k. Littering
2. A person is eligible for the program if they meet all of the following criteria:
 - a. Is 18 years of age or older at the time of the offense
 - b. Admits the offense
 - c. Accepts responsibility for their actions
 - d. Agrees to make restitution to the victim, if applicable, through the APAD office.
 - e. Does not present a risk to the safety of others
 - f. Does not have a prior misdemeanor conviction within the preceding two (2) years, a withhold of adjudication is considered a conviction
 - g. Does not have a prior felony conviction with the preceding five (5) years, a withhold of adjudication is considered a conviction
 - h. Is not a registered sex offender or predator
 - i. Has not participated in APAD:
 - 1) Within the previous ninety (90) days or
 - 2) More than three (3) times since turning 18 years of age
 - j. Has sufficient ties to the community (ex: local employment or address)

C. Criminal history information for the APAD program should be queried by the officer using the ELVIS system.

D. Multiple offenses from one incident may be referred to APAD at the same time and will be considered one referral.

E. Juvenile criminal history or diversions do not affect APAD eligibility to participate or county towards allotted adult diversions.

F. If someone commits both an eligible offense and an ineligible offense during the same incident, they will not qualify for APAD.

G. Reporting Procedures:

1. When collecting evidence or processing a scene as part of an APAD, Officers will complete an RMS report with the offense captioned as APAD.

2. The report narrative will **only** consist of information pertaining to the collection of evidence or processing the scene. The subject who is diverted will not be captioned or named in the report.

3. If an officer is notified that the subject did not qualify for APAD or did not complete the program, the officer will:
- a. Complete a full RMS report documenting the incident and forward it to the SAO, and
 - b. Change the IBR status of any evidence from destruction to evidence.

4. If an arrested subject is diverted at the jail, the officer must notify the Records Division immediately via e-mail so the report can be made confidential.

Anthony Holloway
Chief of Police