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FLORIDA SHERIFFS MANUAL



Part A

ADMINISTRATION



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(reflecting legislative changes through 2024)

I. Office of Sheriff

A. Overview of the Office

1. Constitutional and Statutory Authority

The Office of the Sheriff is established by the Florida Constitution, which sets forth a framework of state and local government. Article VIII of the Constitution relates specifically to local government, and identifies county officers, including the sheriff, the tax collector, the property appraiser, the supervisor of elections, and the clerk of circuit court. A sheriff, therefore, is a county official not affiliated with any of the branches of state government.

Although a sheriff is not a state official, the office of the sheriff is considered to be an integral part of the county, which is a political subdivision of the state. For this reason, sheriffs, as well as members of a sheriff's office, enjoy the protection of sovereign immunity which limits damages in official capacity suits. However, because the sheriff is not a state official, a sheriff is not entitled to Eleventh Amendment immunity which precludes civil rights suits against state agencies under 42 U.S.C. § 1983.

A sheriff is considered to be the chief law enforcement officer of the county. The duties of the sheriff are set forth statutorily and include executing service of process, warrants, and being "conservators of the peace in their counties." In addition to these responsibilities, a sheriff may be designated by county ordinance as the chief correctional officer. Once appointed, the sheriff is charged with operating and maintaining the county jail and appointing corrections officers for this purpose.

Aside from law enforcement or correctional responsibilities, a sheriff is also the executive officer of the courts. In fulfilling the role of executive officer, a sheriff is required to serve and execute civil and criminal process of the court and "do and perform all duties [i.e. court security duties] in and about said court."

As a constitutional officer, a sheriff has the exclusive authority to administer his or her agency. Under Florida law, a sheriff's independence concerning the purchase and procurement¹ of supplies and equipment, selection of personnel, and the hiring, firing and compensation of personnel is expressly recognized.

2. Board of County Commissioners

As an independent constitutional officer, the sheriff does not derive authority from the county or in particular the board of county commissioners. A sheriff is neither accountable generally to the board for conduct in office nor subject to the board's direction in fulfillment of his or her duties. In the event of misconduct by a sheriff, the governor is authorized to suspend the sheriff from office rather than the county commissioners.

¹ Fla. Stat. §§ 30.53.

Although a sheriff is dependent upon the county commission for funding operations, a sheriff determines how the funds should be expended. A board of county commissioners has no authority over the internal operations of the Sheriff's Office. A county commission cannot direct a sheriff to eliminate programs or equipment from the budget. Also, neither a sheriff nor his deputies are subject to the jurisdiction of the county commission or any county boards or panels which have oversight of county officers and employees.

3. Alter Ego Relationship of Deputy Sheriff

According to the law of Florida, a deputy sheriff is not an ordinary employee, but rather holds his appointment from the sheriff and acts for the sheriff "in his name and stead." Therefore, a sheriff was given broad authority in the selection and dismissal of deputies, who served "at will."

This authority, however, is not absolute. A sheriff's decision to hire, fire, or promote may be constrained by civil service acts, collective bargaining agreements, and state and federal laws which prohibit discrimination and retaliation.

4. Discrimination Laws

Under federal and Florida law, employees are protected from discrimination and retaliation. A sheriff is an employer for the purposes of federal and state civil rights laws, and personnel actions may be subject to review by the Equal Employment Opportunity Commission or the Florida Commission on Human Relations as well as state and federal courts.

5. Civil Service Acts

Civil service or career service laws may otherwise limit a sheriff's common law authority to terminate without cause. These local acts vary significantly, but typically they provide for an appeal of disciplinary action to a board whose decision may be final and binding.

6. Collective Bargaining

When the Florida Supreme Court held that deputy sheriffs could collectively bargain, sheriffs faced additional constraints. In cases in which the Public Employees Relations Commission has certified a union as the bargaining representative for a unit of deputies, correctional officers, civilian employees, or supervisors, a sheriff must negotiate terms and conditions of employment in a collective bargaining agreement.

7. Charter Counties

Under the Florida Constitution, counties may establish a charter that specifically delineates the powers and duties of county offices including the Office of Sheriff. With passage of Amendment 10 during the 2018 General Election, charter counties no longer have the option of abolishing the Office of Sheriff and transferring the responsibilities to an office created by the charter. This also

holds true for the other four constitutional officers: tax collector, supervisor of elections, property appraiser and clerk of court. All five constitutional offices must be elected and independent offices in all 67 counties, to include any charter county.

However, with the amendment to Article VIII §1(d), Florida Constitution, all counties will be electing their sheriff along with other Constitutional officers. This will be phased in for the 2024 elections in Broward and Miami-Dade counties. The amendment further ensures that a county charter cannot abolish the constitutional offices and transfer the duties to another office, nor can it change the length of the four-year term of office or provide for any other manner of selection other than by an election. In conclusion, the Office of the Sheriff is particularly distinct and unique among state and local officials. Entrusted with the sovereign power of the state, a sheriff's duties are broad and far reaching.

B. Assumption of Office

After an individual has been elected or appointed to the Office of Sheriff, he or she must qualify within thirty (30) days from the commencement of the term of office by taking the oath of office and noting acceptance of the office with the Secretary of State.² The individual is not allowed to assume the office or perform any of the duties thereof before qualification. Any attempt to do so constitutes a misdemeanor of the second degree.³ He or she would not be entitled to any compensation for any period, for which they are not qualified, since they cannot legally perform any of the duties of the office before qualification. The fact of the individual's election or appointment does not grant him/her the same protection afforded a duly qualified Sheriff in the performance of the function of the office.

1. Bond of Sheriff

When required by the board of county commissioners, a duly elected Sheriff is required by the Constitution to furnish a good and sufficient bond as required by law.⁴ The bond shall be as required by the board of county commissioners and filed with the clerk of the circuit court.⁵ Bonds for deputy sheriffs are also at the discretion of the board of county commission.⁶

If the sheriff fails to provide a bond and to qualify within thirty (30) days from the commencement of the initial term of office, the office becomes vacant and the Governor may make an appointment to fill the vacancy.⁷

² Fla. Stat. §§ 113.06, 114.01(1)(h).

³ Fla. Stat. § 839.18.

⁴ Fla. Const. art. II § 5(b).

⁵ Fla. Stat. §§ 30.01, 30.02.

⁶ Fla. Stat. § 30.09.

⁷ Fla. Stat. §§ 114.01(1)(h), 114.04.

The sheriff's bond must be executed by a surety company authorized to do business in Florida.⁸ This bond is required of each sheriff before being commissioned and assuming the office whether he/she is elected for a full term or for an unexpired term or is appointed to fill a vacancy.⁹ There is a 10-day allowance for those who are appointed to fill a vacancy. The sheriff's bond must be given for the full term of the person who is about to assume the office. Premium on the bond is payable by the General Revenue Fund of the county, although excess premiums over the base rate are payable by the sheriff.¹⁰

2. Oath of Office

Before entering upon the discharge of official duties, the sheriff is required to take and subscribe to the oath required by the Constitution, as follows:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and the Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state, and that I will well and faithfully perform the duties of Sheriff of _____ County, on which I am now about to enter. So help me God."¹¹

A notary public shall attest to the signature of the sheriff for the Oath of Office.

3. Commission and Acceptance

After a sheriff has been elected or appointed, the Secretary of State will send a notice, along with the oath of office and acceptance form. The oath of office is on the DS/DE-56 form. The oath must be executed and the sheriff must accept the office as indicated on the form. The newly elected or appointed officer must sign these items and return them to the Secretary of State within 30 days and must include the fee before the commission will be issued. The fee is personal to the person to whom the commission is issued and may not be charged as an expense of the office or paid by the county.

The commission is issued under the authority of the State of Florida, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.¹² The acceptance and oath are recorded in the Office of the Secretary of State.¹³ The commission is not complete until it has been signed, countersigned, and sealed in accordance with the requirements of the Constitution; and the record of the commission is not complete until the oath has been taken, subscribed and signed acceptance and oath filed with the Secretary of State.¹⁴

⁸ Fla. Stat. § 113.07(1).

⁹ Fla. Stat. §§ 30.01, 30.02.

¹⁰ Fla. Stat. § 113.07(3).

¹¹ Fla. Const. art. II § 5(b).

¹² Fla. Stat. § 113.051.

¹³ Fla. Stat. § 113.06.

¹⁴ *Id.*

4. Change of Office Checklist

For convenience, the Florida Sheriffs Association has developed this general list for administrative matters involved in the assumption of office. For a more comprehensive outline, including fiscal items, refer to the financial section of this manual.

Physical inventories must be conducted for the two items listed below, and receipts for these items must be signed by the incoming sheriff and acknowledged by the outgoing sheriff¹⁵:

- a. Unexecuted writs and processes; and
- b. All prisoners in custody of the sheriff, including the warrants, indictments, or causes of confinement.

New oaths of office must be issued by the incoming sheriff to all sworn personnel. Authority to arrest and conduct duties of the office are contingent upon a signed oath of office by all sworn personnel.¹⁶ For this reason, the Florida Sheriffs Association recommends that the sheriff administer the oath (i.e., swear in the deputies) and that a notary public attest to the signatures. The oaths of office may be signed prior to January 2 of the year the incoming sheriff takes office.

Loyalty Oaths are generally for nonsworn employees. This oath is specific to upholding the Florida and United States Constitutions, and is not specific to the sheriff. A copy of the signed and notarized loyalty oath needs to be in each individual's personnel file.¹⁷

If loyalty oaths are already on file for the Office of Sheriff and do not carry the sheriff's name thereon, new loyalty oaths need not be filed. If the former sheriff's name appears on the loyalty oath, then new oaths are necessary for the newly appointed/elected sheriff.

Ensure that all full time, part time, auxiliary, and special deputies have deputy cards. They should identify the deputy's authority and whether he/she is empowered to carry a weapon and/or make arrests. For example, a deputy card would read, "Special deputy to serve on election days".¹⁸

C. Termination of Office

The term of a sheriff does not come to an end until the incoming sheriff is duly qualified.¹⁹ When the incoming sheriff has qualified, the outgoing sheriff is required to turn over to him or her all unexecuted writs and processes. The new sheriff is required to acknowledge such delivery by giving a receipt for the papers. Failure of the sheriff to turn over processes makes him or her liable for damages to any party injured by reason of neglect or refusal. The new sheriff proceeds to

¹⁵ Fla. Stat. § 30.14(1)(a).

¹⁶ Fla. Stat. § 30.09(1)(a); Holloway v. State, 342 So. 2d 966 (Fla. 1977).

¹⁷ Fla. Stat. § 876.05.

¹⁸ Fla. Stat. § 30.09(4)(a).

¹⁹ Fla. Const. art. II § 5.

execute the writs or make sales and continues with the unfinished duties with the same power to act as was possessed by the retiring sheriff.²⁰

The outgoing sheriff shall also deliver to his or her successor all of the records, papers, documents, or other writings pertaining or belonging to the Office. Should the sheriff withhold from their successor or should they willfully destroy, take away, or otherwise prevent complete possession by the successor of such material, he/she will be guilty of a second-degree misdemeanor.²¹ The records of the office are public property and do not belong to the sheriff personally.

The former sheriff is required to deliver to the new sheriff all prisoners in custody.²²

In the event of a sheriff's death, the delivery of all records, papers, prisoners, and money due to the person appointed to succeed him or her, shall be made by the sheriff's executors or administrators.²³ If a successor is not qualified in due time, the judge of the circuit court shall issue an order designating the chief deputy of the deceased sheriff to fulfill the responsibilities and requirements of the Office of Sheriff.²⁴

1. Suspension and Removal

The Governor of the State is the head of the executive branch of the government, and it is his or her responsibility to see that the laws are faithfully executed. For that reason, the Governor has considerable authority over the activities of the Sheriff. He/she may, by executive order stating the grounds and filed with the Secretary of State, suspend and remove the Sheriff for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony and fill the office by appointment for a period of suspension. The act of the Governor in suspending the sheriff becomes effective immediately, but he/she cannot be removed without the consent of the Senate.²⁵ The Senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the Senate may be convened in special session by its president or by a majority of its membership.²⁶

Any offense a sheriff may have committed in connection with the discharge of his or her duties in the period in which the office is held may be prosecuted within two years from the time he/she leaves public office or employment.²⁷

²⁰ Fla. Stat. § 30.14.

²¹ Fla. Stat. § 839.14.

²² Fla. Stat. § 30.14(1)(b).

²³ Fla. Stat. § 30.14(2)(a).

²⁴ Fla. Stat. § 30.14(2)(b).

²⁵ Fla. Const. art. IV § 7.

²⁶ *Id.*

²⁷ Fla. Stat. § 775.15(12) (b).

2. Prohibited Acts Defined

Malfeasance: evil conduct or an illegal deed, the doing of which one ought not to do. It is performance of an act by the sheriff in his or her official capacity that is wholly illegal and wrongful.

Misfeasance: the performance by the sheriff, in his or her official capacity, of a legal act in an improper or illegal manner, amounting to a misdeed or trespass.

Nonfeasance: neglect or refusal by the sheriff, without sufficient excuse, to do those things which it is his or her legal duty to do.

Neglect of duty: the failure of the sheriff to perform some duty imposed upon him or her by virtue of the office or required by law. It does not matter whether the neglect is willful or through malice, ignorance, or oversight. If the neglect is grave and the frequency is such as to endanger the public welfare, it is gross neglect.

Drunkenness: such use of spirituous, vinous, or malt liquors as impairs or incapacitates the sheriff in the efficient discharge of his or her official duties.

Incompetence: the lack of any physical, moral, or intellectual quality incapacitating the sheriff to perform the duties of the office.²⁸

3. Re-instatement

If the suspended sheriff is not removed by action of the Senate, he/she resumes the duties of the office. The Senate may act by refusing to remove the sheriff, or may adjourn without taking action. The Governor may re-instate a suspended officer before the matter is submitted to the Senate, if satisfactory evidence is presented that the charge against him or her is untrue. A sheriff who has been suspended but resumes office by re-instatement, is entitled to all of the remuneration earned by the office the same as though no suspension had occurred.²⁹

4. Vacancy of Office

The Office of Sheriff may be deemed vacant upon:

- Creation of an office;
- Death of the incumbent sheriff;
- Removal of the sheriff from office;
- The resignation of the sheriff and acceptance thereof by the Governor;

²⁸ State ex rel. Hardie v. Coleman, 155 So. 129 (Fla. 1934).

²⁹ Fla. Stat. § 111.05.

- The succession of the sheriff to another office;
- The sheriff’s unexplained absence for sixty (60) consecutive days;
- The sheriff’s failure to maintain the residence required of him or her by law;
- The failure of a person elected or appointed to office to qualify for office within thirty (30) days from the commencement of the term of office;
- The refusal of the person elected or appointed to accept the office;
- The conviction of the sheriff of a felony as defined in Section 10, Article X of the State Constitution;
- Final adjudication, in this State or in any other state, of the sheriff to be mentally incompetent;
- The rendition of a final judgment of a circuit court of this State declaring void the election or appointment of the incumbent to office.³⁰

The sheriff cannot leave the state for a period of sixty (60) consecutive days or more without notifying the Governor in writing of the intention to do so.³¹ If he/she has left the State, the sheriff must return and resume his or her duties when notified by the Governor, otherwise, the office may be declared vacant and an appointment made to fill it.³²

5. Filling of Vacancy

When the office has become vacant, and the remainder of the elective term is less than 28 months, the Governor has the power to fill such vacancy by granting a Commission for the remainder of the term. If the remainder of the term is greater than 28 months, the term of the office shall end after the first Tuesday after the first Monday after the general election.³³

D. Responsibilities of the Office

The Office of Sheriff is a Constitutional Office in Florida³⁴ and it is declared legislative policy to preserve the independence of Sheriffs, as Constitutional Officials, concerning the purchase and procurement of supplies and equipment, and the selection, employment discharge, and compensation of personnel.³⁵

³⁰ Fla. Stat. § 114.01.

³¹ Fla. Stat. § 114.02.

³² *Id.*

³³ Fla. Stat. § 114.04.

³⁴ Fla. Const. art. VIII § 1(d).

³⁵ Fla. Stat. § 30.53.

While the Sheriff is a county officer, he/she represents the executive or administrative power of the State within the respective county. A sheriff's powers and duties are prescribed by statute, or necessarily implied there from.³⁶ Two primary references for sheriffs are Chapter 30 and Chapter 951, Florida Statutes. Chapter 30 specific to sheriffs, and there are many statutes that dictate laws which sheriffs are required to enforce not included or mentioned in this chapter. Chapter 951 deals with local detention facilities.

1. Powers and Duties

The Sheriff's Office must be at the county seat.³⁷ Once this statutory requirement is met there are no other residency requirements mandated by law.

The sheriff is the conservator of peace within his or her county³⁸ directed to suppress tumults, riots, and unlawful assemblies within that county "with force and a strong hand when necessary".³⁹ He/she is authorized to raise the power of the county and command any person to assist.⁴⁰ The sheriff is authorized, without warrant, to apprehend any person disturbing the peace.⁴¹ He/she is the Executive Officer of the various courts, which requires him or her to attend all terms of the Circuit and County courts and execute all process of the Supreme Court, Circuit Courts, County Courts, and Boards of County Commissioners of the State to be executed in their county.⁴² The sheriff is required to execute all orders of the Board of County Commissioners of the county.⁴³ He/she, in person or by deputy, shall attend meetings at the option of the Board of County Commissioners for which the Sheriff's Office shall receive compensation out of the county treasury, as the board deems proper.⁴⁴

The sheriff must assist district school boards and charter school governing boards complying with, or private schools in exercising option in s.1006.12. The sheriff is required to provide access to a guardian program, at a minimum, for compliance with the safe-school requirements. Private schools may participate in the guardian program but are responsible for all training and screening-related costs. Sheriffs may waive these costs, however, funds provided to the sheriff by the Department of Education (DOE) for the school guardian program may not be used to subsidize any costs that have been waived by the sheriff.

If a guardian program is to be implemented a sheriff must establish the program and provide training directly or through a contract with a nearby sheriff's office that has established a program. The volunteer or school employee appointed by the sheriff must meet the requirements of the

³⁶ Fla. Const. art. II § 5(c).

³⁷ Fla. Stat. § 30.10.

³⁸ Fla. Stat. § 30.15(1)(e).

³⁹ Fla. Stat. § 30.15(1)(f).

⁴⁰ Fla. Stat. § 30.15(1)(h).

⁴¹ Fla. Stat. § 30.15(1)(g).

⁴² Fla. Stat. § 30.15(1)(a), (c).

⁴³ Fla. Stat. § 30.15(1)(d).

⁴⁴ Fla. Stat. § 30.15(2).

statute and does not have the authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident.⁴⁵

Following the passage of HB 1473 (2024), when the sheriff issues a school guardian certificate, the sheriff must report to the FDLE within 30 days of certification the name, date of birth, and certification date of the school guardian.^{46/47} Each sheriff must also report to the FDLE, on a quarterly basis, the schedule for upcoming guardian trainings, including the dates of the training, the training locations, contact person for registration, and class capacity.⁴⁸ Failure of a sheriff to comply with the reporting requirements will prohibit them from receiving reimbursements from the Florida Department of Education (DOE) for costs associated with the school guardian program.⁴⁹

In addition, the sheriff is required to “perform such other duties as may be imposed...by law.”⁵⁰ The following is a listing of statutes imposing such duties:

Florida Statutory Authority	Provisions
Fla. Stat. § 14.022(3)(b)	Governor, pursuant to emergency proclamation, order Sheriffs to take action
Fla. Stat. Ch. 23	Mutual Aid Agreements
Fla. Stat. § 25.262	Duty to execute process for Supreme Court when deputized by Marshal
Fla. Stat. § 26.49	Duty to act as executive officer of circuit court
Fla. Stat. Ch. 30	Sheriff’s Duties Generally
Fla. Stat. § 34.07	Duty to act as executive officer of county court
Fla. Stat. § 39.201	Duty to report abuse, neglect of children
Fla. Stat. § 40.013(2)	Disqualification from jury service
Fla. Stat. § 40.26	Duty to provide meals and lodging for jurors
Fla. Stat. Ch. 48	Service of Process

⁴⁵ Fla. Stat. § 30.15(1)(k).

⁴⁶ Fla. Stat. § 30.15(1)(k)3a(I), (II).

⁴⁷ *Id.*

⁴⁸ Fla. Stat. § 30.15(1)(k)3d.

⁴⁹ Fla. Stat. § 30.15(1)(k)3e.

⁴⁹ Fla. Stat. § 30.15(1)(j).

Florida Statutory Authority	Provisions
Fla. Stat. § 50.011	Legal notice publication requirements
Fla. Stat. Ch. 55	Judgments
Fla. Stat. Ch. 56	Execution of final process (civil)
Fla. Stat. § 57.081	Duty to serve indigents without charge
Fla. Stat. § 61.18	Duties with respect to cash bonds for alimony/ child support
Fla. Stat. Ch. 76	Attachment
Fla. Stat. Ch. 77	Garnishment
Fla. Stat. Ch. 78	Replevin
Fla. Stat. Ch. 79	Habeas corpus
Fla. Stat. Ch. 83	Landlord Tenant Act
Fla. Stat. § 99.012	Resign to run law
Fla. Stat. § 100.021	Duty to post notice of general election where necessary
Fla. Stat. § 100.041	Duty to submit to election every four years
Fla. Stat. § 102.031	Poll deputies
Fla. Stat. § 102.091	Elections: Duty to watch for violations
Fla. Stat. Ch. 111	Public officers; General provisions
Fla. Stat. §§ 112.011-.218	Conditions of employment; retirement; travel expenses
Fla. Stat. §§ 112.311-.326	Public officers' Code of Ethics
Fla. Stat. § 112.3142	Ethics training for specified constitutional officers.
Fla. Stat. §§ 112.531-.535	Law Enforcement and Correctional Officers (Bill of Rights)
Fla. Stat. § 112.533	Duty to provide system for processing complaints against officers

Florida Statutory Authority	Provisions
Fla. Stat. Ch. 113	Commissions of officers
Fla. Stat. Ch. 114	Vacating office
Fla. Stat. Ch. 115	Leave of absence
Fla. Stat. § 116.21	Unclaimed moneys; limitation
Fla. Stat. Ch. 119	Public Records Law
Fla. Stat. §§ 121.051-.052	Optional and compulsory participation in Florida Retirement System
Fla. Stat. §§ 122.08; 122.34	Special provisions for certain Sheriffs in state and county retirement system
Fla. Stat. Ch. 125	County government
Fla. Stat. § 129.03	Duty to prepare budget
Fla. Stat. Ch. 145	Compensation
Fla. Stat. § 198.20	Duty to execute process for collection of estate taxes
Fla. Stat. § 199.262	Duty to execute process for collection of intangible personal property taxes
Fla. Stat. § 206.075	Duty to execute process for collection of motor and fuel taxes
Fla. Stat. § 207.014	Duty to execute process for collection of commercial vehicle taxes
Fla. Stat. §§ 210.14; 210.18(7)	Duty to execute process for collection of cigarette taxes; report seizures
Fla. Stat. § 212.15	Duty to execute process for collection of sales and use taxes
Fla. Stat. Ch. 218	Uniform accounting
Fla. Stat. Ch. 219	Handling county public money
Fla. Stat. Ch. 250	Military affairs
Fla. Stat. §§ 250.36-.37	Duty to serve process for courts-marshal
Fla. Stat. Ch. 252	Emergency management

Florida Statutory Authority	Provisions
Fla. Stat. § 252.47	Duty to enforce emergency orders and rules
Fla. Stat. Ch. 274	County personal tangible property
Fla. Stat. Ch. 286	Government in the Sunshine
Fla. Stat. § 316.640	Duty to enforce traffic laws of the state
Fla. Stat. Ch. 318	Traffic infractions
Fla. Stat. Ch. 322	Drivers' License Law
Fla. Stat. § 384.281	Confining persons with sexually transmitted diseases
Fla. Stat. Ch. 392	Tuberculosis control
Fla. Stat. § 394.463	Duties with respect to custody and delivery for involuntary psychological exam
Fla. Stat. Ch. 397	Hal S. Marchman Act – Substance Abuse and Protective Custody
Fla. Stat. § 406.14	Duty to cooperate with medical examiner in the disposition of dead bodies
Fla. Stat. § 415.1034	Duty to report abuse, neglect of aged persons
Fla. Stat. Ch. 447	Collective bargaining (public employees)
Fla. Stat. § 454.18	Disqualification from the practice of law
Fla. Stat. Ch. 496	Solicitation of funds
Fla. Stat. Ch. 539	Pawnbrokers
Fla. Stat. § 549.02-.03	Duties with respect to auto race meets
Fla. Stat. § 552.113	Report theft or illegal possession of explosive
Fla. Stat. § 561.25	Disqualification for engaging in beverage business
Fla. Stat. Ch. 562	Beverage law
Fla. Stat. § 568.12	Duty to record liquor seizures

Florida Statutory Authority	Provisions
Fla. Stat. § 588.16	Duty to impound stray livestock
Fla. Stat. § 648.44(2)(d)	Disqualification from bail bond business
Fla. Stat. Ch. 705	Disposition of lost and abandoned property
Fla. Stat. § 715.07	Towing vehicles
Fla. Stat. § 723.062	Mobile home possession writs
Fla. Stat. Ch. 741	Domestic violence; injunctions; enforcement
Fla. Stat. Ch. 775	Sexual predator notification
Fla. Stat. Ch. 784	Repeat violence injunctions
Fla. Stat. Ch. 790	Weapons and firearms
Fla. Stat. Ch. 791	Sale of fireworks
Fla. Stat. § 828.05	Duty to destroy injured, suffering animal
Fla. Stat. Ch. 838	Bribery; Misuse of office
Fla. Stat. Ch. 839	Offenses by public officers
Fla. Stat. § 870.043	Declaration of emergency
Fla. Stat. Ch. 901	Arrests
Fla. Stat. § 905.38	Duty to summon members of statewide grand jury
Fla. Stat. Ch. 914	Witnesses
Fla. Stat. §§ 932.701-.706	Contraband forfeiture act
Fla. Stat. Ch. 933	Search and inspection warrants
Fla. Stat. § 937.021	Duty to communicate missing child reports
Fla. Stat. § 939.09	Duty to certify mileage bills

Florida Statutory Authority	Provisions
Fla. Stat. Ch. 941	Corrections: Interstate Cooperation
Fla. Stat. Ch. 942	Interstate Extradition of Witnesses
Fla. Stat. § 943.09 et seq.	Criminal Justice Standards and Training
Fla. Stat. Ch. 948	Probation
Fla. Stat. Ch. 950	Jails and jailers
Fla. Stat. Ch. 951	County and municipal prisoners
Fla. Stat. Ch. 960	Victim Assistance
Fla. Stat. Ch. 985	Juvenile Justice; Interstate compact on juveniles
Fla. Stat. § 985.11	Fingerprinting and photographing of juveniles

2. Restrictions and Limitations

In addition to prescribing specific duties and obligations, various statutes also prohibit the sheriff or deputies from doing certain things, which are otherwise lawful:

Practice of law: No sheriff or full-time deputy may practice law in this State. If an attorney is elected to the Office of Sheriff, or appointed as a deputy, he/she surrenders the right to practice so long as he/she holds such office. However, this section does not apply in a case where such person is representing the office or agency in the course of his or her duties as an attorney.⁵¹

Engaging in Sale of Alcohol: Sheriffs and deputies are not permitted to engage in the sale of alcoholic beverages under the beverage law; or be employed, directly or indirectly, in connection with the operation of any business licensed under the beverage law; or be permitted to own stock or interest in any firm, partnership, or corporation dealing wholly or partly in the sale or distribution of alcoholic beverages. However, off-duty officers may be employed by such establishments as entertainers or security staff with the sheriff's written approval. Also, officers may work for establishments, which sell beer and wine for off-premises consumption for example, grocery stores. Again, the sheriff's written approval is required.⁵²

The sheriff is cautioned, with reference to traffic laws of the State, that his or her official position does not grant the right to disregard traffic observances in all cases. Only in the case of an emergency is the sheriff privileged to disregard traffic laws, and even in that instance, he or she

⁵¹ Fla. Stat. § 454.18.

⁵² Fla. Stat. § 561.25.

must use due precaution.⁵³

A sheriff may operate or administer a program to contract for the employment of sheriff's deputies, during off-duty hours, for public or private security services. Any such public or private employer of a deputy sheriff shall be responsible for the acts or omissions of the deputy sheriff while performing services for that employer off duty, including workers' compensation benefits. However, for the workers' compensation purposes of this section, a deputy sheriff so employed who sustains an injury while enforcing the criminal, traffic, or penal laws of this state shall be regarded as working on duty.⁵⁴ Deputy sheriffs employed during off-duty hours pursuant to the provisions of this section are exempt from the licensing requirements of Chapter 493, Florida Statutes, for watchmen, guards, patrol services, or private investigators.⁵⁵

3. Anti-Nepotism

A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which he/she is serving or over which he/she exercises control over any individual who is a relative of that public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.⁵⁶

A sheriff is not required to terminate the employment of a relative upon taking office. A sheriff cannot promote or advance a relative's position. A sheriff could violate the anti-nepotism law, even if the relative was selected by an objective promotional process which ranked the applicants, upon approving the promotion. Furthermore, an assignment which draws extra compensation, such as detective or even field training officer, could be considered an advancement even though it is not a promotion in rank.

A relative for purposes of this section means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.⁵⁷ The Commission on Ethics has the authority under Chapter 112, Florida Statutes, to investigate a violation of the anti-nepotism provisions of law.

Individuals who are related to the sheriff or his/her personnel may work in a volunteer capacity for the sheriff's office without violating Florida law against nepotism. Current prohibitions do not apply to persons serving in a volunteer capacity and who are providing law enforcement, emergency medical, or firefighting services. A relative of the sheriff or his/her personnel can work as a volunteer in the sheriff's office and may receive, without losing their volunteer status,

⁵³ Fla. Stat. § 316.072(4), (5).

⁵⁴ Fla. Stat. § 30.2905(2)(a).

⁵⁵ Fla. Stat. § 30.2905(3).

⁵⁶ Fla. Stat. § 112.3135(2)(a).

⁵⁷ Fla. Stat. § 112.3135(1)(d).

reimbursement for training related to their volunteer service.⁵⁸

A volunteer could also receive reimbursement for incidental expenses that are related to the service they are providing.⁵⁹ However, if a relative is to be compensated for his or her services, such an auxiliary or reserve officer who would be paid by a secondary employer, appointment to the auxiliary or reserve position may violate the anti-nepotism law.

4. Annual Ethics Training

Sheriffs and other constitutional officers are required to fulfill an annual requirement of four hours of ethics training. This requirement must be met by December 31 each year. For sheriffs assuming office on or before March 31, he or she must complete the annual training on or before December 31 of the year in which the term began. After March 31, the sheriff is not required to complete the ethics training for the calendar year in which he or she assumes office. The training must include, at a minimum, information regarding the Sunshine Amendment (Article II, Section 8, Florida Constitution), the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes), public records laws (Chapter 119, F.S.), and open meetings laws. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.⁶⁰

Completion of the ethics must be recorded on the statement of financial interest each year. Failure to meet the training requirements and timely file the financial disclosure statement may result in a complaint to the Ethics Commission. Financial disclosure forms are required to be filed electronically. The Florida Sheriffs Association provides this training at no cost online and is available at any time to any sheriff. Additionally, more information on ethics can be found in the Code of Ethics, which is Section II of this Manual.

E. Seeking Office

1. Campaigns

Sheriffs are generally elected for terms of four years.⁶¹ When provided by county charter or special law approved by vote of the electors of the county, the sheriff may be chosen in accordance with such county charter or special law.⁶² All counties except Dade County (under Home Rule Charter) currently elect their sheriff. A sheriff's term begins the first Tuesday after the first Monday in January after the election.⁶³ Pursuant to the amendment to Article VIII §1(d), Florida Constitution, Miami-Dade and Broward counties will begin electing their sheriffs in 2024.

⁵⁸ Fla. Stat. § 112.3135(2)(a).

⁵⁹ Fla. Stat. § 112.3135(2)(a).

⁶⁰ Fla. Stat. § 112.3142.

⁶¹ Fla. Const. art. VIII, § 1(d).

⁶² *Id.*

⁶³ Fla. Stat. § 100.041(1).

A person seeking election to the Office of Sheriff must subscribe to the oath, in writing, required of every candidate for office, which includes a statement that the candidate is a qualified elector of the state, thus necessarily implying that he or she has registered to vote.⁶⁴ This means that he or she must be a citizen at least 18 years of age and a permanent resident of Florida and the county in which he or she is registered.⁶⁵ Conviction of a felony in any state, or under federal law, disqualifies a person as an elector unless the person has his or her civil rights restored.⁶⁶ Lastly, it should be noted that suspension and removal of an officer does not prevent him or her from running for re-election.⁶⁷

2. Candidates

“Candidate” means any person to whom any one or more of the following applies:

- Any person who seeks to qualify for nomination or election by means of the petition process.
- Any person who seeks to qualify for election as a write-in candidate.
- Any person who receives contributions, makes expenditures, or gives his or her consent for any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination, election or retention to public office.
- Any person who appoints a treasurer and designates a primary depository.
- Any person who files qualification papers and subscribes to a candidate’s oath as required by law.⁶⁸

3. Oath of Office

Each candidate shall take and subscribe to an oath or affirmation in writing.⁶⁹ A printed copy of the oath or affirmation shall be furnished to the candidate by the officer before whom such candidate seeks to qualify (for sheriffs, the Supervisor of Elections) and shall be substantially in the following form:

State of Florida
County of _____

Before me, an officer authorized to administer oaths, personally appeared (print name as you wish it to appear on the ballot) to me well known, who, being sworn, says that he or she is a candidate for the office of _____, that he or she is a

⁶⁴ Fla. Stat. § 99.021(1)(a)1.

⁶⁵ *Id.* Fla. Stat. § 97.041(1)(a).

⁶⁶ Fla. Const. art. VI, § 4.

⁶⁷ In Re: Advisory Opinion to the Governor, 12 So. 114 (Fla. 1893).

⁶⁸ Fla. Stat. § 97.021(7).

⁶⁹ Fla. Stat. § 99.021(1)(a).

qualified elector of _____ County, Florida; that he or she is qualified under the Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes; and that he or she will support the Constitution of the United States and the Constitution of the State of Florida.

Signature of Candidate

Address of legal residence

Sworn to and subscribed before me this _____ day of _____, _____ (year),
at _____ County, Florida.

Signature and title of officer administering oath⁷⁰

In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

- The party of which the person is a member.
- That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.
- That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.⁷¹

4. Fees

Each person seeking to qualify for nomination or election to any office shall file his/her qualification papers with, and pay the qualification fees, party assessment, if any has been levied, and the election assessment with the Supervisor of Elections of the county. Individuals may also qualify by the alternative method with the Supervisor of Elections, at any time after noon of the first day for qualifying, which shall be the 71st day prior to the primary, but not later than noon of the 67th

⁷⁰ *Id.*

⁷¹ Fla. Stat. § 99.021(1)(b).

day prior to the primary.⁷²

Pursuant to Section 99.061(7)(a), Florida Statutes, in order for a candidate to be qualified, the following items must be received by the Supervisor of Elections by the end of the qualifying period:

- a. The candidate's oath, which must contain the name of the candidate as it will appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, duly acknowledged.
- b. The loyalty oath required by law signed by the candidate and duly acknowledged.
- c. If the office sought is partisan, the written statement of the political party affiliation required by law.
- d. The completed form for the appointment of a campaign treasurer depository.
- e. The full and public disclosure or statement of financial interests required by candidates qualifying for constitutional office.
- f. A properly executed check drawn upon the candidate's campaign account in an amount not less than the fee required in Section 99.092 or, in lieu thereof, as applicable, the copy of the notice of obtaining ballot position pursuant to the petition process or the undue burden oath. If a candidate's check is returned by the bank for any reason, the filing officer must immediately notify the candidate, and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee shall disqualify the candidate. Additionally, each person seeking to qualify for nomination or election to any office, except a person seeking to qualify by petition or write-in, shall pay a qualifying fee, which consists of a filing fee and election assessment, to the officer with whom he or she qualifies. Any party assessment levied, must attach the original or signed duplicate of the receipt for his/her party assessment or pay it at the time of filing other qualifying papers.⁷³ The amount of the filing fee is three percent (3%) of the annual salary of the office. The amount of the election assessment is one percent (1%) of the annual salary of the office sought. The election assessment is deposited into the Elections Commission Trust Fund. The amount of the party assessment is two percent (2%) of the annual salary.⁷⁴ No qualifying fees shall be returned to the candidate unless he or she withdraws his/her candidacy before the last date to qualify.⁷⁵

⁷² Fla. Stat. § 99.061(2).

⁷³ Fla. Stat. § 99.092(1).

⁷⁴ *Id.*

⁷⁵ *Id.*

Municipal candidates are required to pay an election assessment fee in the amount of one percent (1%) of the annual salary of the office sought. The entire amount collected is forwarded to the Department of State for deposit into the Elections Commission Trust Fund. An exemption is provided if the election assessment is an undue burden on the candidate.⁷⁶

- g. A person who is a subordinate officer, deputy sheriff, or police officer must resign effective upon qualifying if the person is seeking to qualify for a public office that is currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.⁷⁷ A deputy sheriff or officer who is not required to resign under Florida law to campaign for office under the above scenario does not have to resign or take a leave of absence. However, under the amended federal Hatch Act, a resignation may be required if the candidate's salary is paid completely with federal funds, and the candidate is campaigning for partisan political office.⁷⁸

Additionally, any public officer, i.e. mayor, sheriff, or other elected or appointed public official who qualifies for state or federal public office must irrevocably resign from the office he or she presently holds if the terms, or any part thereof, run concurrently with each other. This resignation must be submitted at least 10 days prior to qualifying and it must be effective as of the date the officer would take office, if elected, or the date the officer's successor is required to take office, the earlier of the two.⁷⁹

5. Election Laws

After having qualified as a candidate for the Office of Sheriff, a candidate must be careful to observe the laws regulating elections. The name of a candidate may not be printed on the ballot for any election if the candidate or their campaign treasurer is convicted of accepting an illegal contribution, failing to report a contribution, or making an expenditure in violation of Section 106.19, Florida Statutes.⁸⁰ The nomination or election to office of any person who willfully violates such provision may be declared void by a court of competent jurisdiction.

6. Campaign Contributions and Expenditures Generally

The Election Code contained in Chapters 99, 105, and 106, Florida Statutes, contains detailed provisions for the regulation of campaign contributions to, and expenditures by or on behalf of, candidates for office. These provisions are applicable to candidates for election or nomination to

⁷⁶ Fla. Stat. § 99.093.

⁷⁷ Fla. Stat. § 99.012 (5); Division of Elections Opinion DE 99-01.

⁷⁸ 5 U.S.C. § 1502(a)(3) (2012).

⁷⁹ Fla. Stat. § 99.012(3),(4).

⁸⁰ Fla. Stat. §§ 106.18, 106.19.

political office such as write-in candidates who have not been nominated by a recognized political party.

The Department of State, Division of Election publishes the Candidate and Campaign Treasurer Handbook that includes all up to date laws, and can be found:

<http://dos.myflorida.com/elections/forms-publications/publications/>.

7. Campaign Treasurers and Depositories

Each person who seeks to qualify for nomination, election to, or retention in office, shall appoint a campaign treasurer and designate a primary campaign depository prior to qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process must appoint a treasurer and designate a primary depository on or before the date he or she obtains the petitions.

Candidates cannot accept any contribution or make any expenditure with a view to bringing about their nomination, election, or retention in public office, or authorize another to accept contributions or make expenditures on his or her behalf, unless the candidate has appointed a campaign treasurer and designated a primary campaign depository. He or she must file the name and address of the campaign treasurer with the Supervisor of Elections in the county of residence. A candidate for the Office of Sheriff may not appoint more than three deputy campaign treasurers.⁸¹

Every candidate must at the same time he or she designates a campaign depository and appoints a treasurer also designate the office for which he or she is a candidate. A candidate may at a later date change the designation of the office for which he or she is a candidate and use the campaign funds for that candidacy. Within 10 days of filing the appointment of campaign treasurer and designation of campaign depository, each candidate must file a statement declaring they have read and understand the requirements of Chapter 106, Florida Statutes.⁸²

Each candidate may also designate one secondary depository. Secondary depositories shall be for the sole purpose of depositing contributions and forwarding the deposits to the primary campaign depository. Candidates may establish and utilize a secondary interest-bearing account. Any bank authorized to transact business in this State may be designated as a campaign depository. The candidate should file the name and address of each primary and secondary depository at the same time that he or she files the name of his/her campaign treasurer.⁸³ The campaign treasurer or a deputy campaign treasurer may deposit any funds which are in the primary campaign depository and which are not currently needed for expenses into a secondary interest-bearing account in any bank, savings and loan association, or credit union authorized to transact business in this State. The secondary interest-bearing account shall be designated “(name of candidate or committee) separate interest campaign account.”

⁸¹ Fla. Stat. § 106.021(1)(a).

⁸² Fla. Stat. § 106.023.

⁸³ Fla. Stat. § 106.021(1)(b).

The campaign treasurer or deputy campaign treasurer may also purchase a certificate of deposit with such unneeded funds in such bank or savings and loan association. The secondary campaign account or certificate of deposit shall be separate from any personal or other account or certificate of deposit. Any withdrawal of the principal or earned interest or any part thereof shall only be made from the campaign secondary account or certificate of deposit for the purpose of transferring funds to the primary account and shall be reported as a contribution.⁸⁴

Before appointment may be effective, treasurers must accept appointment in writing and file the acceptance with the Supervisor of Elections. An individual may be appointed and serve as campaign treasurer of a candidate and a political committee or two or more candidates and political committee. A candidate may appoint himself or herself as campaign treasurer.⁸⁵

A candidate may remove their campaign treasurer or any deputy treasurer. In case of the death, resignation, or removal of a campaign treasurer, the candidate must appoint a successor and certify the name and address of the successor in the same manner as the original appointment. No resignation is effective until it has been submitted to the candidate in writing and a copy has been filed with the Supervisor of Elections. No treasurer or deputy treasurer shall be deemed removed by a candidate or political committee until written notice of such removal has been given to such treasurer or deputy treasurer and has been filed with the Supervisor of Elections.⁸⁶

Except for independent expenditures, all contributions or expenditures, including contributions or expenditures of a candidate personally or of his or her family, made or received either directly or indirectly in furtherance of the candidacy, must go through the duly appointed campaign treasurer of the candidate or political committee except as provided in Section 106.021(3)(a) through (3)(d).⁸⁷ A deputy campaign treasurer may exercise any of the powers and duties of a campaign treasurer when specifically authorized to do so by the campaign treasurer and the candidate.⁸⁸

All funds received by the campaign treasurer of any candidate or political committee must be deposited in the campaign depository by the end of the fifth (5th) business day following receipt. The account must be designated "Campaign Account of (Name of Candidate.)" Deposits must be accompanied by a bank deposit slip containing the name of each contributor and the amount contributed by each. If a contribution is deposited in a secondary campaign depository, the depository must forward the full amount of the deposit, along with a copy of the deposit slip accompanying the deposit, to the primary campaign depository prior to the end of the first business day following the deposit.⁸⁹

⁸⁴ *Id.*

⁸⁵ Fla. Stat. § 106.021(1)(c).

⁸⁶ Fla. Stat. § 106.021(2).

⁸⁷ Fla. Stat. § 106.021(3).

⁸⁸ Fla. Stat. § 106.021(4).

⁸⁹ Fla. Stat. § 106.05.

8. Reports

Section 106.07, Florida Statutes, requires that campaign treasurers file with the Supervisor of Elections regular reports of all contributions received and all expenditures made by or on behalf of the candidate. Such reports must be filed on the 10th day, excluding Saturday, Sunday, and legal holidays, following the end of each calendar order from the date of the campaign treasurer's appointment. Subsection (a) sets forth the reporting dates based on the last day of qualification.

Chapter 106, Florida Statutes, provides that any candidate failing to file a report on the designated due date shall be subject to a fine which must be paid from the personal funds of the candidate. The fine shall be \$50 per day for the first three days and \$500 per day thereafter not to exceed 25% of the total receipts or expenditures, whichever is greater. If the report immediately precedes a special primary election, special election, primary election, or general election the fine is the same except that the fine starts at \$500 per day. The amount of the fine is figured by the filing officer and is based on the following: (1) When the report is actually received by such officer; (2) When the report is postmarked; (3) When the certificate of mailing is dated; (4) When the receipt from an established courier company is dated; and (5) When the electronic receipt issued pursuant to s. 106.00705 or other electronic filing system is dated.⁹⁰ Fines paid by county office candidates will be deposited into the county's general revenues.⁹¹

Reports of independent expenditures of \$100 or more must contain the name, address and occupation, if any, of each person to whom or from whom the expenditure is made; the amount, date, and purpose of each such expenditure; a description of the goods or services obtained by each such expenditure; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.⁹² Any individual, group, political party, organization, or committee making an independent expenditure in excess of \$100 on behalf of or in opposition to a candidate must provide notice in writing of the expenditure, as well as the amount and a detailed description of the media type or use of the expenditure. Such advertisements must prominently state "Paid political advertisement paid for by (name and address of person paying for advertisement) independently of any (candidate or committee)" and shall contain the name and address of the person paying for the political advertisement.⁹³ However, notice of an obligation of an expenditure must be made at least five days prior to an election.⁹⁴

Multiple uniform contributions from the same person aggregating no more than \$250 per calendar year may be reported in an aggregate amount listing the number of contributors together with the amount contributed by each and the total amount contributed during the reporting period. The identity of each person making such uniform contribution must be reported consistent with the same requirements provided in Section 106.07(4)(a).⁹⁵

⁹⁰ Fla. Stat. § 106.07(8)(b).

⁹¹ Fla. Stat. § 106.07(8)(a).

⁹² Fla. Stat. § 106.07(4).

⁹³ Fla. Stat. § 106.143(5)(a)-(b).

⁹⁴ Fla. Stat. § 106.07(1)(a)2.

⁹⁵ Fla. Stat. § 106.07(4)(b).

Except for political parties or affiliated party committees, no person or political committee may, in any election, make contributions to any sheriff's race in excess of \$1,000.00.⁹⁶ A candidate cannot accept contributions from national, state, and county executive committees, including subordinate committees, of a political party of over \$50,000 in the aggregate.⁹⁷ The limit applies to each election. The first primary, second primary, and general election are deemed separate elections so long as the candidate is not an unopposed candidate.⁹⁸ Contributions received on the day of that election or less than five (5) days prior to the election, by a candidate with opposition in an election, or the campaign treasurer, or a deputy treasurer of such a candidate, must be returned to the person or committee contributing it.⁹⁹ Any contribution received after the date at which the candidate withdraws, is defeated, becomes unopposed, or is elected to office, shall be returned to the person or committee contributing it and shall not be used or expended by or on behalf of the candidate.¹⁰⁰ A person elected to office must report, to the Division of Elections, all loans, exceeding \$500 in value, used for campaign purposes in the 12 months preceding his or her election to office. The report must be made, in the manner prescribed by the Department of State, within 10 days after being elected to office.¹⁰¹

Supporters may not make contributions through or in the name of another.¹⁰² Anonymous contributions should not be accepted, however if a candidate cannot return the contribution, the candidate should list the contribution in their report and place the amount in their campaign account, not use the contribution and dispose of it at the end of the election in a method authorized by law like other unused contributions.

Solicitations from, and contributions by, candidates, political committees, and party executive committees to any religious, charitable, civic, or other causes or organizations established primarily for the public good are expressly prohibited. However, the law permits a candidate to continue regular personal contributions to religious, civic, or charitable groups of which he or she is a member or to which he or she has been a regular contributor for more than six months, or to make a gift of money in lieu of flowers in memory of a deceased person. A candidate may purchase, with campaign funds, tickets, admission to events, or advertisements from religious, civic, political party, or charitable groups.¹⁰³ Candidates are allowed to continue membership in a political party from personal or business funds.

Knowing and willful violations of these provisions are punishable as a misdemeanor of the first degree.¹⁰⁴ If any corporation, partnership, or other business entity or any political committee, committee of continuous existence, or electioneering communications organization is convicted

⁹⁶ Fla. Stat. § 106.08(1)(a)(3).

⁹⁷ Fla. Stat. § 106.08(2)(a).

⁹⁸ Fla. Stat. § 106.08(1)(c).

⁹⁹ Fla. Stat. § 106.08(3)(a).

¹⁰⁰ Fla. Stat. § 106.08(3)(b).

¹⁰¹ Fla. Stat. § 106.075(1).

¹⁰² Fla. Stat. § 106.08(5).

¹⁰³ Fla. Stat. § 106.08(5)(b)-(c).

¹⁰⁴ Fla. Stat. § 106.08(7)(a).

of knowingly and willfully violating this section, it shall be fined not less than \$1,000 and not more than \$10,000. If it is a domestic entity, it may be ordered dissolved; if it is a foreign or nonresident business entity, its rights to do business in this State may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity, or of a political committee, committee of continuous existence, or electioneering communications organization, or certain tax exempt organizations who aids, advises, or participates in a violation of these provisions is guilty of a misdemeanor of the first degree.¹⁰⁵

However, Section 106.08(7)(b), Florida Statutes, states that any person who knowingly and willingly makes two or more contributions in violation of sub-section (1) or subsection (5) commits a felony of the third degree. If an organization violates this paragraph, it shall be fined not less than \$10,000 and not more than \$50,000. If a domestic entity is the offender, it may be dissolved and a foreign entity may forfeit its right to do business in Florida. Any person who aids such an offending entity commits a felony of the third degree.

In addition to other punishment, a violator must pay to the State a sum equal to twice the amount contributed in violation of this section to the State for deposit in the General Revenue Fund.¹⁰⁶

9. Prohibitions

- No person shall make or accept an aggregate cash contribution or contribution by means of a cashier's check in excess of \$50 per election.¹⁰⁷
- No candidate may pay money or give anything of value for the privilege of speaking at a political meeting in the furtherance of their candidacy, nor shall anyone speaking for such a person pay money or give anything of value for such privilege.¹⁰⁸
- No candidate, in the furtherance of his or her candidacy for nomination or election to public office in any election, shall use any state-owned aircraft or motor vehicle, solely for the purpose of furthering his or her candidacy. However, in the event a candidate uses any state-owned aircraft or motor vehicle to conduct official state business, and while on such trip performs any function in the furtherance of his or her candidacy for nomination or election to public office in any election, the candidate shall prorate the expenses incurred and reimburse the appropriate agency for the expenses incurred for the use of such state aircraft or motor vehicle while conducting business in the furtherance of his or her candidacy. The reimbursement shall be made from the campaign account of the candidate.¹⁰⁹

A sheriff may use an officially assigned vehicle to attend campaign re-election activities. Use of an official vehicle in these circumstances is permitted with certain qualifications.

¹⁰⁵ *Id.*

¹⁰⁶ Fla. Stat. § 106.08(8).

¹⁰⁷ Fla. Stat. § 106.09(1).

¹⁰⁸ Fla. Stat. § 106.15(1).

¹⁰⁹ Fla. Stat. § 106.15(2).

The Florida Attorney General issued an opinion (AGO 74-384) stating, “A [s]heriff may assign [s]heriff’s Department vehicles to his or her personnel on a permanent basis for use both on and off duty if it is done pursuant to rules and regulations that ensure that the program will serve a valid public purpose and that such rules and regulations are, in fact, complied with.” Since a sheriff must be “on call” and able to respond, the use of an official vehicle and the equipment it contains serve a “valid public purpose.” The Attorney General Opinion also notes that any personal use and benefit would be incidental to the benefit of the public. Therefore, sheriffs may use their assigned vehicle for campaign purposes unless the availability of the vehicle serves no public purpose, i.e., radio equipment is turned off or disconnected and the vehicle has no additional equipment unique to a law enforcement vehicle.”

- No candidate shall, in the furtherance of his or her candidacy for nomination or election to public office in any election, use the services of any officer or employee of the State during working hours.¹¹⁰
- No public officer may use his or her official authority or influence for the purpose of an election or coercing another person’s vote, nor may the officer directly or indirectly attempt to coerce or command an employee to contribute to any political campaign.¹¹¹ However, employees may solicit voluntary contributions from one another, and are free to express their opinions on all political subjects and candidates but only while off-duty.¹¹²
- No person shall make, solicit, or knowingly accept a campaign contribution in a government building.¹¹³
- A person may not make contributions in support of or opposition to a candidate through or in the name of another.¹¹⁴
- A candidate may not willfully make a false and malicious statement about an opposing candidate; punishable up to a civil penalty of \$5,000.¹¹⁵

10. Campaign Expenditures

Each candidate may make expenditures from funds on deposit in his or her campaign depository only in the following manner, with the exception of expenditures made from petty cash funds:¹¹⁶

- The campaign treasurer or deputy campaign treasurer may make expenditures only by means of a bank check drawn upon the campaign account of the candidate. The

¹¹⁰ Fla. Stat. § 106.15(3).

¹¹¹ Fla. Stat. § 104.31.

¹¹² *Id.*

¹¹³ Fla. Stat. § 106.15(4).

¹¹⁴ Fla. Stat. § 106.08(5).

¹¹⁵ Fla. Stat. § 104.271.

¹¹⁶ Fla. Stat. § 106.11.

campaign account must be separate from any personal or other account and may be used only for the purpose of depositing contributions and making expenditures for the candidate or political committee. The checks must contain, as a minimum, the following information:

- a. The name of the campaign account of the candidate or political committee.
 - b. The account number and the name of the bank.
 - c. The exact amount of the expenditure.
 - d. The signature of the campaign treasurer or deputy treasurer.
 - e. The exact purpose for which the expenditure is authorized.
 - f. The name of the payee.¹¹⁷
- The campaign treasurer or deputy treasurer who signs the check is responsible for the completeness and accuracy of the information on such check and for insuring that such expenditure is an authorized expenditure.¹¹⁸
 - No one shall authorize any expenses, nor shall any campaign treasurer or deputy treasurer sign a check drawn on the primary campaign account for any purpose, unless there are sufficient funds on deposit in the primary depository account of the candidate to pay the full amount of the authorized expense, to honor all other checks drawn on such account, which checks are outstanding, and to meet all expenses previously authorized but not yet paid.¹¹⁹

11. Petty Cash

Campaign treasurers may withdraw, up to the last date for qualifying, \$500 per calendar quarter reporting period for the purpose of providing a petty cash fund for the candidate.¹²⁰ After the last day for qualifying and up to the time when the candidate for the Office of Sheriff is eliminated, elected or becomes unopposed, the treasurer may withdraw \$100 per week.¹²¹ Petty cash may only be spent in amounts less than one hundred (\$100) and only for office supplies, transportation expenses and other necessities.

The candidate must report the total amount withdrawn and the total amount spent for petty cash in each reporting period. A candidate does not have to report individually each expenditure made

¹¹⁷ Fla. Stat. § 106.11(1)(a)-(b).

¹¹⁸ Fla. Stat. § 106.11(3).

¹¹⁹ Fla. Stat. § 106.11(4).

¹²⁰ Fla. Stat. § 106.12(1).

¹²¹ Fla. Stat. §§ 106.12(2), 106.12(3).

from the petty cash fund. It may not be used to buy advertising space or time.¹²²

12. Surplus Funds

Once a candidate withdraws their candidacy, is eliminated, elected, or becomes unopposed, he or she must stop accepting contributions and has ninety (90) days to dispose of surplus funds in the campaign account and file a report reflecting the disposition of all remaining funds. However, if a candidate receives a refund check after disposition of surplus funds, he or she may endorse the check and dispose of it and report same in accordance therewith.¹²³ Prior to disposing of the funds, the candidate may pay bills incurred but not paid while he or she had opposition,¹²⁴ and may be reimbursed for personal contributions.¹²⁵

Surplus funds may be disposed of as follows:

- a. "Thank you" advertising may be purchased for a period of up to seventy-five (75) days following the date the candidate becomes unopposed.
- b. Pay for items which were obligated BEFORE he or she withdrew, became unopposed, or was eliminated or elected.
- c. Pay for expenditures necessary to close down the campaign office and to prepare final campaign reports.¹²⁶
- d. Pro-rata shares of contributions may be returned to contributors.¹²⁷
- e. Funds may be donated to charitable organizations meeting the qualifications of Section 501(c)(3) of the Internal Revenue Code¹²⁸ or up to \$25,000 to the political party to which the candidate belongs.¹²⁹
- f. Funds may be given to the county general fund.¹³⁰
- g. If a candidate is elected, or a candidate who will be elected, by virtue of being unopposed, and has funds remaining in his or her campaign account, he or she may transfer surplus campaign funds to his/her office account, but the funds in the account cannot exceed \$5,000 multiplied by the number of years in the

¹²² *Id.*

¹²³ Fla. Stat. § 106.141(1).

¹²⁴ Fla. Stat. § 106.11(4).

¹²⁵ Fla. Stat. § 106.141(2).

¹²⁶ Fla. Stat. § 106.11(5).

¹²⁷ Fla. Stat. § 106.141(4)(a).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

term of office for which elected. The applicable total amount may be transferred into an office account which must be separate from any personal account of the candidate.¹³¹

13. Political Advertisements

A political advertisement is a paid expression in any communications media, whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail or display or by means other than the spoken word in direct conversation, which supports or opposes any candidate, elected public official or issue.

Exceptions to this definition include:

- A statement by an organization in existence prior to the time during which a candidate qualifies for that election, in support of or in opposition to a candidate, in the organization's newsletter, which newsletter is distributed to the members of the organization.
- Editorial endorsements by any newspaper, radio or television station, or other recognized news medium.¹³²

Any political advertisement and any campaign literature published, displayed, or circulated on or before election day shall be marked "paid political advertisement" or with the abbreviation "pd. pol. adv.," identify the persons or organizations sponsoring the advertisement, and state whether the advertisement and the cost of production is paid for or provided in kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the political advertisement or who paid if different from the source of sponsorship. This does not apply to campaign messages used by a candidate and his or her supporters in which messages are designed to be worn by a person. Such political advertisements must prominently state political advertisement paid for and approved by candidate, party, and office sought.¹³³

Political advertisements of candidates running for partisan office in any election must state the political party of which the candidate is seeking nomination or is the nominee. An exception to this rule is novelty items of nominal value (\$10 or less) that support but do not oppose a candidate.¹³⁴

Any political advertisement endorsing the candidate shall expressly state that the content of the advertisement was approved by the candidate and must state who paid for the advertisement as well.¹³⁵ Except in the case of news media editorials and where a party committee has published its

¹³¹ Fla. Stat. § 106.141(5).

¹³² Fla. Stat. § 106.011(15).

¹³³ Fla. Stat. § 106.143.

¹³⁴ Fla. Stat. § 106.143(8).

¹³⁵ Fla. Stat. § 106.143 (1).

advocacy of the candidate, a candidate may not claim that a person or organization supports him or her unless he or she has the person or organization's written permission to make that claim.¹³⁶

Political advertisements of a candidate who is not an incumbent cannot use the word "reelect." Additionally, the word "for" must be included between the candidate's name and the office for which he or she is running, so incumbency is not implied. These requirements do not apply to novelty items of nominal value (\$10 or less) that support but do not oppose a candidate, bumper stickers and items designed to be worn by a person.¹³⁷

A candidate may not erect, post, paint, tack, nail or otherwise display, place or locate a political advertisement on or above any state or county road right-of-way.¹³⁸

Additionally, legislation that passed in 2024 (Laws of Florida, Chapter 2024-126) created a new Florida statute (s. 106.145) and requires disclaimers on political ads that depict a real person performing an action that did not occur. The legislation does not limit the content of the ad. The disclaimer must state that the ad was "created in whole or in part with the use of generative artificial intelligence." Additionally, the disclaimer must comply with certain specifications depending on the medium used.

For a printed communication, the disclaimer must be in a bold font or at least 12 points.

- For a TV or video ad, the disclaimer must be clearly readable and take up at least four percent of the vertical picture height.
- For an internet ad that includes text or graphic components, the disclaimer must be viewable without the user taking any action and be clearly readable.
- For any audio component of a communication, the disclaimer must be at least three seconds and clearly audible at either the beginning or the end of the ad.

The bill provides that in addition to any civil penalties provides by law, a person identified pursuant to another disclaimer required for campaign finance purposes as paying for, sponsoring, or approving an advertisement or electioneering communication of a political nature that is required to include the AI disclaimer and fails to do so commits a first-degree misdemeanor and faces a \$1,000 fine. The bill also allows a complaint to be filed with the Florida Elections Commission if a disclaimer is not included.

14. False or Malicious Charges

Any candidate who willfully charges an opposing candidate participating in such election with a violation of any provision of the Election Code, knowing that the charge is false or malicious, is guilty of a third degree felony. In addition, after conviction he or she shall be disqualified to hold office.

¹³⁶ Fla. Stat. § 106.143(4).

¹³⁷ Fla. Stat. § 106.143(6).

¹³⁸ Fla. Stat. § 106.1435(3).

Any candidate who, with actual malice makes or causes to be made any statement about an opposing candidate which is false is guilty of a violation of this Code. An aggrieved candidate may file a complaint with the Florida Elections Commission. Notwithstanding any other provision of law, the Florida Elections Commission shall assess a civil penalty of up to \$5,000 against any candidate found in violation of this subsection, which shall be deposited to the account of the general revenue fund of the State of Florida.¹³⁹

15. Violations

Any candidate; campaign manager, campaign treasurer, or deputy treasurer of any candidate; committee chairman, vice-chairman, campaign treasurer, deputy treasurer or other officer of any political committee; agent or person acting on behalf of any candidate or political committee; or other person is guilty of a first degree misdemeanor if he or she knowingly and willfully:

- Accepts a contribution in excess of the limits prescribed by Section 106.08, Florida Statutes;
- Fails to report any contribution required to be reported, by Chapter 106, Florida Statutes;
- Falsely reports or deliberately fails to include any information required by Chapter 106, Florida Statutes; or
- Makes or authorizes any expenditure in violation of Section 106.11(3), Florida Statutes, or any other expenditure prohibited by Chapter 106, Florida Statutes.¹⁴⁰

Any candidate, campaign treasurer, or deputy treasurer; any chairman, vice-chairman, or other officer of any political committee; any agency or person acting on behalf of any candidate or political committee; or any other person who violates paragraphs (a), (b), or (d) above is also subject to a civil penalty equal to three (3) times the amount involved in the illegal act and will be paid into the General Revenue Fund of the state.¹⁴¹

16. Miscellaneous

General elections are held on the first Tuesday after the first Monday in November in the even numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.¹⁴²

17. Contest of Election

The certification of election or nomination of any person to office, or of the result on any question submitted by referendum, may be contested in the circuit court by any unsuccessful candidate

¹³⁹ Fla. Stat. § 104.271.

¹⁴⁰ Fla. Stat. § 106.19(1).

¹⁴¹ Fla. Stat. § 106.19(2).

¹⁴² Fla. Stat. § 100.031; Fla. Const. art. XI, § 6.

for such office or nomination thereto, or by any taxpayer, respectively. Such contestant shall file a complaint, together with the fees prescribed in Chapter 28, with the Clerk of the Circuit Court within ten (10) days after midnight of the date the last county canvassing board empowered to canvass the returns adjourns, and the complaint shall set forth the grounds on which the contestant intends to establish his or her right to such office or set aside the result of the election on a submitted referendum. The canvassing board or election board shall be an indispensable and proper party defendant, and the successful candidate shall be an indispensable and proper party to any action brought to contest the election or nomination of a candidate.¹⁴³

¹⁴³ Fla. Stat. § 102.168.

II. Code of Ethics for Public Officers and Employees

The Commission on Ethics exists because of the Sunshine Amendment adopted by voters in 1976. This amendment gave an independent commission the authority to monitor and enforce ethics in government at the state and local level. The Code of Ethics is Part III of Chapter 112, Florida Statutes, and does two things: prohibits certain acts, and requires public disclosures of gifts and financial interest. The Code is intended to promote the public interest and to ensure that public officials do not abuse the office held for personal gain. The following chapter outlines the responsibilities of the Code that sheriffs must comply with.

A. Financial Disclosure Statements

Sheriffs as “reporting individuals” are required to file annually file with the Supervisor of Elections “a full and public disclosure of his or her financial interests.”¹⁴⁴ If a sheriff who is an incumbent files the financial disclosure statement to qualify for re-election (or for election to another office) an electronic copy of the statement shall also be filed with the Commission on Ethics no later than July 1.¹⁴⁵ Sheriffs must also certify on the annual report that he or she has completed the four hours of ethics and public records training required by Section 112.3142, Florida Statutes.¹⁴⁶ The Florida Sheriffs Association offers ethics training through webinars, which can be viewed live annually or anytime throughout the year at www.flsheriffs.org.

Additionally, quarterly reports are required for sheriffs who receive gifts that exceed \$100 in value.¹⁴⁷ These reports, which are filed with the Commission on Ethics, are not required if no gifts were received for the past quarter¹⁴⁸ or the gifts were provided by relatives.¹⁴⁹ The quarterly report shall include a description of the gift, the monetary value of the gift, the name and address of the person making the gift, and the date of the gift. A copy of any receipt for the gift shall also be provided.¹⁵⁰

B. Gifts

As apparent from the reporting requirements outlined above, the Code of Ethics is intended to provide transparency regarding the receipt of gifts. The gift restrictions placed on public officials and employees are intended to further the public interest in avoiding conflicts of interest and misuse of office for personal gain.

For the purposes of the Code of Ethics, a gift is anything of value which is accepted by an individual for which the value is not repaid within 90 days. Gifts may include but are not limited

¹⁴⁴ Fla. Const. Art. II, sec. 8; Fla. Stat. § 112.3144(1); Fla. Comm’n on Ethics Form 1.

¹⁴⁵ Fla. Stat. § 112.3144(2).

¹⁴⁶ Fla. Stat. § 112.3144(1).

¹⁴⁷ Fla. Stat. § 112.3148(8); Fla. Comm’n on Ethics Form 9.

¹⁴⁸ Fla. Stat. § 112.3148(8)(f).

¹⁴⁹ Fla. Stat. § 112.3148(8)(a)(1); relatives are defined by Fla. Stat. § 112.312(21).

¹⁵⁰ Fla. Stat. § 112.3148(8)(b).

to real property or the use of real property, tangible or intangible personal property or the use of such property, a preferential rate on a loan, forgiveness of indebtedness, transportation, food and beverage, membership dues, tickets to events, plants and flowers or floral arrangements, professional services or other some personal service for which a fee is normally charged.¹⁵¹

A gift does not include salary, benefits, or expenses associated primarily with employment, campaign contributions, an honorarium, an award given in recognition of an individual's public civic, charitable, or professional service, an honorary membership service or fraternal organization presented as a courtesy, the use of a public facility or public property made available by governmental agency for a public purpose, transportation related to officially approved governmental business, or gifts provided directly or indirectly by a state, regional, or national professional organization whose membership is primarily composed of elected or appointed public officials or staff.¹⁵² Gifts from the Florida Sheriffs Association are included in this exemption.

Generally, the value of the gift is determined by the cost to the donor, less taxes and gratuities.¹⁵³ In the case of personal services provided, such as accounting or legal services, the reasonable and customary charge for these services in the same community is used.¹⁵⁴ Transportation is valued on a round-trip basis, unless only one-way travel occurred. Transportation in a private conveyance is valued at the comparable commercial rate.¹⁵⁵

Lodging provided on consecutive days shall be considered as a single gift. Lodging in a private residence is determined by the state per diem rate, currently \$44 per night, which includes the \$80.00 per diem rate minus the meal allowance of \$36.00.¹⁵⁶ Food and beverages provided at a single meal (i.e., a sitting) shall be considered a single gift; the value of the food and beverage (less tax and gratuity) is the value of the gift.¹⁵⁷ Entrance or admission fees are valued at the face value of the ticket, or on a daily or per event basis, whichever is greater.¹⁵⁸

Sheriffs cannot accept gifts valued in excess of \$100 from a vendor or lobbyist or a principal of a lobbyist.¹⁵⁹ A vendor is defined as a business entity doing business directly with the agency, such as renting, leasing, or selling any realty, goods, or services.¹⁶⁰ A lobbyist means any person who, for compensation, seeks, or sought during the preceding 12 months to influence the decision-making of the sheriff.¹⁶¹ The determination as to whether someone is a vendor, lobbyist or principal of a lobbyist is agency dependent.

¹⁵¹ Fla. Stat. § 112.312((12)(a).

¹⁵² Fla. Stat. § 112.312(12)(b).

¹⁵³ Fla. Stat. § 112.3148(7)(a).

¹⁵⁴ *Id.*

¹⁵⁵ Fla. Stat. § 112.3148(7)(d).

¹⁵⁶ Fla. Stat. § 112.3148(7)(e); § 112.061(6)(a)1; § 112.061(6)(b).

¹⁵⁷ Fla. Stat. § 112.3148(7)(f).

¹⁵⁸ Fla. Stat. § 112.3148(7)(h).

¹⁵⁹ Fla. Stat. § 112.3148(5)(a).

¹⁶⁰ Fla. Stat. § 112.3148(2)(f).

¹⁶¹ Fla. Stat. § 112.3148(2)(b)1.

In other words, businesses that contract with a sheriff's office to provide food or medical services to inmates, or communications services or vehicles for the sheriff's office, would be considered vendors. Any person who on behalf of a business entity attempted to obtain a contract for similar or other related services at the sheriff's office in the past 12 months would be considered a lobbyist.

Under the Code of Ethics, sheriffs may accept gifts of less than \$100 from vendors or lobbyists and would not be required to report them. However, as previously stated, they are precluded from taking gifts from vendors or lobbyists which exceed the value of \$100. It should be noted that if a sheriff repaid the vendor or lobbyist within 90 days so that the value of the gift was \$100 or less, no violation would occur.¹⁶² It should also be noted that the vendor or lobbyist is required to report this gift. So while the sheriff has no obligation to report a gift under \$100 from a vendor or lobbyist, the gift will be disclosed and discoverable through public records.¹⁶³

Sheriffs, or members of their immediate family, are also prohibited from accepting any gift from a political committee. A gift for this purpose essentially means anything of value that is not primarily related to a campaign contribution.¹⁶⁴ As previously stated, gifts in excess of \$100 are required to be reported.¹⁶⁵

C. Unauthorized Compensation & Solicitation of Gifts

Neither a sheriff nor any other member of the sheriff's office is absolutely precluded from accepting gifts. However, sheriffs cannot solicit a gift from a vendor or lobbyist.¹⁶⁶ Furthermore, no public officer or employee of an agency can solicit or accept any compensation, payment, or thing of value when the public officer or employee knows or reasonably should know that it was given to influence some official action.¹⁶⁷ It does not appear that sheriffs soliciting donors for charitable events, such as a golf tournament to benefit the Florida Sheriffs Youth Ranch, would violate this section, however should any questions arise the sheriff can seek clarification from the Commission on Ethics.

The Code of Ethics also prohibits misuse of a public position to benefit the public officer or employee or to benefit another person. Specifically, no public officer or employee shall corruptly use his or her official position to secure a special privilege benefit or exemption for himself, herself or others.¹⁶⁸

Additionally, Article II §8, Florida Constitution was amended to prohibit a public officer or employee

¹⁶² See Fla. Stat. § 112.312(12)(a).

¹⁶³ Fla. Stat. § 112.3148.

¹⁶⁴ Fla. Stat. § 112.3148, § 112.31485. Political committee is not defined by this statute.
See Fla. Stat. § 106.011(16)(a) for a definition of this term.

¹⁶⁵ Fla. Stat. § 112.3148.

¹⁶⁶ Fla. Stat. § 112.3148(3).

¹⁶⁷ Fla. Stat. § 112.313(2).

¹⁶⁸ Fla. Stat. § 112.313(6).

from abusing his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business in which the officer or employee contracts, in which he or she is an officer, partner, director, or proprietor, or in which he or she owns an interest. A disproportionate benefit is defined as a benefit, privilege, exemption, or result arising from an act or omission of a public officer or employee that is inconsistent with the proper performance of the officer's or employee's public duties.¹⁶⁹

The amendment will take effect on December 31, 2020. Section 112.317, F.S. establishes penalties for violations of the Code of Ethics as well as Article II, section 8 of the Florida Constitution.¹⁷⁰

D. Honoraria

An honorarium is defined as a payment of money or anything of value, directly or indirectly, in consideration for a speech or other oral presentation, or a writing other than a book which has been or is/are intended to be published.¹⁷¹ It does not include reasonable transportation, lodging, or food and beverage expenses related to the honorarium event, including any event or registration fee.¹⁷²

Sheriffs may not solicit an honorarium relating to the sheriff's official duties.¹⁷³ Additionally, a sheriff cannot accept an honorarium from a political committee, or from a vendor or lobbyist.¹⁷⁴ Sheriffs may receive payment of expenses relating to an honorarium event from a political committee, vendor, or lobbyist. The political committee, vendor, or lobbyist must provide to the sheriff a statement of the honorarium expenses.¹⁷⁵

Although a sheriff may lawfully accept an honorarium related to his/her official duties if the source is not a lobbyist vendor, or political committee, the better practice would be to reject the honorarium. Acceptance of a speaking fee or a fee related to writing an article on matters related to the sheriff's office duties may invite a complaint of solicitation. It would be prudent, therefore, for a sheriff to accept only reimbursement for the expenses related to the particular event.

Sheriffs are required to publicly disclose honorarium expenses paid by political committees, vendors, and lobbyists.¹⁷⁶ Sheriffs must disclose on their annual financial disclosure statement the name, address, and affiliation of the person paying the providing expenses, the amount of the expenses, the date of the honorarium event, a description of the expenses provided on

¹⁶⁹ Fla. Admin. Code Rule 34-18.001.

¹⁷⁰ 2020 Florida House Bill No. 7009, Florida One Hundred Twenty-Second Regular Session.

¹⁷¹ Fla. Stat. § 112.3149(1)(a)1., (1)(a)2.

¹⁷² Fla. Stat. § 112.3149(1)(a).

¹⁷³ Fla. Stat. § 112.3149(2).

¹⁷⁴ *Id.* § 112.3149(3).

¹⁷⁵ *Id.* § 112.3149(5).

¹⁷⁶ *Id.* § 112.3149(6); Ethics Comm'n Form 10.

each day of the honorarium event, and the total value of the expenses provided.¹⁷⁷ A copy of each statement received by the sheriff from the political committee, vendor, or lobbyist shall be attached to this report.¹⁷⁸ In summary, expenses related to speaking engagements would not be considered honorarium and can be reimbursed. As previously noted these expenses must be reported.

E. Conflicting Contractual or Employment Relationships

The Code of Ethics precludes a public officer or employee from doing business with his/her agency. Therefore, a public officer or employee cannot purchase, rent, or lease any realty, goods or services for his or her agency from any business entity of which the officer or employee, or the spouse or child of the officer or employee, is an officer, partner, director, or proprietor. The same prohibition applies if the employee, or the officer's or employee's spouse or child, has a material interest in the business entity. Furthermore, a public officer or employee, acting in a private capacity, cannot rent, lease, or sell any realty, goods, or services to the officer's or employee's agency.¹⁷⁹

For example, a sheriff could not purchase or lease vehicles for the sheriff's office from a dealership in which his son is a partner. Similarly, an employee who has an off-duty computer business could not sell laptops to the agency, or install software on agency computers for a fee.

Conflicting employment relationships are also prohibited. No public officer or employee shall have any employment or contractual relationship with a business entity which a subject to the regulation or doing business with the agency of which he or she is an officer or employee. An officer or employee is also prohibited from having an employment or contractual relationship that creates a continuing or recurring conflict between his or her private interest and the performance of his or her public duties.¹⁸⁰

As an example, a sheriff who is also an insurance agent cannot retain the position with the insurance agency if it provided health insurance to the sheriff's office. For similar reasons, an employee who repaired agency vehicles could not work part-time on weekends at an automobile dealership that leased vehicles to the sheriff's office.

Upon leaving the agency, a sheriff may not personally represent for compensation another person or entity before the sheriff's office for two years after leaving the office.¹⁸¹ Although the sheriff could be employed by an entity that contracted with the sheriff's office upon vacating the office, the sheriff could not represent the business in any matters before his or her former agency for a two-year period.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Fla. Stat. § 112.313(3).

¹⁸⁰ Fla. Stat. § 112.313(6).

¹⁸¹ Fla. Stat. § 112.313(14).

F. Anti-nepotism

Sheriffs may not hire, advance, or promote, or advocate for the hiring, advancement, or promotion, a relative to a position in the sheriff's office.¹⁸² Relatives would include a sheriff's father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, and half-sister.¹⁸³ A sheriff's promotion of his brother was held to violate the anti-nepotism law even though the sheriff abstained from decision-making when the brother was considered for promotion.¹⁸⁴

If a relative is currently employed when a sheriff is elected to office, the sheriff is not required to terminate the employment of the relative. However, the sheriff cannot promote the relative while the sheriff remains in office.¹⁸⁵

For the purposes of the anti-nepotism law, promotion means an advancement or elevation to a higher rank or to a position of greater personal dignity or importance. It does not include an increase in salary within the limits fixed for the pay grade in which the position was classified.¹⁸⁶

The anti-nepotism statute does not prohibit a relative from being appointed as a volunteer to the agency.¹⁸⁷ A relative could become a member of the sheriff's auxiliary provided there is no compensation for this service other than reimbursement for training or other incidental expenses.¹⁸⁸

G. Dual Public Employment

A sheriff is prohibited from accepting public employment with the state or any of its political subdivisions if he/she knows or reasonably should know that the position is being offered by the employer to gain influence or other advantage based on the sheriff's office or candidacy for office. Another public position may be accepted if all the following conditions are met:

- a. The position was already in existence or was created by the employer without the knowledge or anticipation of the public officer's interest in such position;
- b. The position was publicly advertised;
- c. The public officer was subject to the same application and hiring process as other candidates for the position; and

¹⁸² Fla. Stat. § 112.3135(2)(a).

¹⁸³ Fla. Stat. § 112.3135(1)(d).

¹⁸⁴ *Morris v. Seely*, 541 So. 2d 659 (Fla. 1st DCA 1989).

¹⁸⁵ Fla. Stat. § 112.3135(2)(a).

¹⁸⁶ *Slaughter v. City of Jacksonville*, 338 So. 2d 902, 903 (Fla. 1st DCA 1976).

¹⁸⁷ Fla. Stat. § 112.3135(2)(a).

¹⁸⁸ Op. Comm'n Ethics 13-01.

- d. The public officer meets or exceeds the required qualifications for the position.¹⁸⁹ If a person was employed in another position before qualifying for the office of sheriff, he/she may continue in the employment while serving as sheriff provided there is no conflict of interest or that the dual office holding constitutional prohibition is not violated. However, he or she may not accept promotion, advancement, additional compensation or anything of value that he or she knows or reasonably should know is given as a result of the election or the position of sheriff, or is inconsistent with the promotion, advancement, additional compensation or anything of value given an employee who is similarly situated.¹⁹⁰

¹⁸⁹ Fla. Stat. § 112.3125(3)(a) – (d).

¹⁹⁰ Fla. Stat. § 112.3125(4).

III. Personnel

A. Hiring

Under Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act of 1992, all applicants for hire must be considered without regard to race, color, religion, sex, pregnancy, national origin, age, disability, or marital status. Sex includes sexual orientation and gender identity.¹⁹¹ A disabled applicant may be denied if the required accommodation for that individual would be unduly burdensome on the Sheriff's Office.¹⁹²

Sworn personnel, including law enforcement and correctional officers, must be citizens of the United States.¹⁹³ This does not apply to non-sworn personnel provided they are authorized to work in the United States. Beginning January 1, 2021, the authorization status of all newly hired employees must be verified through the E-Verify system.¹⁹⁴

B. Deputies

1. Relationship

In Florida, a deputy sheriff is an officer who holds appointment from the sheriff and is vested with the same sovereign powers as the sheriff.¹⁹⁵ For this reason, a deputy sheriff is the “alter ego” of the sheriff.¹⁹⁶

At common law, deputies served at the will of the sheriff, and no property right existed to invoke due process of law requirements governing notice, hearing and termination for cause.¹⁹⁷ However, many sheriffs' offices have implemented career or civil service acts or union collective bargaining agreements which provide that certain disciplinary actions such as suspension, demotion and dismissal of permanent employees shall only be for cause. In such a case, due process rights are satisfied by notice of charges and an opportunity to be heard to contest the charges through a pre-disciplinary conference and post-discipline evidentiary hearing.¹⁹⁸

A career service civil service law in a county may affect a sheriff's authority to hire and fire.¹⁹⁹ Establishment of career or civil service systems or boards is usually accomplished through a special

¹⁹¹ 42 U.S.C. § 2000e; Fla. Stat. § 760.10; *Boystock v. Clayton Cty., Georgia*, 140 S.Ct. 1731 (2020).

¹⁹² 42 U.S.C. § 12112.

¹⁹³ Fla. Stat. § 943.13(2).

¹⁹⁴ Fla. Stat. § 448.095(2)(a).

¹⁹⁵ *Szell v. Lamar*, 414 So. 2d 276, 277 (Fla. 5th DCA 1982).

¹⁹⁶ *Terry v. Cook*, 866 F.2d 373, 377 (11th Cir. 1989); Fla. Stat. § 30.071(3) (2016). Unless otherwise noted, all Florida Statute citations refer to the current year of 2016.

¹⁹⁷ *Stough v. Gallagher*, 967 F.2d 1523, 1530 (11th Cir. 1992).

¹⁹⁸ *Cleveland Bd. of Educ. v. Loudermill*, 407 U.S. 532 (1985).

¹⁹⁹ Fla. Const. art. III, § 14.

act of the Florida Legislature.²⁰⁰ A property interest requiring due process is created if the career or civil service law requires “just or proper cause” for disciplinary action and the disciplinary review board’s decision is final and binding on the sheriff.²⁰¹

Deputy sheriffs, as in the case of correctional officers and support staff, are public employees eligible to engage in collective bargaining.²⁰² When a union is certified as the representative of a unit of sworn or civilian employees, the sheriff no longer has the exclusive and independent authority to dictate terms and conditions of employment. Rather, pursuant to the collective bargaining process as outlined in Chapter 447, Florida Statutes, terms and conditions of employment shall be negotiated. In the event of an impasse, the board of county commissioners resolves the issue.²⁰³

2. Chapter 30 Review Board

In 1994, the Legislature enacted Sections 30.071-30.079, Florida Statutes, which established an administrative hearing process to review only terminations of deputy sheriffs that are alleged to have been for political or discriminatory reasons.²⁰⁴ This statewide act exempts counties that have established a career of civil service system through a special act which grants equal or greater protection for deputies.²⁰⁵

The act does not change the alter ego relationship between sheriffs and their deputy sheriffs.²⁰⁶ It does not grant collective bargaining rights to deputy sheriffs,²⁰⁷ nor does it affect a sheriff’s exclusive power to appoint his or her deputies. Furthermore it does not apply to special deputies, members of the sheriff’s posse or reserve unit, part-time deputies, undersheriff, chief deputy, director, legal advisor or certain managerial personnel.²⁰⁸

The act, if applicable to a sheriff’s office, establishes probationary periods for employment and promotion. After hiring, the deputy must satisfactorily complete a 12-month probation prior to attaining regular status. A promotion to a higher rank will not become a regular appointment until the completion of a six-month probationary period. If a non-service disability or other justifiable reason interferes with the deputy’s probationary period, the sheriff may extend the amount of time for probation.²⁰⁹

²⁰⁰ See, e.g., *Ison v. Zimmerman*, 372 So. 2d 431 (Fla. 1979); *Morris v. Crow*, 817 F. Supp. 102 (M.D. Fla. 1993).

²⁰¹ See *Ragucci v. City of Plantation*, 407 So. 2d 932, 935 (Fla. 4th DCA 1981).

²⁰² *Coastal Fla. P.B.A. v. Williams*, 838 So. 2d 543 (Fla. 2003).

²⁰³ *Sheriff of Pasco County v. Fla. State Lodge, F.O.P.*, 53 So.3d 1073 (Fla. 1st DCA 2011).

²⁰⁴ Ch. 94-143, Laws of Fla.

²⁰⁵ Fla. Stat. § 30.071(1).

²⁰⁶ Fla. Stat. § 30.071(3).

²⁰⁷ Fla. Stat. § 30.071(2).

²⁰⁸ Fla. Stat. §§ 30.071(c)-(e), 30.072(2).

²⁰⁹ Fla. Stat. § 30.073(2)(c).

Pursuant to the act, a sheriff may withdraw a deputy's appointment or discharge an employee for any reason (except an illegal reason; i.e., discrimination or political speech), anytime during the probationary period.²¹⁰ However, a deputy who has completed probation and attained regular status and who claims to have been terminated for political or discriminatory reasons may request a hearing before a review board.²¹¹

The review board only determines whether the termination of the deputy sheriff was politically or discriminatorily motivated. The board will be comprised of either three (3) or five (5) voluntary members, depending on whether there are more or less than 150 deputies within the agency. The members are appointed equally (one by the sheriff, one by the deputy or two by the sheriff, two by the deputy) with one additional neutral member (selected by the appointed members) who will act as the chair of the review board. The law further provides that an arbitrator shall be selected to serve as chairperson if a neutral member cannot be agreed upon. All members (with the exception of the neutral chairman) must be certified law enforcement officers within the sheriff's jurisdiction.²¹²

Prior to any termination action, the sheriff is required to provide the deputy with written notice of the proposed termination.²¹³ The deputy must request a hearing within 10 working days. The review board must convene and conduct a hearing within 10 working days after receipt of deputy's request.²¹⁴

At the hearing, the burden is on the sheriff to prove by a preponderance of the evidence that the termination is valid.²¹⁵ The rules of evidence as they apply to administrative hearings conducted pursuant to Chapter 120, Florida Statutes, shall be followed.²¹⁶ Findings of fact and recommendations by the board must be made within 10 working days.²¹⁷ A majority of members must concur with the decision, which may recommend an alternative disciplinary action.²¹⁸ The board's findings are binding on the parties.²¹⁹ A deputy who is exonerated must be reinstated without prejudice or penalty.²²⁰

A measure of employment security is also provided to deputy sheriffs to whom the act applies. According to the act, when a new sheriff is appointed or elected, the incoming sheriff may not

²¹⁰ Fla. Stat. § 30.073(3),(5).

²¹¹ Fla. Stat. § 30.076(3)(a).

²¹² Fla. Stat. § 30.075.

²¹³ Fla. Stat. § 30.073(3)(a).

²¹⁴ Fla. Stat. § 30.076(3)(b).

²¹⁵ Fla. Stat. § 30.076(3)(c).

²¹⁶ Fla. Stat. § 30.076(3)(b).

²¹⁷ Fla. Stat. § 30.076(3)(i).

²¹⁸ Fla. Stat. § 30.076(3)(i)-(j).

²¹⁹ Fla. Stat. § 30.076(3)(i).

²²⁰ Fla. Stat. § 30.076(3)(m).

terminate deputies for lawful off-duty political activity or for discriminatory reasons. The sheriff may replace deputies assigned to managerial, confidential, or policy making positions, or part-time sheriffs.²²¹ However, no property interest is created by the act which would create due process rights.²²²

3. Bonds

Deputies must give bond in the amount required by the board of county commissioners.²²³ The board may accept a blanket surety bond paid for by the sheriff's office.²²⁴ The bond is then filed with the clerk of the circuit court.²²⁵ The giving of such bonds does not relieve the sheriff of the liability for the acts of his or her deputies.²²⁶

4. Oath of Office

An oath of office is mandated for deputy sheriffs.²²⁷ Article II, section 5(b) of the Florida Constitution sets forth the oath to be administered to deputy sheriffs:

STATE OF FLORIDA

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of Deputy Sheriff of _____ County, on which I am about to enter. So help me God.

Sworn to and subscribed before me this day of _____, 20____.

Executing the oath timely and properly is important because no deputy shall be allowed to perform his or her duties until he or she subscribes to the oath and a bond is approved.²²⁸ An arrest was successfully challenged because the deputy who made the arrest had not taken the oath of office.²²⁹

Following an election, an incoming sheriff should require deputy sheriffs to execute their written oath prior to the sheriff taking office. The sheriff may administer the ceremonial swearing of the oath at any time provided that the written oath has been executed. Sheriffs who have been re-elected need not re-administer the oath.

²²¹ Fla. Stat. § 30.078.

²²² Fla. Stat. § 30.079.

²²³ Fla. Stat. § 30.09(1)(a).

²²⁴ Fla. Stat. § 30.09(1)(b).

²²⁵ Fla. Stat. § 30.09(1)(a).

²²⁶ Fla. Stat. § 30.09(3).

²²⁷ Fla. Stat. § 30.09(1)(a).

²²⁸ *Id.*

²²⁹ *Holloway v. State*, 342 So. 2d 966 (Fla. 1977).

5. Special Deputies

Sheriffs are empowered under Chapter 30, Florida Statutes, to appoint special deputies.²³⁰ Special deputies are exempt from the bond requirements when appointed under the following circumstances:

- a. On election days, to attend elections.²³¹
- b. To perform undercover investigative work.²³²
- c. For specific guard or police duties in connection with public sporting or entertainment events, not to exceed thirty (30) days; or for watchman or guard duties, when serving in such capacity at specified locations or areas only.²³³
- d. For special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners.²³⁴
- e. To aid in preserving law and order, or to render necessary assistance in the event of any threatened or actual hurricane, fire, flood, or other natural disaster, or in the event of any major tragedy such as an airplane crash, train, or automobile wreck, or similar accident.²³⁵
- f. To raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy.²³⁶
- g. To serve as a parking enforcement specialist pursuant to Section 316.640(2), Florida Statutes.²³⁷

Except for parking enforcement specialists, special deputies may be granted full powers of arrest when the sheriff deems it necessary.²³⁸ Except under the circumstances described in paragraphs (a), (e), (f), and (g), the appointees must possess at least the minimum requirements established for law enforcement officers by the Criminal Justice Standards and Training Commission.²³⁹ The appointment must be recorded in a register maintained by the sheriff showing the terms and

²³⁰ Fla. Stat. § 30.09(4).

²³¹ Fla. Stat. § 30.09(4)(a).

²³² Fla. Stat. § 30.09(4)(b).

²³³ Fla. Stat. § 30.09(4)(c).

²³⁴ Fla. Stat. § 30.09(4)(d).

²³⁵ Fla. Stat. § 30.09(4)(e).

²³⁶ Fla. Stat. § 30.09(4)(f).

²³⁷ Fla. Stat. § 30.09(4)(g).

²³⁸ Fla. Stat. § 30.09(4).

²³⁹ *Id.*

circumstances of the appointment.²⁴⁰ If a sheriff decides to grant a special deputy the power to carry a firearm, the appointee should be required to participate in training with that firearm in order to avoid any potential liability that may arise.

Training for special deputies is not required by statute. However, sheriffs should consider training as a best practice and a means to reduce liability exposure.

6. Deputy Cards

Because of the potential liability of the sheriff for the acts of a deputy or special deputy, deputy cards should specify:

- The type of appointment (deputy or special deputy);
- The statutory authority for the appointment;
- Whether or not the special deputy has arrest powers; and,
- The duration of the appointment.

7. Coach Aaron Feis Guardian Program

In response to the shooting at Marjory Stoneman Douglas High School on February 14, 2018, the Florida Legislature enacted SB 7026, the Marjory Stoneman Douglas High School Public Safety Act (Act). The Act included provisions to address school safety and security including establishment of the school guardian program, creation of the Office of Safe Schools within the Florida Department of Education and increased coordination among state and local agencies serving students with or at-risk of mental illness, among many other provisions.

Florida law now requires district school boards and school district superintendents to partner with law enforcement agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A school district may implement one or more safe-school officer options to best meet the needs of the school district and charter schools. A safe-school officer may be a school resource officer (SRO), school safety officer (SSO), a school guardian, or contract with a security agency to employ as a school security guard an individual who holds a class “D” and class “G” license, but must also complete the same training required of a school guardian, and passes minimum screening requirements.

A school guardian is a school employee who volunteers and completes the program requirements of the Coach Aaron Feis Guardian Program (guardian program) to serve as a guardian. Guardians must hold a valid concealed weapon permit, complete 144 hours of specified training, pass a psychological evaluation, and pass an initial and on-going, random drug tests. The sheriff provides the guardian training, issues a guardian certificate to school employees who complete the program, appoints the guardian, and retains all guardian-related records and documentation. If a person holds a CJSTC law enforcement certification in good-standing, the sheriff may waive the

²⁴⁰ *Id.*

requirement that the person attend the 144-hour guardian academy. This applies in particular to deputies who want to become guardians.²⁴¹

C. Complaints against Officers/Law Enforcement and Correctional Officers' Bill of Rights

The Bill of Rights, Sections 112.531-112.535, Fla. Statutes, requires every law enforcement and every corrections agency to establish a system for receipt, investigation and determination of complaints against law enforcement and correctional officers.²⁴² The employing agency is the exclusive agency that may conduct an internal investigation that could lead to discipline. However, a law enforcement agency with 35 or fewer officers may request an investigator from another agency to conduct the investigation if the employing agency's investigator has a conflict, the investigator is the subject of or a witness in the investigation, or the employing agency lacks an investigator to conduct the investigation.²⁴³

The Bill of Rights applies to part-time and full-time law enforcement and corrections officers.²⁴⁴ Pursuant to Sections 112.532 and 112.533, Florida Statutes, deputy sheriffs and detention officers who are under investigation and subject to interrogation for any reason which could lead to disciplinary action, demotion, or dismissal, are entitled to certain rights.

An officer's initial statement relating to matters such as preservation of the scene, identification of suspects and witnesses, or a cursory statement necessary for determining proper course of conduct by the agency would not be subject to this section because it relates to the investigation of a duty-related incident. However, an inquiry into the propriety of the officer's conduct for disciplinary purposes is subject to the Bill of Rights.²⁴⁵

In addition, if a law enforcement agency permits the use of body cameras and upon the request of the officer, the officer must be given an opportunity to review the recorded footage from the officer's body camera prior to writing a report or providing a statement regarding any event arising within the scope of the officer's official duties. However, such a request does not affect the officer's duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.²⁴⁶

1. Interrogation

The officer's rights during interrogation are summarized as follows:

- a. The interrogation shall be conducted at a reasonable hour, preferably during duty time, unless immediate action is required due to the seriousness of the investigation.²⁴⁷

²⁴¹ Fla. Stat. § 30.15(1)(9k)1g.

²⁴² Fla. Stat. § 112.533(1)(a).

²⁴³ Fla. Stat. § 112.533(1); *Demings v. Orange County Citizens Review Bd.*, 15 So.3d 604, 607-08 (Fla. 5th DCA 2009).

²⁴⁴ Fla. Stat. §112.531(1),(2).

²⁴⁵ Op. Att'y Gen. Fla. 90-65; Op. Att'y Gen. Fla. 2001-34.

²⁴⁶ Fla. Stat. § 943.1718(2)(d).

²⁴⁷ Fla. Stat. § 112.532(1)(a).

- b. The interrogation shall take place either at the sheriff's office facility where the incident which caused the investigation took place or the investigating officer's office.²⁴⁸
- c. The subject officer shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all present during the investigation by name, rank and command. Unless specifically waived, only one person at any one time may ask questions.²⁴⁹
- d. The sheriff's office shall notify the officer under investigation of the nature of the investigation and the identity of all complainants prior to the interrogation. The officer who is the subject of the complaint may review the complaint and all evidence including any statements, regardless of the form, made by the complainant and witnesses immediately prior to the beginning of the investigative interview unless the witness is incarcerated. If the witness is an inmate who is subject to the supervision of or may have contact with the subject officer, only the names and statements of the complainant and non-incarcerated witnesses may be reviewed by the officer prior to the investigative interview.²⁵⁰ After being informed of the right to review witness statements, an officer may wave this right and provide a voluntary statement at any time.²⁵¹
- e. Interrogating sessions shall only be conducted for a reasonable period and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.²⁵²
- f. The officer under investigation shall not be subjected to offensive language or be threatened with transfer, dismissal or disciplinary action. No promise or reward shall be made as an inducement to answer any questions.²⁵³
- g. The interrogation and all recess periods shall be recorded on audiotape, or otherwise preserved as to allow a transcript to be prepared. There shall be no unrecorded questions or statements during the interrogation. Upon the request of the interrogated officer, a copy of any such recording of the interrogation must be made available no later than 72 hours, excluding holidays.²⁵⁴
- h. If the officer under investigation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the officer shall be completely informed of all his or her rights prior to the commencement of the interrogation.²⁵⁵

²⁴⁸ Fla. Stat. § 112.532(1)(b).

²⁴⁹ Fla. Stat. § 112.532(1)(c).

²⁵⁰ Fla. Stat. § 112.533(2)(a).

²⁵¹ Fla. Stat. § 112.532(1)(d).

²⁵² Fla. Stat. § 112.532(1)(e).

²⁵³ Fla. Stat. § 112.532(1)(f).

²⁵⁴ Fla. Stat. § 112.532(1)(g).

²⁵⁵ Fla. Stat. § 112.532(1)(h).

- i. Upon request, the officer under investigation is entitled to be represented by counsel or any other representative of his/her choice, who shall be present during the interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement or correctional services.²⁵⁶ However, counsel is not permitted to object to questioning or otherwise disrupt the interrogation.
- j. Notwithstanding the above, the Bill of Rights does not limit the right of a sheriff to discipline or pursue criminal charges against an officer.²⁵⁷

2. Additional Requirements

Under completion of the investigation, the subject officer must be notified of any demotion, transfer, reassignment, suspension, or other personnel action that may result in loss of pay or be considered punitive in nature prior to the effective date of the action. The notice should inform the officer of the disciplinary action that is proposed and the reasons for this action.²⁵⁸

Upon request, the subject officer must be given a complete copy of the investigative report and supporting documents and an opportunity to address the report's findings before discipline is imposed. The contents of the complaint and investigation remain confidential until final action is taken by the sheriff.²⁵⁹ No officer may be discharged, disciplined, demoted, denied promotion, transferred, or otherwise subject to retaliation or discrimination for exercising his or rights under the Bill of Rights.²⁶⁰

Officers have the right to bring civil suit against third parties for damages suffered during the performance of the officer's official duties or for filing a false report against the officer. The Bill of Rights does not permit a civil action against the officer's employing agency for the investigation and processing of a complaint.²⁶¹

An officer may review his or her official personnel file at any reasonable time under the supervision of the designated records custodian. An officer may attach to the file a concise statement in response to any items included in the file identified by the officer as detrimental, and such items must be made available to the officer.²⁶²

The procedures set forth in the Bill of Rights regarding the establishment and use of a complaint review board do not apply to sheriffs or deputy sheriffs.²⁶³ The complaint review board should

²⁵⁶ Fla. Stat. § 112.532(1)(i).

²⁵⁷ Fla. Stat. § 112.532(1)(j).

²⁵⁸ Fla. Stat. § 112.532(4)(a),(6)(a).

²⁵⁹ Fla. Stat. § 112.532(4)(b).

²⁶⁰ Fla. Stat. § 112.532(5).

²⁶¹ Fla. Stat. § 112.532(3).

²⁶² Fla. Stat. § 112.533(3).

²⁶³ Fla. Stat. § 112.532(2).

not to be confused with a compliance review panel which may be convened for resolving disputes about alleged violations of the Bill of Rights.²⁶⁴ The compliance review panel is discussed later in this chapter.

3. Limitations Period/Tolling of Investigation

Unless tolled, an internal investigation resulting from a complaint, whether it originates internally or from outside of the agency, must be completed within 180 days after the date the agency receives the complaint.²⁶⁵ Investigations that are initiated as a result of a complaint from within the agency are not subject to this 180-day period.²⁶⁶ If the agency determines that disciplinary action is appropriate, notice must be provided to the officer of its intent to proceed with discipline, including the specific action proposed, such as the length of any suspension.²⁶⁷ Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct except as follows:

- a. The running of the limitations period may be tolled for a period specified in a written waiver of the limitation executed by the officer;²⁶⁸
- b. The investigation may be tolled while an ongoing criminal investigation or prosecution in connection with the alleged misconduct is pending;²⁶⁹
- c. If the investigation involves an officer who is incapacitated or unavailable, the investigation is tolled for period of time the officer is incapacitated or otherwise available;²⁷⁰
- d. In a multijurisdictional investigation, limitations period may be extended for a period of time reasonably necessary to facilitate the coordination of agencies involved;²⁷¹
- e. The running of the limitations period may be tolled if the Governor has declared a state of emergency within the jurisdictional boundaries of the agency;²⁷²
- f. The limitations period will be tolled if the officer has requested a compliance hearing pursuant to Section 112.534, Florida Statutes, from the time of the notice of the violation until a written decision is rendered by the panel or the agency cures the violation.²⁷³

²⁶⁴ Fla. Stat. § 112.534.

²⁶⁵ Fla. Stat. § 112.532(6)(a).

²⁶⁶ *McQuade v. Fla. Dept. of Corrections*, 51 So.3d 489, 494 (Fla. 1st DCA 2011).

²⁶⁷ Fla. Stat. § 112.532 (6)(a).

²⁶⁸ *Id.* § (6)(a) sub. 1.

²⁶⁹ *Id.* § (6)(a) sub. 2.

²⁷⁰ *Id.* § (6)(a) sub. 3.

²⁷¹ *Id.* § (6)(a) sub. 4.

²⁷² *Id.* § (6)(a) sub. 5.

²⁷³ *Id.* § (6)(a) sub. 6.

Notwithstanding the 180-day limitations period an investigation may be reopened if:

- a. significant new evidence has been discovered that is likely to affect the outcome of the investigation, or;
- b. the evidence could not reasonably have been discovered in the normal course of the investigation or the evidence resulted from the pre-disciplinary response of the officer.

If the investigation was reopened, any disciplinary action must be completed within 90 days after that the date the investigation this reopened.²⁷⁴

4. Confidentiality

A complaint against an officer or correctional officer is confidential, and neither the complaint nor information obtained pursuant to the investigation may be disclosed until:

- a. The investigation ceases to be active; or
- b. Written notice is provided to the officer who is the subject of the investigation that:
 - 1) the investigation is concluded with a finding not to proceed with disciplinary action or to file a charge, or
 - 2) the investigation is concluded with a finding to proceed with disciplinary action or to file charges.²⁷⁵

At the time one of the above occurs, the complaint and investigative information become subject to disclosure unless they meet one of the other exceptions to the Public Records Act. An investigation will be presumed inactive if no finding is made within forty-five (45) days after the complaint is filed, or upon the agency head providing written notice to the officer who is the subject of the complaint of the outcome of the investigation and whether disciplinary action shall be imposed.²⁷⁶ If a finding of no probable cause for disciplinary action is made, a statement to that effect should be signed by the sheriff or his or her designee and attached to the complaint. If the 45-day period is about to elapse, the investigation should request an extension of time to ensure the confidentiality of the investigation.

Pursuant to Section 122.533(4), Florida Statutes, any person who is a participant in the investigation and willfully reveals any information obtained pursuant to the investigation before it becomes a public record commits a first degree misdemeanor.²⁷⁷ In *Cooper v. Dillon*, this statute was declared unconstitutional by the Eleventh Circuit Court of Appeals in reviewing the arrest of a newspaper editor who reported allegations of a complaint that had been lodged by the

²⁷⁴ *Id.* § (6)(b).

²⁷⁵ Fla. Stat. § 112.533(2)(a).

²⁷⁶ Fla. Stat. § 112.533(2)(b).

²⁷⁷ Fla. Stat. § 112.533(4).

editor against a member of the police department.²⁷⁸ Sheriffs should therefore avoid making any criminal charges for this offense.

The opinion of the Eleventh Circuit in *Cooper v. Dillon* does not address whether the participants in an internal investigation may be instructed not to discuss the investigation while it is ongoing. Therefore, to ensure the confidentiality and integrity of the investigation, participants in an internal investigation may be instructed not to discuss the investigation.

The complaint and the investigation shall be available to other law enforcement and correctional agencies, as well as the state attorney, in the conduct of a criminal investigation.²⁷⁹ Furthermore, a sheriff, police chief, or other head of a law enforcement agency, or their designee, is not precluded from acknowledging the existence of a complaint and the fact that an investigation is underway.²⁸⁰

5. Compliance Review Panel

The exclusive remedy to address a violation of the Bill of Rights is a compliance review panel.²⁸¹ If the subject officer believes that there has been a violation of the Bill of Rights during the investigation, the officer shall advise the investigator of an intentional violation which is alleged to have occurred.²⁸² If the investigator fails to cure the violation, the officer shall request that the sheriff or the sheriff's designee be informed of the alleged intentional violation. When this request has been made, any interview of the subject officer shall cease and the officer's refusal to respond to further questions does not constitute insubordination.²⁸³

Within three working days, the subject officer must file a written notice of the violation and request a compliance review hearing. The compliance review panel hearing is considered part of the original investigation and confidentiality attaches.²⁸⁴

Unless an alternate date is chosen, the compliance review hearing must be conducted within 10 working days after the request for a hearing. The panel shall consist of three members: one member selected by the sheriff, one member selected by the subject officer, and a third member to be selected by the other two members. The review panel members shall be officers who are active from the same discipline, i.e. corrections or law enforcement, as the subject officer. Panel members may be selected from any state, county and municipal agency within the county in which the subject officer works.²⁸⁵

²⁷⁸ *Cooper v. Dillon*, 403 F.3d 1208 (11th Cir. 2005).

²⁷⁹ Fla. Stat. § 112.533(2)(c).

²⁸⁰ Fla. Stat. § 112.533(4).

²⁸¹ See *Fraternal Order of Police, Gator Lodge v. City of Gainesville*, 148 So.3d 798, 804 (Fla. 1st DCA 2014).

²⁸² Fla. Stat. § 112.534(1)(a).

²⁸³ Fla. Stat. § 112.534(1)(b).

²⁸⁴ Fla. Stat. § 112.534(1)(c).

²⁸⁵ Fla. Stat. § 112.534(1)(d).

The compliance review panel shall determine whether the investigator with the agency intentionally violated the Bill of Rights.²⁸⁶ The subject officer bears the burden of proof by a preponderance of the evidence to establish that the violation was intentional. At the conclusion of the hearing, the panel makes a written determination which is filed with the sheriff.²⁸⁷

If the panel sustains the violation as intentional, the sheriff shall immediately remove the investigator from the investigation of the subject officer. In addition, the sheriff shall direct that an investigation be initiated against the investigator who was determined to have intentionally violated the Bill of Rights. If this investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position.²⁸⁸

D. Due Process/Name Clearing Rights

As previously discussed, when a civil or career service act or a collective bargaining agreement creates a property interest for deputies or non-sworn employees, rights to procedural due process are also created.²⁸⁹ Essentially these rights involve notice of charges and a meaningful opportunity to be heard to address the charges.²⁹⁰ A pre-deprivation (pre-disciplinary) conference and a post-discipline evidentiary hearing satisfy procedural due process rights.²⁹¹

Even if no property interest exists for a deputy or civilian employee because there is no collective bargaining agreement or career service law in effect, an employee may nonetheless have the right to a name clearing hearing in the case of a dismissal. This right, which stems from a liberty interest provided by the Fourteenth Amendment to the United States Constitution, extends also to a probationary employee who has no right to appeal discipline.²⁹²

The name clearing hearing is intended to “cleanse the reputation” of the employee.²⁹³ At the name clearing hearing, the employee may address the dismissal and the underlying charges, but it is not intended to reevaluate a termination.²⁹⁴ Therefore, it may take place prior to or after the termination of the employee.²⁹⁵

In essence, the name clearing hearing is an informal opportunity for the employee to speak to the termination and offer a response.²⁹⁶ If a pre-disciplinary conference is offered to an employee prior

²⁸⁶ Fla. Stat. § 112.534(1)(e).

²⁸⁷ Fla. Stat. § 112.534(1)(f).

²⁸⁸ Fla. Stat. § 112.534(1)(g).

²⁸⁹ *Infra* III.A.1. “Relationship”;

²⁹⁰ *Cleveland Bd. of Educ. v. Loudermill*, 407 U.S. 532, 545-46 (1985).

²⁹¹ *Gilbert v. Homar*, 520 U.S. 024, 933 (1997).

²⁹² *Buxton v. City of Plant City*, 871, F.2d 1037, 1045 n. 14 (11th Cir. 2000).

²⁹³ *Campbell v. Pierce County, Ga.* 741 F.2d 1342,1345 (11th Cir. 1984).

²⁹⁴ *Id.* at 1346.

²⁹⁵ *Id.* at 1345-46.

²⁹⁶ *Harrison v. Wille*, 132 F.3d 679, 683 n. 9 (11th Cir. 1998).

to final disciplinary action, the conference also serves as a name clearing hearing.²⁹⁷ Because the purpose is to give the employee an opportunity to respond to potentially stigmatizing information, the employee's response, which may be rerecorded or summarized, should be included with the investigative and personnel files.²⁹⁸

E. Officer Qualifications

1. The Criminal Justice Standards and Training Commission

The Criminal Justice Standards and Training Commission in the Florida Department of Law Enforcement is charged with providing, "statewide leadership in the establishment, implementation, and evaluation of criminal justice standards and training" for law enforcement officers, correctional officers and correctional probation officers.²⁹⁹ The Commission establishes minimum employment and training standards,³⁰⁰ with the administrative support of the Criminal Justice Professionalism Program in the Florida Department of Law Enforcement.³⁰¹

The commission shall be composed of 19 members, consisting of the Secretary of Corrections or a designated assistant; the Attorney General or a designee; the Director of the Division of the Florida Highway Patrol; and 16 members appointed by the Governor, consisting of 3 sheriffs; 3 chiefs of police; 5 law enforcement officers who are of the rank of sergeant or below within the employing agency; 2 correctional officers, 1 of whom is an administrator of a state correctional institution and 1 of whom is of the rank of sergeant or below within the employing agency; 1 training center director; 1 person who is in charge of a county correctional institution; and 1 resident of the state who falls into none of the foregoing classifications. Prior to the appointment, the sheriff, chief of police, law enforcement officer, and correctional officer members must have had at least 4 years' experience as law enforcement officers or correctional officers.³⁰²

Statewide regional criminal justice assessment centers established by the Criminal Justice Standards and Training Commission, are either under the direction and control of a post-secondary public school or a local criminal justice agency. A region shall encompass more than one county and the center shall serve the participating police departments and corrections agencies for the purpose of hiring and in-service promotions. Each center will provide standardized screening, testing, physical examinations, and background investigations of all applicants.³⁰³

An advisory board comprised of not more than 11 members shall establish the center's policies.³⁰⁴

The centers receive their funding from applicant fees or user fees, grants, and donations. Annual

²⁹⁷ *Dressler v. Jenne*, 87 F. Supp.2d 1308, 1317 (S.D. Fla. 2000).

²⁹⁸ *See id.* at 1316-17.

²⁹⁹ Fla. Stat. § 943.085(3).

³⁰⁰ Fla. Stat. § 943.12(4)-(5).

³⁰¹ Fla. Stat. § 943.09.

³⁰² Fla. Stat. § 943.11(1)(a).

³⁰³ *Id.*; Fla. Stat. § 943.256.

³⁰⁴ Fla. Stat. § 943.2562.

audits shall be conducted by an independent CPA. The audit must comply with the rules of the Auditor General.

2. Statutory Standards for Officers

The following requirements are set by statute³⁰⁵ for employment as a law enforcement or correctional officer:

- a. Be at least 19 years of age, except that any person employed as a full-time, a part-time, or an auxiliary correctional officer must be at least 18 years of age.
- b. Be a citizen of the United States, notwithstanding any laws of the state to the contrary;
- c. Be a high school graduate or its “equivalent” as the term may be determined by the commission.
- d. Not have been convicted of a felony or of a misdemeanor involving perjury or a false statement nor have been dishonorably discharged from any of the Armed Forces of the United States. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of a felony or of a misdemeanor involving perjury or false statement is not eligible for employment as an officer, notwithstanding suspension of sentence or withholding of adjudication.
- e. Have his/her fingerprints processed and on file with the employing agency. If he/she is a private correctional officer, they shall have their fingerprints on file with the Commission or the Department of Corrections;
- f. Have passed an examination by a licensed physician, physician assistant, or a certified advanced registered nurse practitioner based on specifications established by the Commission;
- g. Have a good moral character as determined by investigation under procedures established by the Commission; Note: A drug test is required as part of this investigation. In 2017, Florida voters passed a constitutional amendment that allows physicians to prescribe medical marijuana to a person diagnosed with a debilitating medical condition. However, marijuana remains illegal under federal law and employers are not required to permit the use of marijuana in the workplace.³⁰⁶
- h. Execute an affidavit-of-applicant form attesting to full compliance with the above.
- i. Complete a Commission-approved basic recruit training program unless exempted;

³⁰⁵ Fla. Stat. § 943.13.

³⁰⁶ Fla. Const. Art. X, § 29.

- j. Achieve a passing score on the officer certification exam for the applicable discipline; and
- k. Comply with the continuing training or education requirements of Section 943.135, Florida Statutes.
- l. Complete four hours of training in identifying and investigating human trafficking within one year of employment or before July 1, 2022, for officers employed before July 1, 2019.³⁰⁷

The sheriff is fully responsible for the collection, verification, and maintenance of documentation establishing that an applicant complies with the requirements of Sections 943.13 and 943.131, Florida Statutes, and the rules adopted pursuant to these sections. An affidavit-of-compliance must be completed and submitted to the Commission prior to appointment.³⁰⁸

3. Background Information

Requirements concerning the release by employers of employee information to law enforcement agencies who are conducting background checks of applicants for sworn criminal justice positions, including full-time, part-time, and auxiliary law enforcement, correctional, or correctional probation officers are described in Chapter 943, Florida Statutes. The law provides procedures to be followed in obtaining information and requires that the Commission create a standardized authorization form for the release of information by an employer to the investigating agency.³⁰⁹

An employer is not required to maintain employment information other than information that is kept in the ordinary course of business. If an employer refuses to disclose information in accordance with the law, an employing agency may file a civil action to mandate release of the requested information.³¹⁰ An employer may charge a reasonable fee for copies provided, and is provided immunity from civil liability for release of information in accordance with the law.³¹¹

4. Training Requirements for Officers

Officers must complete a commission approved basic recruit training program. The following are required training program hours are required:

Traditional Law Enforcement Officer:.....770 hours
 Traditional Correctional Officer:.....552 hours³¹²

³⁰⁷ Fla. Stat. § 943.17297.

³⁰⁸ Fla. Stat. § 943.13(8).

³⁰⁹ Fla. Stat. § 943.134(2)(a).

³¹⁰ Fla. Stat. § 943.134(4).

³¹¹ *Id.* § 943.134(5),(6).

³¹² Fla. Admin. Code R. 11B-35.002.

An applicant is exempt from this requirement if he/she has:

- a. Completed a comparable basic recruit training program in another state or for the federal government and served as a full-time sworn officer in another state or for the federal government for at least one (1) year provided there is no more than an 8-year break in employment.³¹³
- b. Served in the special operations forces of the U.S. military for at least five (5) years, provided there is no more than a 4-year break from the applicant's special operations forces experience at the time of application.³¹⁴

A basic recruit candidate must undergo a criminal history background check prior to academy entry.³¹⁵ Recruit candidates are also required to complete a basic skills examination and assessment instrument prior to entry into the academy.³¹⁶ The Commission can take action up to and including revocation of certification of an officer who is not in compliance with the above statutory and training qualifications.³¹⁷

As of July 1, 2020 all officers are required to complete training on the recognition of and response to head trauma and brain injury in a child under 6 as part of either basic recruit training or continuing education by July 1, 2022.³¹⁸

5. Temporary Appointment

A sheriff may temporarily appoint a person who meets the qualifications specified in Sections 943.13(1)-(8), Florida Statutes, but who has not completed the required basic recruit training if a critical need is documented and the person so appointed is, or will be, enrolled in the next approved basic recruit training program available in the geographic area. When the training program is completed, the temporary appointee must successfully pass the officer certification exam within 180 days.³¹⁹

The temporary appointment must end if the person fails or withdraws from basic recruit training or fails to pass the required exam within 180 days after employment.³²⁰ The temporary appointee must be adequately supervised by an officer certified in the same discipline.³²¹

³¹³ Fla. Stat. § 943.13(9)(a).

³¹⁴ Fla. Stat. § 943.13(9)(b).

³¹⁵ Fla. Stat. § 943.13(5).

³¹⁶ Fla. Stat. § 943.13(9).

³¹⁷ Fla. Stat. § 943.1395.

³¹⁸ Fla. Stat. § 39.303(3)(h).

³¹⁹ Fla. Stat. § 943.131(1)(a).

³²⁰ Fla. Stat. § 943.131(1)(b).

³²¹ Fla. Stat. § 943.131(1)(c).

6. Officer Separations

The sheriff's office must immediately notify the Commission, in writing, upon an officer's separation from the office, regardless of whether the separation is voluntary or involuntary. The sheriff's office shall execute an affidavit-of-separation form adopted by the commission, maintain the original form and submit, or electronically transmit, a copy of the form to the Commission. The affidavit must set forth the facts and reasons for the separation. The officer may respond to the separation, in writing, to the Commission, setting forth the facts and reasons as he/she understands them.³²²

Before employing or appointing an officer, a subsequent employing agency must contact the Commission to inquire as to the facts and reasons an officer became separated from any previous employment. The Commission, upon written request, shall provide the subsequent employing agency with all the information that is required above.³²³ An administrator or employing agency who discloses information pursuant to this section is immune from civil liability.³²⁴

The report of misconduct and all records or information provided to or developed by the Commission during the course of an investigation regarding the revocation of an officer's certification are exempt from disclosure until after a finding relating to probable cause is made or until the investigation becomes inactive.³²⁵

F. Salary Incentive

Full-time officers are entitled to a salary increase ("incentive") for taking certain types of educational or training classes.³²⁶ This salary incentive is not to be confused with the sheriff's salary supplement set out in Section 145.071, Florida Statutes. Sheriffs are eligible for both the salary supplement and salary incentives, but the same training program may not be used to qualify them for both.³²⁷ Additional courses listed in Rule 11B-14.002(4) of the Florida Administrative Code may also qualify as well.

Salary incentives come in two forms: incentives for educational advancement (usually a degree or certificate-oriented course of studies at a college or university) and incentives for completing approved training programs sponsored by the Florida Department of Law Enforcement or other organizations.³²⁸

1. Educational Incentive

³²² Fla. Stat. § 943.139(1), (2).

³²³ Fla. Stat. § 943.139(3).

³²⁴ Fla. Stat. § 943.139(4).

³²⁵ Fla. Stat. § 943.1395(6)(b).

³²⁶ Fla. Stat. § 943.22(2).

³²⁷ Fla. Admin. Code R. 11B-14.002(14).

³²⁸ Fla. Stat. § 943.22(2).

Full-time officers with community college degrees receive \$30 per month.³²⁹ Full-time officers who obtain bachelor's degrees are entitled to an additional \$50 per month.³³⁰ The degree program must be job-related.³³¹ The following documentation is required for an officer who wishes to receive salary incentive monies:

- a. The sheriff's office must obtain an official sealed copy of the officer's transcript directly from the educational institution.
- b. Complete a "Higher Education Report Form," CJSTC-63 and send it to the Division of Criminal Justice Standards and Training; do not send the transcript.
- c. The Division will respond with the effective date of eligibility for incentive pay, and the amount to be paid.³³²

2. Training Incentives

A full-time officer who completes 480 hours of advanced and career development training may receive up to \$120 per month. The officer may receive incremental increases on completion of 80-hour units.³³³ Repetition of a course will not entitle the officer to additional payment.³³⁴ The maximum aggregate amount an officer may receive is \$130 per month.³³⁵ In order for the officer to receive credit for salary incentive payment, the training course must be approved by the Division of Criminal Justice Standards and Training. In addition to courses provided by the Division of Criminal Justice Standards and Training programs, additional courses approved by the Commission, including the FBI National Academy, qualify for forty (40) hours of training credit per forty (40) hour week of training attended.³³⁶

Courses provided by other entities may qualify as well. Officers desiring to receive credit must submit a written request from the sheriff to the Bureau of Standards of the Division of Criminal Justice Standards and Training and attach copies of certificates and course curriculum.³³⁷ Cross-training hours required to certify a correctional officer as a law enforcement officer (and vice-versa), mandatory retraining, and inservice programs do not qualify for salary incentive.³³⁸

³²⁹ Fla. Stat. § 943.22(2)(b).

³³⁰ Fla. Stat. § 943.22(2)(c).

³³¹ Fla. Stat. § 943.22(2)(h) sub. 3.

³³² Fla. Admin. Code R. 11B-14.002(5), (6).

³³³ Fla. Stat. § 943.22(2)(d).

³³⁴ Fla. Admin. Code R. 11B-14.003(4).

³³⁵ Fla. Stat. § 943.22(2)(e) & Rule 11B-14.003(5).

³³⁶ See Fla. Admin. Code R. 11B-14.002(4), for the list of approved courses.

³³⁷ See Fla. Admin. Code R. 11B-14.003.

³³⁸ Fla. Stat. § 943.175(2).

The officer should provide the sheriff's office with a copy of the Final Class Report issued by the training school, or a Commission-approved training certificate.³³⁹

3. Miscellaneous

Salary incentive payments shall commence on or after the date of eligibility as specified in the documentation authorizing the payments which is the date indicating the successful completion of an approved training course or the date of certification for employment, whichever is later; the date indicated on a Commission-approved training certificate or the date of certification of employment, whichever is later; and, for educational salary incentive, the date as specified of the transcript approval or certification for employment, whichever is later.³⁴⁰ The initial payment may be pro-rated, or the first month may be excluded.³⁴¹

The Division will, at the sheriff's request, verify any documents an officer submits for training salary incentive monies, and the amount of payment the officer is entitled to receive. The U.S. Department of Labor has determined that salary increases affect the officer's regular rate of pay for overtime computation purposes.³⁴²

Salary incentive is an entitlement to the officer. It is paid by the sheriff's office, not the state, and it may not be used to circumvent regularly scheduled salary increases.³⁴³

The Florida Sheriffs Association has permission to grant initial qualification for salary supplement to newly elected sheriffs through the completion of the 40-hour Florida Sheriffs Institute. These hours may be taken after the election and prior to taking office in January, yet the hours will count towards the calendar year the sheriff is sworn in.³⁴⁴

Additional information on the sheriff's salary is available in the Finance Section of this Manual.

G. Overtime

The Fair Labor Standards Act ("FLSA")³⁴⁵ requires that all non-sworn employees who are required to work more than forty (40) hours a week be compensated at one and one-half (1 1/2) times their regular hourly wage for each hour worked over 40.³⁴⁶ Because of the hardship this mandate placed on public safety functions, two special provisions have been set out for law enforcement:

³³⁹ See Fla. Admin. Code R. 11B-14.002(3).

³⁴⁰ Fla. Admin. Code R. 11B-14.002(6).

³⁴¹ Fla. Admin. Code R. 11B-14.002(5)(b).

³⁴² See 29 U.S.C. § 207 (2009).

³⁴³ Fla. Stat. § 943.22(2)(g).

³⁴⁴ Fla. Admin. Code R. 11K-1.003.

³⁴⁵ 29 U.S.C. §§ 201 et. seq.

³⁴⁶ 29 U.S.C. § 207(a)(1).

the flexible work period for officers,³⁴⁷ and the ability to use compensatory time (“comp time”) for both officers and civilian personnel, instead of cash payment for overtime.³⁴⁸

1. The Flexible Work Period

Instead of basing overtime compensation based on a 40-hour week, sheriffs may extend the work period to use one of the periods on the following chart³⁴⁹ for law enforcement and correctional officers only:

Work Period (days)	Max. Hrs.	Work Period (days)	Max. Hrs.
28	171	17	104
27	165	16	98
26	159	15	92
25	153	14	86
24	147	13	79
23	141	12	73
22	134	11	67
21	128	10	61
20	122	9	55
19	116	8	49
18	110	7	43

A 28-day work period may be used for computation of overtime even if sworn personnel are paid bi-weekly. The work period need not coincide with the pay cycle.³⁵⁰

Using this chart gives a sheriff’s office greater flexibility in scheduling than a 40-hour work period would allow. Keep in mind that these are mandated minimum levels. A sheriff may pay overtime at fewer hours than those shown on the chart. However, for civilian non-exempt personnel, including dispatchers, overtime must always be computed based on a 40-hour, 7-day period.

2. Compensatory Time

Instead of cash, sheriff’s offices may grant compensatory time for overtime at a rate of one and one-half (1 1/2) hours for each hour worked.³⁵¹ If the agency policy as of April 15, 1986 (the date this section was adopted) provided that compensatory time in lieu of cash payment would be given, all employees who were employed at that time are considered to have agreed to that policy.³⁵² For persons hired after April 15, 1986, there should be a documented agreement in which

³⁴⁷ *Id.* §§ 207(k), (o).

³⁴⁸ *Id.* § 207(o).

³⁴⁹ 29 C.F.R. § 553.230.

³⁵⁰ 29 C.F.R. § 553.224.

³⁵¹ 29 U.S.C. § 207(o)(2)(A)(ii).

³⁵² *Id.* § 207(o)(2)(B).

they will accept compensatory time in lieu of cash. The Florida Sheriffs Association job application contains such an agreement, which may be required as a condition of initial employment.

Limitations on Compensatory Time

No officer may carry more than 480 hours of compensatory time. No civilian employee may carry more than 240 hours. If the hour limit has been reached, each additional overtime hour must be paid in cash at the time and one-half rate.³⁵³

An employee who has compensatory time and asks to use it, must be allowed to do so “within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.”³⁵⁴ The employer may require use of compensatory time before annual or vacation leave. Also, an agency can compel officers and employees to use their accrued compensatory time.

An employee who has accrued compensatory time and whose employment is terminated for any reason is entitled to payment for the compensatory leave accrued, at a rate of one and one-half (1 ½) times the greater of:

- his/her average regular rate for the last three (3) years, or,
- his/her final regular rate.³⁵⁵

3. Figuring the Regular Rate

Because overtime must be paid at one and one-half (1 1/2) times the employee’s “regular rate,” the determination of that rate is critical. Under the FLSA, that rate includes all remuneration paid to or on behalf of the employee, except: gifts, sums paid for annual or sick leave or other periods when no work is performed, reimbursement for travel, discretionary bonuses, insurance or retirement contributions, and premiums for working holidays.³⁵⁶

The regular rate is an hourly rate arrived at by dividing the employee’s gross remuneration including incentive pay, but (excluding items listed above) by the total hours worked.³⁵⁷ For salaried employees, the regular rate should remain fairly stable, but it will need to be re-calculated if the work period or salary changes.

4. Compensable Hours of Work

Compensable hours of work generally include all of the time during which an employee is on duty on the employer’s premises or at a prescribed workplace, as well as all other time during which

³⁵³ *Id.* § 207(o)(3)(A).

³⁵⁴ *Id.* § 207(o)(5).

³⁵⁵ *Id.* § 207(o)(4).

³⁵⁶ *Id.* § 207(e).

³⁵⁷ 29 C.F.R. §§ 553.233, 778.109-115.

the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call and compiling reports.³⁵⁸

Sheriffs cannot allow officers or employees to work extra hours if they volunteer to do so without pay, because any time that an employee is required or permitted to work is compensable time if it is similar to their regular duties.³⁵⁹

Time spent away from the sheriff's office under conditions that are so circumscribed that the employee cannot use the time for personal pursuits is also compensable time.³⁶⁰

Some examples:

- If the officer is required to respond to a radio call on the way to or from work, the time he/she spends responding to the call is compensable.³⁶¹
- Home to work travel is not compensable, even if the officer is required to listen to the police radio.³⁶²
- Meal time where the employee is freed from duties and may pursue personal business is not compensable.³⁶³
- The mere requirement of wearing a pager or being "on call" does not make the time compensable, unless the employee's activities are substantially limited.³⁶⁴

Time spent in training required by the sheriff's office to maintain certification, such as firearms qualification, will normally be compensable. However, attendance outside of regular working hours for training required for certification or recertification is not counted as compensable time.³⁶⁵

H. Retirement

Chapter 121, Florida Statutes, establishes benefits under the Florida Retirement System ("FRS").³⁶⁶ Participation in the FRS is mandatory for the office of the sheriff. The FRS also now requires a

³⁵⁸ *Id.* § 553.221(b).

³⁵⁹ 29 U.S.C. § 203(e)(4); 29 C.F.R. § 533.101(d).

³⁶⁰ 29 U.S.C. § 553.221(d).

³⁶¹ *Id.* § 553.221(f).

³⁶² See Portal-to-Portal Act, 29 U.S.C. § 251 *et. seq.* which amends the FLSA; 29 U.S.C. 553.221 (e)-(f).

³⁶³ 29 C.F.R. § 785.19.

³⁶⁴ 29 C.F.R. § 785.17.

³⁶⁵ 29 U.S.C. § 553.226(b).

³⁶⁶ Fla. Stat. Ch. 121.

mandatory contribution by the employee.³⁶⁷ Contribution rates paid on behalf of the sheriff for all employees are set by the legislature annually based on the actuarial cost to fund the system.³⁶⁸ Contribution rates vary for each class.

The FRS has five membership classes:

- Regular Class
- Special Risk Class (most deputies fall into this category)
- Special Risk Administrative Support Class
- Elected Officers’ Class (would include the sheriff)
- Senior Management Service Class

There are two main plans offered to employees of sheriffs’ offices: the Investment Plan (also known as the Defined Contribution Plan) and the Pension Plan (also known as the Defined Benefit Plan). If a member does not elect which program to enter into the default is the pension plan, however members who are not in the Special Risk Class will default into the investment plan.³⁶⁹

A member can make a one-time election to change plans in his/her employment history with the FRS.³⁷⁰

There were significant changes to the FRS Pension Plan in 2011³⁷¹. These new changes affect those hired after July 1, 2011:

	Hired Before July 1, 2011	Hired After July 1, 2011
Retirement age	60 years old	55 years old
Years of service required to retire (regardless of age)	25 years	30 years
Years required to vest in the pension plan	6 years	8 years
Calculation for average final compensation	Highest five years	Highest eight years

Section 121.091 creates the Deferred Retirement Option Plan (“DROP”) under the FRS.³⁷² This program allows eligible members to receive retirement benefits while using employment with his/her FRS employer. For specific details refer to the full text of the statute.

³⁶⁷ Fla. Stat. Ch. 121.71(3).

³⁶⁸ Fla. Stat. Ch. 121.71(4).

³⁶⁹ Fla. Stat. § 121.4501(4)(b)4.

³⁷⁰ Fla. Stat. § 121.4501(4)(g).

³⁷¹ Ch. 2011-68, Laws of Fla.

³⁷² Fla. Stat. § 121.091(13).

A FRS member who is required to resign his/her position as a subordinate officer, deputy sheriff, or police officer because he/she is a candidate for public office to be eligible to purchase retirement credit for the period between his/her date of resignation and the beginning of the term of office for which he/she was a candidate.³⁷³

A member may purchase creditable service for up to two work years of authorized leaves of absence, including any leaves of absence covered under the Family and Medical Leave Act if certain criteria are met.³⁷⁴

The minimum in the line of duty disability benefit for members who retire on or after July 1, 2000, is 65 percent of the average monthly compensation.³⁷⁵ Retirement disability benefits vary between municipal and county law enforcement agencies. In a sheriff's office, there is a higher threshold for disability and an option for the employing agency to review the health status of the deputy years after claiming retirement due to disability.³⁷⁶

Florida Statute creates a presumption that certain conditions are accidental and caused by in line of duty actions, except when rebuttable by competent evidence and that the condition was not preexisting.³⁷⁷ Conditions or impairments caused by heart disease, tuberculosis, or hypertension are presumed to be in-the-line-of-duty disabilities for law enforcement officers.³⁷⁸

Starting in 2017, retired members of the investment plan can re-enroll into the FRS. Effective July 1, 2017, retirees of the Investment Plan are eligible for renewed membership in the Investment Plan. You must be employed in an FRS-covered position on or after July 1, 2017, in order to gain renewed membership. It is important to note this new provision does not afford renewed membership retroactively for the period of July 1, 2010 to June 30, 2017, nor does it grant disability benefits for renewed members. Renewed membership in the FRS is not available for retired members who are initially reemployed on or after July 1, 2010 through June 30, 2017. Please note that different termination requirements and reemployment limitations apply if you retired prior to July 1, 2010.³⁷⁹

I. Death Benefits

Beneficiaries of law enforcement or correctional officers who die in the line of duty are entitled to \$75,000 death benefit. If the death occurs while in fresh pursuit; in response to what is reasonably believed to be an emergency; at the scene of a traffic accident to which the officer

³⁷³ Fla. Stat. § 121.121(2).

³⁷⁴ Fla. Stat. § 121.121(1).

³⁷⁵ Fla. Stat. § 121.091(4)(f).

³⁷⁶ Fla. Stat. § 121.091(4).

³⁷⁷ Fla. Stat. § 112.18(1).

³⁷⁸ Fla. Stat. § 112.18.

³⁷⁹ Ch. 2017-88, Laws of Fla.

has responded; or while the officer is enforcing what is reasonably believed to be a traffic law or ordinance an additional \$75,000 is payable. The sum of \$225,000 is payable if an officer, while acting in the line of duty, is killed unlawfully and intentionally. A \$1,000 allowance for funeral and burial expenses benefit is also available, in addition the employing agency may pay up to a \$5,000 for fees associated with the burial venue.³⁸⁰ These statutory amounts are annually adjusted for price level changes by the Bureau of Crime Prevention and Training within the Department of Legal Affairs.³⁸¹

These benefits are payable in addition to any workers' compensation death benefits available. That section provides up to \$150,000 for accidental death, \$7,500 for funeral expenses, as well as payment of postsecondary student fees for the surviving spouse.³⁸²

If the officer is killed in the line of duty as a result of an act of violence inflicted by another person while the officer is engaged in the performance of law enforcement duties or as a result of an assault against the officer under riot conditions, the employer shall pay the entire premium of the health insurance plan for the officer's surviving spouse until remarried, and for each dependent child until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25, if the child was dependent upon the officer for support at the time of death and the child continues to be dependent for support, or the child is a full-time or part-time student and is dependent for support.³⁸³ This benefit is also available to an officer who suffers a catastrophic injury in the line of duty.³⁸⁴ Finally, the surviving spouse or child(ren) of an officer killed in the line of duty may also have certain educational expenses waived for a career certificate, undergraduate education, or postgraduate education.³⁸⁵

The surviving spouse or child(ren) of a Florida Retirement System (FRS) investment plan member in the Special Risk Class who is killed in the line of duty may opt into the FRS investment plan survivor benefits program in lieu of receiving normal retirement benefits under the FRS investment plan. By participating in the survivor benefits program, the surviving spouse and children are eligible to receive annuitized benefits afforded to Special Risk Class members of the FRS pension plan. Survivor benefits are available for members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. The monthly survivor benefits available to the spouses and children of FRS pension plan members in the Special Risk Class when killed in the line of duty are equal to 100 percent of the member's monthly salary at the time of death.

In addition, the Federal Public Safety Officers Death Benefit Program currently provides a one-time benefit to the survivors of any state or local officer killed while on duty, whether intentionally or accidentally.³⁸⁶

³⁸⁰ Fla. Stat. § 112.19.

³⁸¹ *Id.* § 112.19(2)(b).

³⁸² *Id.* §§ 112.19(2)(c) and § 440.16.

³⁸³ Fla. Stat. § 112.19(2)(g).

³⁸⁴ *Id.* § 112.19(2)(h).

³⁸⁵ *Id.* § 112.19(3).

³⁸⁶ 42 U.S.C. § 3796. For the fiscal year of 2017, the amount of the PSOB benefit is \$343,589.00

The sheriff's office may also elect to create a trust fund for the education of slain officer's children, but the fund must be set up as a separate entity from agency. The sheriff's office must establish a non-profit corporation, and obtain 501(c)(3) status by filing a 1023 Form with the Internal Revenue Service.³⁸⁷ This non-profit corporation can be called a foundation and used as a trust fund for that specified purpose.

J. Military Reserves

An employee who is a reserve member of the U.S. Military, Naval Service or National Guard for training pursuant to official orders shall receive full pay and benefits not to exceed 240 hours in one annual period. These days may be taken at one time or for periodic drills or training. Administrative military leave shall be granted if assignments to military duty functions exceed 240 working hours, but it shall be without pay. However, all leave granted shall be without loss of time or efficiency rating.³⁸⁸

Any Florida National Guard member called to active duty pursuant to Section 250.28 or Section 252.36, Florida Statutes, shall be granted leave without loss of pay, time or efficiency rating during active duty. However, such leave without loss of pay may not exceed 30 days for each emergency or disaster.³⁸⁹

Note also that the Uniformed Services Employment and Reemployment Rights (USERRA) requires employers to re-employ employees who return from military duty within five years of cumulative service. The returning employees are reinstated as if they had not been absent including wage increases, pension eligibility for promotion, retention of seniority and other length of service based benefits.³⁹⁰ In Florida, employers are required to make continued contributions to the Florida Retirement System during the service member's absence upon return to employment.³⁹¹

K. Dual Office Holding

Article II, section 5(a) of the Florida Constitution provides that no person holding an office may hold another office under the state government and the counties and municipalities. Underlying this constitutional prohibition is the potential for a conflict of interest when multiple state, county, or municipal offices are held by the same person.

A deputy sheriff who exercises powers of arrest as a law enforcement officer is considered an officer for the purposes of the dual office holding prohibition.³⁹² This prohibition does not apply to corrections officers, who do not have same the arrest powers of deputy sheriffs, or civilian employees.³⁹³

³⁸⁷ See 27 U.S.C. § 501 (2015).

³⁸⁸ Fla. Stat. § 115.07(2).

³⁸⁹ Fla. Stat. § 115.09.

³⁹⁰ 38 U.S.C. §§ 4301-4335.

³⁹¹ See 38 U.S. §§ 4313, 4316.

³⁹² Op. Att'y Gen. Fla. 89-10.

³⁹³ See *id.* (opining that an administrative officer with no arrest powers was not considered to be an

However, a deputy may accept a temporary assignment for which no additional compensation is received, such as a joint task force with another law enforcement agency, without violating this prohibition.³⁹⁴ The newly assigned duties are viewed as an addition to the existing duties of the officer.

L. Clean Indoor Air Act

Article X, section 20 of the Florida Constitution and Florida Law³⁹⁵ prohibit smoking in any enclosed indoor workplace, including common areas such as hallways, restrooms, conference rooms, entryways, or stairwells. The proprietor of an enclosed workplace must develop and implement a policy to include procedures to be taken when the proprietor or person in charge witnesses is made aware of violations of the Florida Clean Indoor Air Act, which prohibits employees from smoking in the enclosed indoor workplace. In accordance with this rule, a proprietor may post “No Smoking” signs in the workplace.³⁹⁶

M. Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) is a federal law requiring certain types of employers to comply with a required federal minimum labor standard.³⁹⁷ The FMLA allows employees to take leave for up to 12 weeks per year, without fear of losing health insurance coverage and job security, to: 1) for the birth and care of newborns, newly adopted children, or children taken in for foster care; 2) care for a spouse, parent, or child suffering from a serious health condition; or, 3) the employees own serious health condition³⁹⁸ which makes the employee unable to perform the functions of the job.³⁹⁹ The law applies to all public employers, including sheriffs, provided that the sheriff employs fifty (50) or more persons within seventy-five (75) miles from the work site.⁴⁰⁰

The FMLA requires employers to provide eligible employees with unpaid leave, continued health insurance coverage, and job security. For an employee to be eligible to take leave, he/she must have been hired at least one (1) year before leave is taken and have worked at least 1250 hours in the previous 12 months.⁴⁰¹

“officer”).

³⁹⁴ See *Rampil v. State*, 422 So. 2d 867 (Fla. 2d DCA 1982) (no violation of dual office holding for police officer to act in the capacity of a deputy sheriff while conducting a wiretap).

³⁹⁵ Fla. Stat. § 386.201-386.2125.

³⁹⁶ Fla. Stat. § 386.206(1).

³⁹⁷ 29 U.S.C §§ 2601-2654.

³⁹⁸ 29 C.F.R. § 825.102.

³⁹⁹ 29 C.F.R. § 825.100.

⁴⁰⁰ 29 C.F.R. § 825.104.

⁴⁰¹ 29 C.F.R. § 825.110.

A “serious health condition” is defined as an illness, injury, impairment, or physical or mental condition that involves: 1) any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility and any period of incapacity or subsequent treatment in connection with the inpatient care, 2) continuing treatment by a health care provider including incapacity for more than three (3) calendar days and any subsequent treatment, 3) any period of incapacity due to pregnancy, prenatal care, incapacity or treatment of a chronic health condition incapacity which is permanent or long-term because treatment may not be effective, 4) multiple healthcare treatments following an accident, or 5) conditions if left untreated would result in three or more days of consecutive absences.⁴⁰²

An employer may not delay the designation of FMLA leave. In other words, an employee has no right to decline or delay the leave.⁴⁰³

An employee may take a total of up to 12 weeks in any 12 month period in one or more of the circumstances described above.⁴⁰⁴ An employer may require that a married couple limit their collective leave to no more than 12 workweeks when the purpose is to care for a parent or newborn, newly adopted child, or a child taken into foster care.⁴⁰⁵ An employer may require that leave to care for a newly adopted child, or a child taken into foster care, be taken all at one time. In all other cases, the employee may take the leave in increments throughout the year.⁴⁰⁶ If allowed by the employer, an employee may take paid leave which can be counted against the employee’s FMLA leave entitlement.⁴⁰⁷

Where the leave is to care for a newborn, newly adopted child, or a child taken into foster care, the employee must give 30 days notice when the necessity for such leave is foreseeable. In other circumstances, the FMLA requires such advance notice as is practicable.⁴⁰⁸

Where the purpose of the leave is necessitated by the serious health condition of the employee, or the employee’s parent, child or spouse, the employer may require a certification by a health care provider containing the following: 1) information about the health condition, including date of its onset and probable duration; 2) a statement that the employee is needed to care for the person with the health condition or that the employee’s own health condition prevents him or her from performing the functions of his or her position, and; 3) the dates and duration of planned medical treatment and the medical necessity of intermittent leave, where the leave is to be on an incremental basis. Employees must be given at least 15 days to provide a certification concerning

⁴⁰² 29 C.F.R. §§ 825.102, 825.113.

⁴⁰³ DOL Op. Ltr. FMLA 2019-1-A (Mar. 14, 2019)

⁴⁰⁴ 29 C.F.R. § 825.200.

⁴⁰⁵ 29 C.F.R. § 825.201. This provision applies only to married couples who are employees of the same employer.

⁴⁰⁶ 29 C.F.R. § 825.202.

⁴⁰⁷ 29 C.F.R. § 825.207.

⁴⁰⁸ 29 C.F.R. § 825.302.

their own health condition or that of a family member. Failure to give certification may result in denial of leave.⁴⁰⁹ Certification forms can be obtained from the U.S. Department of Labor.

Where an employee has not requested FMLA leave for a serious health condition, the employer should notify the employee that it is initiating FMLA leave. The employer may compute this leave retroactive to the date that the employee commenced time off for a serious health condition.⁴¹⁰

When an employee takes FMLA leave, an employer must continue to provide health care coverage under its health care plan as though the employee had not taken leave.⁴¹¹ The employer is not required to pay health insurance premiums for unpaid FMLA leave unless it pays premiums for unpaid non-FMLA leave.⁴¹²

An employer who denies leave to which the employee is entitled, or discriminates against an employee because the employee exercised or attempted to exercise rights under the Act, will be liable to the employee in an amount equal to lost wages and benefits or other damages (e.g., the cost of engaging substitute care givers), plus attorneys' fees and costs. Further, an additional amount equal to actual damages may be awarded as liquidated damages.⁴¹³

If FMLA applies, a conspicuous notice, prepared by the U.S. Secretary of Labor, must be posted providing personnel with information about the FMLA.⁴¹⁴ The notice can be obtained from local Wage and Hour Division offices. Information concerning FMLA entitlements and employee obligations, must be included in the agency's handbook or sheriff's offices policy manual.⁴¹⁵

If a person requests FMLA leave, the employer must give a written explanation of the employee's obligations and expectations before, during and after leave.⁴¹⁶ The Department of Labor has promulgated regulations that implement the FLSA and should be reviewed to determine the employee's rights and employer's obligations under the FMLA.⁴¹⁷

The FMLA was amended by the National Defense Authorization Act (NDAA) in 2008 to provide up to 26 weeks of leave for familial caretakers of injured military personnel.⁴¹⁸ The caregiver leave benefit (of up to 26 weeks) includes leave to take care of a child, spouse, parent or next of kin who (1) is a veteran, (2) is undergoing medical treatment, recuperation or therapy for serious injury or illness, and (3) was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the five years preceding the date of treatment.⁴¹⁹

⁴⁰⁹ 29 C.F.R. §§ 825.305, 825.306.

⁴¹⁰ 29 C.F.R. §§ 825.300, 825.301.

⁴¹¹ 29 C.F.R. § 825.209.

⁴¹² 29 C.F.R. § 825.210.

⁴¹³ 29 U.S.C. § 2617.

⁴¹⁴ 29 C.F.R. § 825.300(a)(1).

⁴¹⁵ *Id.* § 825.300(a)(3).

⁴¹⁶ *Id.* § 825.300(b).

⁴¹⁷ 29 C.F.R. § 825.100 *et. seq.*

⁴¹⁸ Pub. L. No. 110-181, 122 Stat. 3 (2008) § 585 *et seq.*

⁴¹⁹ 29 C.F.R. § 825.127.

The medical treatment must be related to a serious injury or illness incurred while in the line of duty on active duty in the Armed Forces or which existed before the beginning of military service, and which was aggravated by service in the line of duty while on active duty.⁴²⁰ Employers are required to advise employees of the NDAA amendment to the FMLA. Sheriff's offices are encouraged to periodically check for updates at the Department of Labor's website at <https://www.dol.gov/general/topic/benefits-leave>, and contact their legal counsel to discuss questions regarding compliance.

N. Harassment

Sheriffs should implement and distribute to all employees an anti-harassment policy. The policy should prohibit all kinds of harassment including harassment based on sex, race, color, religion, national origin, age, disability, marital status and protected activity.

An agency would have an affirmative defense to a claim of harassment where no tangible employment action is taken, if it could show that the employer exercised reasonable care to prevent and correct any sexually harassing behavior and the employee unreasonably failed to take advantage of any preventive avoid harm.⁴²¹ It is not enough to have a written policy in the General Orders or Standard Operating Procedures. Sheriffs should publicize the policy, train their personnel on the complaint procedures and a written or electronic acknowledgment by each employee should certify that they had been trained on the policy.

The anti-harassment and complaint procedure should contain at a minimum the following information:

1. A clear explanation of prohibited conduct;
2. Assurance that employees that make complaints of harassment or provide information related to such complaints will not be retaliated against;
3. A clearly described complaint process that provides accessible avenues of complaint;
4. Assurance that the employer will protect the confidentiality of the complaint to the extent possible;
5. A complaint process that permits complaints to persons outside the chain of command e.g. Human Resource and Internal Affairs, provides prompt, thorough and impartial investigations; and
6. Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has taken place.

⁴²⁰ *Id.*

⁴²¹ *Faragher v. City of Boca Raton*, 524 U.S. 775, 807-08 (1998).

The policy should encourage employees to report harassment before it becomes severe and pervasive. The sheriff should make it clear that harassment of any form is not tolerated.

IV. Public Records

A. What is a Public Record?

The basic rule of thumb is: if material proposed or maintained in connection with agency business is not made exempt or confidential by a particular statute, it is a public record and must be disclosed.⁴²² Accordingly, all documents, maps, books, tapes, photos, films, sound recordings, data processing software, regardless of physical form, made or received by an agency pursuant to the transaction of the official business of any agency are deemed public records.⁴²³

In particular, public records include all materials made or received by an agency in connection with official business that are used to perpetuate, communicate and formalize knowledge.⁴²⁴ Therefore, every record made in connection with official business, including work done for the office on a home computer, falls within the scope of a “public record.” Likewise, circulated non-final drafts, circulated interoffice memos, circulated preliminary drafts, and data processing software are also public records, though uncirculated notes used to create another document, rough drafts or dictation are excluded from the scope of public records.⁴²⁵ Emails and documents of a private nature, however, are exempt regardless of whether they are kept in the work place.⁴²⁶

Several examples of public records include:

- Records that include salaries of agency personnel⁴²⁷
- Tape recording of incoming calls to a public agency⁴²⁸
- E-mail (Non-private correspondence)

B. Retention

All public records, whether exempt from disclosure requirements or not, must be retained for a certain period of time, depending on the nature of the material.⁴²⁹ A schedule for retention of the various documents is available from the Department of State, Bureau of Records and Information Management. It can also be accessed online at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

⁴²² Fla. Stat. § 119.01(1).

⁴²³ Fla. Stat. § 119.011(12).

⁴²⁴ Pietri v. State, 885 So. 2d 245, 268-69 (Fla. 2004); Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633, 640 (Fla. 1980).

⁴²⁵ Fla. Stat. § 119.011(1) and AGO 2001-20.

⁴²⁶ State v. City of Clearwater, 863 So. 2d 149 (Fla. 2003).

⁴²⁷ Lewis v. Schreiber, 611 So. 2d 531 (Fla. 4th DCA 1992); Op. Att’y Gen. Fla. 73-30 (1973).

⁴²⁸ Fla. State. § 119.011(12).

⁴²⁹ Fla. Stat. § 119.021.

C. Exempt vs. Confidential Records

Some documents, while meeting the definition of “public records,” are not subject to the disclosure requirement of the law. While the terms “exempt records” and “confidential records” may be used together or separately, they have different meanings. Materials considered “confidential” by statute must not be revealed. Other materials are considered “exempt,” and the sheriff has the discretion to disclose the material. If a record is withheld as exempt or confidential, the reason and statutory citation must be stated.⁴³⁰

D. Inspection and Copying

1. Who has the right to inspect?

When a member of the public requests to inspect or copy records that are subject to disclosure, the sheriff’s office must comply with the request.⁴³¹

Identification cannot be required as a condition of inspecting or obtaining copies of records.⁴³² Furthermore, the agency cannot require an explanation for seeking the records.⁴³³ Inspection can be done under reasonable conditions, reasonable time and under supervision of custodian. An agency cannot impose unreasonable restrictions in order to circumvent the Public Records Law. A knowing violation of the Public Records Act by a public officer is a first degree misdemeanor and may result in suspension and removal from office.⁴³⁴

2. Can you charge for inspection?

The sheriff’s office may require that the inspection, copying or photographing public records be done under the supervision of a staff member.⁴³⁵ An agency may charge a special service charge for extraordinary time expended by personnel to safeguard public records from loss or destruction while being inspected. However, the policy should reflect no more than the actual cost of the personnel time and be sensitive to accommodating the request in such a way as to ensure unfettered access while safeguarding the records.⁴³⁶

3. What can you charge?

An agency may charge up to fifteen cents (\$.15) per one-sided copy of not more than 14 inches by 8 1/2 inches and no more than an additional five (\$.05) cents for each two-sided copy. An agency may charge up to one dollar (\$1.00) per copy for certified or microfilm copies. For all other copies the agency may charge the actual cost of duplicating records. “Actual cost” means the cost of

⁴³⁰ Fla. Stat. § 119.07.

⁴³¹ Fla. Stat. § 119.07(1)(a).

⁴³² Chandler v. City of Greenacres, 140 So.3d 1080 (Fla. 4th DCA 2014).

⁴³³ Curry v. State, 811 So. 2d 736. 742 (Fla. 4th DCA 2002).

⁴³⁴ Fla. Stat. § 119.10.

⁴³⁵ Fla. Stat. §§ 119.07(1)(a), 119.07(3)(c).

⁴³⁶ Op. Att’y Gen. Fla. 2000-11 (2000).

materials and supplies, and in some cases labor and overhead.⁴³⁷ The county may, by ordinance, set a fee to be charged so long as the fee is reflective of the actual costs of duplication.⁴³⁸

4. Special Service Charge

If the material to be duplicated requires extensive use of information technology or clerical or supervisory assistance, the sheriff's office may assess a reasonable service charge based on the cost incurred.⁴³⁹ When using staff to assist or supervise records inspection, the lowest paid person available and able should do the job, since a court may find that the increased cost of using a higher paid individual may not be reasonable.⁴⁴⁰ Sheriff's offices should adopt a policy that establishes whether a service charge shall be assessed. A court upheld an agency rule providing for assessment of the special service charge when the nature or volume of records requested from the agency required extensive clerical or supervisory assistance by agency personnel such that it would take more than fifteen minutes to locate, review for confidential information, copy and re-file the requested material.⁴⁴¹

5. Redacting Exempt/Confidential Information

If part of a record which has been requested is exempt from disclosure, it may be redacted before providing the record for inspection.⁴⁴² However, the reason and the statutory citation behind the claim for the exemption must be stated.⁴⁴³

6. Data processing software (DPS)

Data processing software (DPS) is a public record. If a copy of a computer software disc (barring exempt/ confidential information) is requested, the agency must provide a copy of the disc in original format. A transcript is not sufficient.⁴⁴⁴

7. Miscellaneous

- a. FCIC/NCIC information is confidential pursuant to a user agreement with the Florida Department of Law Enforcement. Persons requesting criminal history records should be directed to write to: The Florida Department of Law Enforcement, Criminal History Service, User Services Bureau, P.O. Box 1489, Tallahassee, FL 32302-1489; or

⁴³⁷ Fla. Stat. § 119.07(4)(a).

⁴³⁸ Op. Att'y Gen. Fla. 85-19 (1985).

⁴³⁹ Fla. Stat. § 119.07(4)(d).

⁴⁴⁰ Board of County Commissioners of Highlands County v. Colby, 976 So. 2d 31 (Fla. 2d DCA 2008).

⁴⁴¹ Florida Institutional Legal Services, Inc. v. Florida Department of Corrections, 579 So. 2d 267 (Fla. 1st DCA), review denied, 592 So. 2d 680 (Fla. 1991).

⁴⁴² Fla. Stat. § 119.07(1)(d).

⁴⁴³ Fla. Stat. § 119.07(1)(e); Weeks v. Golden, 764 So. 2d 633 (Fla. 1st DCA 2000).

⁴⁴⁴ Fla. Stat. § 119.011(6), (12), Op. Att'y Gen. Fla. 91-61 (1991).

<http://www.fdle.state.fl.us/cms/Criminal-History-Records/Obtaining-Criminal-History-Information.aspx>.⁴⁴⁵

- b. Materials produced by your office (for example, training videotapes) are public records subject to disclosure. Regardless of their sophistication, the only charge which may be made for them is the reasonable charge based on fees referred to previously.⁴⁴⁶
- c. The Attorney General's Office has prepared a Florida Government-in-the-Sunshine Manual, which explains in detail the Sunshine Law and Public Records Law. It is available from the First Amendment Foundation, 336 E. College Avenue, Suite 101, Tallahassee, FL 32301; www.floridafaf.org; 850-222-3518 or 1-800-337-3518.⁴⁴⁷
- d. E-mails received or generated in connection with official business are public records.⁴⁴⁸ E-mail policies are essential and should include at a minimum:
 - 1) Retention requirements
 - 2) No expectation of privacy/audits
 - 3) Restrictions on use for personnel

E. Display of Contact Information

An award of attorney's fees to a prevailing plaintiff in public records cases should only be assessed where the complainant "provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action[.]"⁴⁴⁹ Additionally, where a court determines that the complainant requested the public record "for an improper purpose," the claimant is not entitled to an award of fees but rather the agency is entitled to recover its fees from the complainant. "Improper purpose" is defined as a public records request made "primarily to cause a violation [of the Public Records Law] or for a frivolous purpose."⁴⁵⁰ However, the five-day advance notice requirement is inapplicable if the agency fails to "prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website."⁴⁵¹

⁴⁴⁵ Fla. Admin. Code R. 11C-6.004.

⁴⁴⁶ Op. Att'y Gen. Fla. 88-23 (1988).

⁴⁴⁷ In addition, you may download an abridged copy of the Government-in-the-Sunshine Manual from the Attorney General's Website at <http://myfloridalegal.com/open-government/sunshine-manual>.

⁴⁴⁸ Op. Att'y Gen. Fla. 96-34 (1994); Op. Att'y Gen. Fla. 07-14 (2014).

⁴⁴⁹ Fla. Stat. § 119.12(1)(b).

⁴⁵⁰ Fla. Stat. § 119.12(3).

⁴⁵¹ Fla. Stat. § 119.12(2).

F. Exemptions/Confidentiality Relating to Law Enforcement

The following is a partial list of exemptions most commonly used by law enforcement. A more detailed list can be found in Section 119.071, Florida Statutes, and in other statutes:

1. Active Criminal Intelligence and Criminal Investigative Information

Criminal intelligence information means information collected by a criminal justice agency, including law enforcement agencies, state attorneys, courts, correctional agencies, or agencies charged with criminal law enforcement duties. It must pertain to an identifiable person or group and be collected in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal investigative information means information with respect to an identifiable person or group compiled in the course of conducting a criminal investigation of a specific act or omission, including lab tests, reports of investigators or informants, or any type of surveillance.⁴⁵²

Criminal intelligence information shall be considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal investigative information shall be considered “active” while such information is directly related to an ongoing investigation which has a good faith anticipation of securing an arrest or prosecution in the foreseeable future.⁴⁵³

In addition, criminal intelligence and investigative information shall be considered “active” while such information is directly related to pending prosecutions or direct, but not collateral appeals.⁴⁵⁴

Exempt active criminal investigative information can be shared with another criminal justice agency without losing its protective status.⁴⁵⁵

When is criminal investigation/intelligence information considered inactive and no longer exempt?

- Case by case basis.
- Requires a showing that an arrest or prosecution is reasonably anticipated in the foreseeable future not that it is a certainty or probability.
- It is not inactive just because investigation might not have named a suspect - no time limit except statute of limitation.
- Determination is in hands of law enforcement agency (LEA).

a. Shooting Investigations

⁴⁵² Fla. Stat. § 119.071(2).

⁴⁵³ Fla. Stat. § 119.011.

⁴⁵⁴ Fla. Stat. § 119.011(1)(d).

⁴⁵⁵ Fla. Stat. § 119.071(2).

Unlike most cases where the investigation becomes a public record when the agency closes its case, a shooting investigation may still be considered “active” until the agency finishes their investigation or a grand jury hears the case.⁴⁵⁶

b. Criminal Investigation/Intelligence Exceptions

Some information is not considered criminal intelligence or investigative information even though it pertains to a current investigation. The following information is subject to disclosure:

- 1) The time, date, location, and nature of the crime;
- 2) The name, sex, age, and address of the person arrested, except certain juveniles that do not meet the criteria in Section 985.04, Florida Statutes;
- 3) The name, photograph, sex, age, and address of the victim, except cases of any sexual battery or offense or child abuse, Section 119.071(2)(h)1, Florida Statutes;
- 4) The time, date, and location of the arrest;
- 5) The crime charged;⁴⁵⁷
- 6) Any document given to the person arrested – however, the court in a criminal case may order that certain information otherwise required by law to be given to the defendant be maintained in a confidential manner if the release of such information would be defamatory to a victim or witness or would jeopardize their safety and impair the ability of the state to locate a codefendant;⁴⁵⁸
- 7) Any indictment or information, unless for a felony and the person is not yet in custody or under recognizance.⁴⁵⁹

The identity of the reporting party received through the mobile suspicious activity reporting tool held by the department, law enforcement agencies, or school officials is confidential and exempt. Any other information received through the mobile suspicious activity reporting tool is exempt.⁴⁶⁰

2. 911 Calls

Any record, recording, or information or portions thereof, obtained by a public agency for the

⁴⁵⁶ Barfield v. City of Fort Lauderdale Police Department, 639 So. 2d 1012 (Fla. 4th DCA 1994); News-Press Publishing Co., Inc. v. Sapp, 464 So. 2d 1335 (Fla. 2d DCA 1985).

⁴⁵⁷ Fla. Stat. § 119.011(3)(c); Barfield v. City of Tallahassee, 171 So.3d 239 (Fla. 1st DCA 2015).

⁴⁵⁸ Fla. Stat. § 119.011(3)(c)5.

⁴⁵⁹ Fla. Stat. § 905.26.

⁴⁶⁰ Fla. Stat. § 943.082(6)..

purpose of providing service in an emergency and which reveals the name, address, or telephone number or personal information about or information which may identify any person requesting emergency service or reporting as emergency by dialing “911” is exempt from disclosure.⁴⁶¹ This exemption would most likely not apply to offense reports or other documents generated as a result of the “911” call unless some other exemption applies.

Records that identify the design, scope, and location of 911 or E911 communication system infrastructure or any portions of meetings revealing these records are exempt from disclosure.⁴⁶²

3. Body Cameras

Pursuant to Section 119.071(2)(l), Florida Statutes, body camera recordings of law enforcement officers are confidential and exempt from disclosure if the recording: (1) is taken within a private residence; (2) is taken within a health care, mental health care, or social services facility; or (3) is taken within a place that a person has a reasonable expectation of privacy.⁴⁶³ However, several exceptions may apply. For example, a law enforcement agency must disclose a body camera recording pursuant to a valid court order.⁴⁶⁴

In addition, a recording may also be disclosed to a person, or his or personal representative, who was recorded by a body camera. Only the portions of the recording which are relevant to the person’s presence in the recording should be disclosed.⁴⁶⁵

Recordings of a person’s lawful residence, dwelling, or lodging must also be disclosed to a person not depicted in the recording who lawfully resided in the residence, dwelling, or lodging. However, such disclosures may be limited to only portions of the recording which depict the interior of applicable place.⁴⁶⁶

Lastly, body camera recordings must be retained for a period of no less than 90 days.⁴⁶⁷

4. Videotaped Statements of Minors

Videotaped statements of minors who are, or are alleged to be victims of sexual battery, lewd acts, or other sexual misconduct are confidential. The wrongful disclosure by any public officer or employee regarding this information is punishable as a first degree misdemeanor.⁴⁶⁸

⁴⁶¹ Fla. Stat. § 365.171(12).

⁴⁶² Fla. Stat. § 119.071(3)(e).

⁴⁶³ Fla. Stat. § 119.071(2)(l)2.

⁴⁶⁴ Fla. Stat. § 119.071(2)(l)4.

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ Fla. Stat. § 119.071(2)(l)5.

⁴⁶⁸ Fla. Stat. § 119.071(2)(j)2b.

5. Victims

Information from victims of sex offenses and child abuse are confidential, including any information revealing photo, name, address, or other information which reveals the identity of victim of a crime. This includes court records and proceedings. This specifically includes victims of the following crimes:

- 1) Sexual battery;⁴⁶⁹
- 2) Lewd, lascivious or indecent assault upon or in presence of child;⁴⁷⁰
- 3) Aggravated child abuse;⁴⁷¹

Also, photos or images of any part of the body of a victim of a sexual offense is exempt.⁴⁷²

Any document *received by* an agency that regularly receives information from or concerning the victims of crime which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as a victim of a crime is exempt from disclosure. However, this exception is limited to documents received by an agency which regularly receives information from or concerning crime victims; it does not apply to records *generated or made by* an agency.⁴⁷³

Any information not otherwise held confidential or exempt from the provisions of Chapter 119, Florida Statutes, which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been a victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from public disclosure, upon written request by the victim, which must include official verification that an applicable crime has occurred. The information shall cease to be exempt five years after receipt of the written request. This section applies to both agencies which receive and generate records.⁴⁷⁴

The address of a victim of an incident of mass violence (defined for this purpose as anyone other than the perpetrator injured or killed by an intentional and indiscriminate act of violence which kills or severely injures four or more people) is exempt from the provisions of Chapter 119, Florida Statutes.⁴⁷⁵ All photographs, audio, or video recordings that depict or record the killing of a victim of mass violence, defined as an incident in which three or more persons not including

⁴⁶⁹ Fla. Stat. § 119.071(2)(j)1.

⁴⁷⁰ Fla. Stat. § 119.071(2)(j)2a.

⁴⁷¹ Fla. Stat. § 119.071(2)(j)1.

⁴⁷² Fla. Stat. § 119.071(2)(h)1a.

⁴⁷³ Op. Att’y Gen. Fla. 90-80 (1990); Fla. Stat. § 119.071(2)(i), (j).

⁴⁷⁴ Fla. Stat. § 119.071(2)(j)1.

⁴⁷⁵ Fla. Stat. § 119.071(2)(o).

the perpetrator are killed by the perpetrator in an intentional act of violence, are confidential and exempt except as statutorily provided.⁴⁷⁶

Crime Victims Protection Act states that an agency or a person who communicates information prior to open judicial proceedings is liable to victim for damages.⁴⁷⁷

6. Criminal History Records

In order to petition the court to expunge or seal a criminal history record, a person must first apply to the FDLE for a certificate of eligibility for expunction or sealing, depending upon the relief sought.⁴⁷⁸ A criminal history record may be expunged if the charges related to the arrest did not result in a trial and other specified criteria are met.⁴⁷⁹ However, a criminal history record that resulted in a withhold of adjudication must be sealed for 10 years and meet other specified criteria before it can be expunged.⁴⁸⁰ A criminal history record pertaining to a list specified crimes, such that relate to offenses against children or would require an offender to register as a sexual predator, may not be sealed or expunged.⁴⁸¹

Expunged Records

A criminal history record ordered expunged by a court must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the FDLE must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt through the provisions of Section 119.07(1), Florida Statutes, and Section 24(a) of Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.⁴⁸² This applies only to information formalizing the person's criminal history record identifiable to the individual's arrest, detention indictment, information or other formal criminal charge and the disposition thereof and does not apply to criminal intelligence information and criminal investigative information.⁴⁸³

Sealed Records

A criminal history record ordered sealed by a court is maintained by FDLE and criminal justice agencies. A criminal history record ordered sealed by a court is confidential and exempt through the provisions of Section 119.07(1), Florida Statutes, and Section 24(a) of Art. I of the State Constitution and is available only to the subject of the record; his or her attorney; to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal

⁴⁷⁶ Fla. Stat. § 119.071(2)(o),(p).

⁴⁷⁷ Fla. Stat. § 794.026.

⁴⁷⁸ Fla. Stat. § 943.0585(2).

⁴⁷⁹ Fla. Stat. § 943.0585(2).

⁴⁸⁰ Fla. Stat. § 943.0585(2).

⁴⁸¹ Fla. Stat. §§ 943.0585, 943.059.

⁴⁸² Fla. Stat. § 943.0585(4).

⁴⁸³ See Op. Att'y Gen. Fla. 2000-16 (2000); Op. Att'y Gen. Fla. 2002-68 (2002).

history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities; and to entities for licensing, access authorization, and employment purposes specified in Section 943.059(4)(a), Florida Statutes.⁴⁸⁴

7. Juvenile Proceedings and Records

Records relating to juvenile delinquency proceedings are confidential and exempt through Section 119.07(1), Florida Statutes, and Section 24(a) of Art. I of the State Constitution and may be disclosed only to the authorized personnel of the court, the Department of Juvenile Justice and its designees, the Department of Corrections, the Parole Commission, the Juvenile Justice Accountability Board, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile or other persons specifically authorized by statute or court.⁴⁸⁵ Within each county, the Sheriff, the Chiefs of Police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties.⁴⁸⁶

There are several exceptions to this statute:

- a. Records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;⁴⁸⁷
- b. Records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;⁴⁸⁸
- c. Records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony;⁴⁸⁹ or
- d. Records where a juvenile has been transferred to adult court pursuant to part X of Chapter 985, Florida Statutes.⁴⁹⁰

The name, address, photograph, and crime or arrest report of a juvenile may be released if he or she meets the criteria of a.-d. However, it will not be a violation if a public records custodian chooses not to electronically publish the arrest or booking photo of a child.⁴⁹¹

⁴⁸⁴ Fla. Stat. § 943.059(4).

⁴⁸⁵ More information on the dissemination of juvenile records can be found in Fla. Stat. § 943.053.

⁴⁸⁶ Fla. Stat. § 985.04(1)(c).

⁴⁸⁷ Fla. Stat. § 985.04(2)(a)1.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

⁴⁹¹ Fla. Stat. § 985.04(2)a2.

- The juvenile offense report by a law enforcement agency may be released to the victim of the offense. However, information gained by the victim pursuant to Chapter 985, Florida Statutes, including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.⁴⁹²
- Records of traffic violations by juveniles are public records.⁴⁹³
- Records containing sexual offender and predator registration information are public records.⁴⁹⁴
- When a juvenile is taken into custody by a law enforcement officer for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools that the juvenile is alleged to have committed the delinquent act.⁴⁹⁵
- Records related to juvenile dependency cases are generally open to the public.⁴⁹⁶

Automatic Expunction of Criminal History Records for Juveniles

A juvenile's criminal history will be automatically expunged at age of 21 as long as they meet specified criteria. In addition, those specified juveniles may also apply to the FDLE to have his or her record expunged before the age of 21 in certain circumstances. However, a juvenile who is classified as a serious or habitual juvenile offender must wait until the age of 26 and may not apply for an earlier expunction through the FDLE.⁴⁹⁷

Pre-arrest, Post-arrest, or Teen Court Diversion Programs

A juvenile may also apply to the FDLE after participating in a pre-arrest, post-arrest, or teen court diversion program to receive an expunction of a non-judicial arrest record.⁴⁹⁸

8. Confidential Informants

Information revealing the identity of a confidential informant or confidential source need not be disclosed.⁴⁹⁹ Confidentiality extends to tips from anonymous private citizens such as to a Crime Stoppers program. Sheriffs are not required to reveal the names of confidential informants to auditors conducting audits of Investigation and Evidence (I&E) funds.⁵⁰⁰

⁴⁹² Fla. Stat. § 985.04(3); Op. Att'y Gen. Fla. 2000-16 (2000).

⁴⁹³ Fla. Stat. § 985.11(3).

⁴⁹⁴ Fla. Stat. § 985.04(6)(b).

⁴⁹⁵ Fla. Stat. § 985.04(4)(a).

⁴⁹⁶ Fla. Stat. §§ 39.507(2), 39.507(3).

⁴⁹⁷ Fla. Stat. § 943.0515.

⁴⁹⁸ Fla. Stat. § 943.0582.

⁴⁹⁹ Fla. Stat. § 119.071(2)(f).

⁵⁰⁰ Fla. Stat. § 925.055(2).

9. Surveillance Techniques and Inventories

Information revealing surveillance techniques, procedures, personnel, or emergency management plans under Chapter 23, Florida Statutes, or undercover personnel need not be disclosed.⁵⁰¹ Any comprehensive inventory of state and local law enforcement resources compiled pursuant to Part I, Chapter 23, Florida Statutes, and any comprehensive policies or plans pertaining to mobilization, deployment or tactical operations involved in an emergency defined in Section 252.34 are exempt.⁵⁰²

10. Confessions

The substance of a confession of an arrested person need not be revealed until the case reaches final disposition.⁵⁰³

11. Abuse and Neglect Records

Records concerning reports of abuse or neglect of children or adults including records of reports made to the Department of Children and Family (DCF) and the central abuse hotline and all records generated as a result of such reports are confidential.⁵⁰⁴

Notwithstanding the confidentiality provision found in Section 39.202, Florida Statutes, the recording of incoming or outgoing calls received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment shall be released in full only to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges pursuant to Section 39.205, or to employees of the department for the purpose of investigation and seeking administrative penalties pursuant to Section 39.206.

Only those persons specified in Section 39.202, may have access to the records excluding the name of the reporter. The list includes:

- Employees or contract providers of DCF, Department of Health or county agencies responsible for: carrying out child or adult protective investigations, ongoing child or adult protective services, Healthy Start services or licensure of approval of adoptive homes, foster homes, or child care facilities;
- Certain employees of Department of Juvenile Justice;
- Criminal justice agencies and the state attorney in the appropriate jurisdiction;
- The parent or legal custodian within 30 days of receiving the initial report; the subject of the report within 30 days of receiving the initial report;

⁵⁰¹ Fla. Stat. § 119.071(2)(d).

⁵⁰² Fla. Stat. § 119.071(2)(d).

⁵⁰³ Fla. Stat. § 119.071(2)(e).

⁵⁰⁴ Fla. Stat. § 39.202(1).

- When the alleged perpetrator is not a parent, disclosure shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings.
- A court with specific findings;
- Grand jury by subpoena;
- Division of Administrative Hearings;
- Public Employees Relations Commission; or
- Any person in the event of death of the child from the alleged abuse, abandonment or neglect.⁵⁰⁵

See the full text of the statute for additional entities listed. Remember, this information may still be exempt as active criminal investigative information or some other exemption which would allow for nondisclosure.

The name of the person reporting the abuse can only be given to the agency responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney unless the person reporting the abuse consents in writing.⁵⁰⁶ All records and reports of the child protection team of the Department of Health are confidential and exempt from disclosure, except upon request to the state attorney, law enforcement, the DCF, and necessary professional persons for diagnosis and treatment of the child or perpetrator.⁵⁰⁷

A school staff member may be allowed to remain with the child if the initial interview, either in a child protection investigation or a criminal investigation, is taking place at a school.⁵⁰⁸ This is notwithstanding Section 39.0132(4), Florida Statutes, which provides that all information obtained in the discharge of official duty by a law enforcement officer is confidential and exempt from Chapter 119 and may not be disclosed to anyone except those entitled under Chapter 39.

12. Fleeing with Minors

Section 787.03, Florida Statutes, creates an exemption from the charge of interference with custody when a victim of domestic violence flees with their child, and a report to the sheriff or state attorney is given. The report must include the name of the person taking the child, the current address and the reason for taking the child. Information provided to a sheriff or state attorney under this section is confidential and exempt.

⁵⁰⁵ Fla. Stat. § 39.202(2).

⁵⁰⁶ Fla. Stat. §§ 39.202(2), 39.202(5).

⁵⁰⁷ Fla. Stat. §§ 39.202(6).

⁵⁰⁸ Fla. Stat. § 39.301(18).

13. Crash Reports

Vehicle crash reports that contain specified personal information about the parties involved in the crash are exempt from public disclosure for 60 days. The law provides for release of information to insurance companies, legal representatives, and certain media. It is a third-degree felony for any employee of a state or local agency to illegally disclose confidential information. It is also a third-degree felony for any person, knowing that he/she is not entitled to obtain confidential information under this section, to obtain or attempt to obtain the information.⁵⁰⁹

14. Autopsy Reports

Autopsy photographs and recordings are considered confidential and exempt from public record requests except that a surviving spouse or specified survivor may view and copy such records upon request. A local governmental agency or state or federal agency in furtherance of its official duties, may view or obtain a copy of such records upon submission of a written request of the medical examiner.

The custodian of such records may not allow any other access to the records without a court order issued upon a showing of defined “good cause” and with restrictions or stipulations that the court deems appropriate. It is a third-degree felony for any custodian of a photograph or audio or video recording of an autopsy to willfully and knowingly violate the provisions of this law. It is also a third-degree felony for any person to willfully and knowingly violate a court order issued pursuant to the law.⁵¹⁰

15. Agency Security System Plan

Under Section 119.071(3)(a), Florida Statutes, all agency security system plans relating to the physical security of facility or revealing security systems, threat assessments, response plans, evacuation or sheltering plans, manuals for security personnel, emergency equipment or security training are exempt from disclosure. This includes building plans and blueprints for various facilities listed in the statute.⁵¹¹ However, information made confidential and exempt under this section may be disclosed in certain instances defined by statute.⁵¹²

16. Identity of a Witness to a Murder

Criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder is exempt for a period of two years from the date on which the murder is observed by the witness. However, a criminal justice agency may disclose such

⁵⁰⁹ Fla. Stat. § 316.066(2)-(3).

⁵¹⁰ Fla. Stat. § 406.135.

⁵¹¹ Fla. Stat. § 119.071(3)(b).

⁵¹² Fla. Stat. §§ 119.071(3)(a)3., 119.071(3)(b)3.

information: (1) in the furtherance of its official duties and responsibilities; (2) to assist in locating or identifying the witness if the agency believes the witness to be missing or endangered; (3) to another governmental agency for use in the performance of its official duties and responsibilities'; or (4) to the parties in a pending criminal prosecution as required by law.⁵¹³

17. DNA Analysis

All public or private records, results, and findings of DNA analyses performed on a person are confidential. The records are the exclusive property of the person tested. The information may not be released to anyone, unless the subject of the genetic test gives his or her informed consent to such disclosure. The law does not apply to DNA analyses conducted as part of a criminal investigation, analyses performed pursuant to law in order to maintain records of persons convicted of sexual offenses, and Human Leukocyte Antigen (HLA) tests conducted pursuant to law in a civil action in order to determine paternity.⁵¹⁴

18. Pawnbroker Records

All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant to the Pawnbroking Act, are confidential and exempt from public disclosure.⁵¹⁵

19. Discrimination Complaints

Complaints or other records which relate to a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap, or marital status need not be revealed until a finding of probable cause is made, the investigation becomes inactive, or the complaint or other record is made part of the official record of any hearing.⁵¹⁶

20. Complaints Against Officers

Complaints filed against law enforcement or correctional officers are confidential until the internal investigation ceases to be active or when the agency provides written notice to the officer that the agency concluded the investigation with a finding not to proceed with disciplinary action or to file charges, or concluded the investigation with a finding to proceed with disciplinary action or to file charges.⁵¹⁷ See also "Complaints Against Officers" in *Section III. Personnel, Chapter B. Law Enforcement Officer Bill of Rights* of this Manual.

21. Personnel File Information

Generally, agency personnel files are not confidential. However, records and complaints relating to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap,

⁵¹³ Fla. Stat. § 119.071(2)(m).

⁵¹⁴ Fla. Stat. § 760.40.

⁵¹⁵ Fla. Stat. § 539.003.

⁵¹⁶ Fla. Stat. § 119.071(2)(g).

⁵¹⁷ Fla. Stat. § 112.533(2)(a).

marital status are not subject to disclosure as “public records” until a finding of probable cause is made, the investigation becomes inactive, or the complaint or other record is contained in a hearing or court record.⁵¹⁸ This provision applies to records provided to the Equal Employee Opportunity Commission (federal) or Human Relations Commission (state) or a local deferral agency.⁵¹⁹

Presence of Employee

When personnel files are to be inspected there is no statutory requirement that the employee be notified or present. However, if a policy allows an employee’s presence during inspection, the policy should also provide that inspection will not be delayed in order to have the employee present.

Separate Files

A supervisor may maintain a separate file on a subordinate employee. With the exception of the supervisor’s uncirculated personal notes⁵²⁰, records maintained in the supervisor’s file are subject to disclosure.

22. Employee Records

These following employee records are confidential:

- Annuity and Deferred Compensation: Records identifying participants in annuity or deferred compensation programs are confidential.⁵²¹
- Medical Records: Employee medical records may only be released to the employee or his or her legal representative (except with written permission from the employee or in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the employee).⁵²²
- Medical records arising out of Workers’ Compensation claims.⁵²³
- Employee Assistance Programs: Employee participation in any kind of employee assistance plan.⁵²⁴

⁵¹⁸ Fla. Stat. § 119.0713(1).

⁵¹⁹ *Id.*

⁵²⁰ The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission, 823 So. 2d 185, 192 (Fla. 1st DCA 2002).

⁵²¹ Fla. Stat. §§ 112.21(1), 112.215(7).

⁵²² Fla. Stat. § 112.08(7).

⁵²³ Fla. Stat. § 440.125.

⁵²⁴ Fla. Stat. § 110.1091(2).

- Direct deposit names of authorized financial institutions and the account numbers of the beneficiaries.⁵²⁵
- Drug test results received under Drug Free Workplace Act.⁵²⁶
- Social Security Number: Employee social security numbers and W-4 information.⁵²⁷
- Undercover Personnel: In Ocala Star Banner v. McGhee, 643 So. 2d 1196 (Fla. 5th DCA 1994) the court ruled that the police department should delete any information that could reveal undercover personnel and release the remainder of the report.
- Employment Examinations: Question and answer sheets for examinations and licenses administered for employment purposes may be withheld from disclosure, although the individual taking the test is entitled to review his or her own examination.⁵²⁸ There is no exemption for assessments or narrative commentaries on most examination results. However, examinations administered by the Criminal Justice Professionalism Program and the results of those examinations, are exempt from the disclosure requirements of the Public Records Act.⁵²⁹
- Polygraph Records: Questions and answers in pre-employment polygraph exams are exempt, but a summary of the examination is subject to disclosure.⁵³⁰

23. Current and Former Law Enforcement and Correction Personnel, and Civilian Personnel Employed by a Law Enforcement Agency

Home addresses, phone numbers, social security numbers, dates of birth, and photographs of active or former law enforcement officers or of active or former civilian personnel and their spouses and children may be withheld from disclosure. “Home Address” is defined to include the dwelling location where a person resides and includes the physical, mailing and street address, parcel identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address. Also exempt are the names, places of employment, and names and locations of schools or daycares of the spouses and children of active or former sworn or civilian law enforcement and correction personnel.⁵³¹ Also exempt are identifying medical records.⁵³² If the custodian of the information is not the employer of the officer, confidentiality must be maintained only

⁵²⁵ Fla. Stat. § 17.706(5).

⁵²⁶ Fla. Stat. § 112.0455(11).

⁵²⁷ 26 U.S.C. § 6103; Fla. Stat. § 119.071(4).

⁵²⁸ Fla. Stat. § 119.071(1)(a).

⁵²⁹ Fla. Stat. § 943.173(3).

⁵³⁰ Rush v. High Springs, 82 So. 3d 1108 (Fla. 1st DCA 2012); Fla. Stat. § 119.071(1)(a).

⁵³¹ Fla. Stat. § 119.071(4)(d)2.a.(I)-(II).

⁵³² Fla. Stat. § 119.071(4)(a)-(b)1.

if the officer, employee, or agency submits a written request for confidentiality to the custodial agency.⁵³³

This exemption also applies to both sworn and non-sworn personnel of an agency. An officer's arrest booking photograph may be withheld upon written request by the officer.⁵³⁴

The above exemption also applies to human resource and labor relations directors whose duties include hiring and firing employees or engaged in labor negotiations, administration or other personnel related duties.⁵³⁵

24. Inmate Records

Records of inmates, including jail visitation records, are generally open to public inspection. However, recordings of inmate phone calls are not subject to disclosure as public records unless they involve a crime or security risk.⁵³⁶ In addition, mental health, medical, and substance abuse records are exempt from disclosure under The Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, and the Drug Abuse Prevention, Treatment and Rehabilitation Act unless the protected individual provides an executed release(s) and/or requisite authorization(s).⁵³⁷

⁵³³ Fla. Stat. § 119.071(4)(d)3.

⁵³⁴ Inf. Op. Att'y Gen. Fla. to Amunds, June 8, 2012.

⁵³⁵ Fla. Stat. § 119.071(4)f.

⁵³⁶ Bent v. State, 46 So.3d 1047 (Fla. 4th DCA 2010).

⁵³⁷ 42 C.F.R. § 164; 42 C.F.R. Subchapter A, Part 2.

V. Office Administration

A. Insurance

1. Worker's Compensation

All employers in the State of Florida, with limited exceptions, are required to provide workers' compensation protection to their employees.⁵³⁸ This obligation extends to Sheriffs. The initial question for a Sheriff is which entity purchases the coverage, and how does the agency report a claim. Some Sheriffs purchase workers' compensation coverage for their employees directly, while in other instances the Board of County Commissioners purchases workers' compensation coverage that covers all county employees, including Sheriff's Office employees. The Sheriff should make sure the agency's Human Resources unit knows whether the purchase of workers' compensation coverage is the Sheriff's responsibility or is being handled by the county, as well as where and how to report workers' compensation claims.

2. Property

The Board of County Commissioners is responsible for providing office space for constitutional officers, including the Sheriff⁵³⁹. That space may be several offices located within a county-owned building with other county offices and employees, or separate building(s) housing just Sheriff's Office staff and operations. As owners of the buildings, the county usually provides insurance coverage for the buildings themselves. However, in some instances that coverage may not extend to protect the contents of the buildings. It is important for the Sheriff to investigate whether the property coverage for the buildings that house the Sheriff's operations includes coverage for the contents of the buildings, such as furniture, computers, etc., and that the limits of that coverage are adequate. In the event the county's insurance does not include the contents in the Sheriff's facilities, the agency may need to purchase insurance that will protect the Sheriff's equipment, operations and budget.

3. Automobile

Florida's sovereign immunity statute provides protections to the Office of the Sheriff and to its employees from state law claims.⁵⁴⁰ Specifically, the sovereign immunity statute precludes suits against Sheriff's Office employees for certain claims. It also limits the damages that can be awarded against the Sheriff and/or the Sheriff's Office as a result of those claims. Most automobile claims, by their nature, fall within the protections of the sovereign immunity statutes, but care should be given when allowing Sheriff's Office employees to drive agency vehicles outside the course and scope of their duties. Doing so could result in claims that do not come under the protection of the sovereign immunity statute, meaning that the employees could be subject to suit and the

⁵³⁸ See Chapter 440 Fla. Stat.; Fla. Stat. § 440.03; Fla. Stat. § 440.02 (15), (16) and (17).

⁵³⁹ Fla. Stat. § 125.01(c).

⁵⁴⁰ Fla. Stat § 768.28.

Sheriff's Office, as owner of the vehicle, could be sued and not have the benefit of the sovereign immunity cap on damages.

As a result, the Sheriff should carefully review the agency's policies for personal use of office vehicles, carefully review the agency's auto insurance to determine whether off-duty use is covered, and consider a requirement that employees authorized to use office automobiles for personal use have minimum limits of insurance which would apply to their use of the Sheriff's Office vehicle.

4. General Liability (also referred to as Professional Liability of Law Enforcement Liability)

As indicated under paragraph 3 above, Florida's sovereign immunity statute provides some protections to the Office of Sheriff and its employees from state law claims. However, for non-automobile operational matters, law enforcement officers are also often sued under federal laws and those claims are not subject to the protection of the sovereign immunity laws and its cap on damages. In many instances individual officers and employees, whether law enforcement or corrections officers, sworn or non-sworn employees, are individually named as defendants in claims for violations of federal laws. These types of claims relate to law enforcement duties and normally include false arrest, excessive force, and other law enforcement or jail operations claims.

In most cases, the Sheriff's Office purchases liability insurance itself but there are a few instances in which the Board of County Commissioners purchase liability coverage for all county operations, including Sheriff's operations. It is imperative that the Sheriff should determine who purchases the office's liability insurance, who provides that insurance, and whether it is broad enough to cover the law enforcement and corrections operations.

In addition, many general or professional liability insurance policies will specifically exclude claims arising out of automobile operations as well as the operations of aircraft and watercraft, for example. The policy may also not provide coverage for labor relations or employee related claims. So, again, it is important to review your liability policies to ensure they cover all your operations and that the limits of coverage are sufficient. Specific attention should be paid to make sure you have labor relations or employee related coverage, often called Employer's Liability coverage, as well as coverage for specialty operations such as the operation of a watercraft or aviation unit.

It is not unusual for a Sheriff's Office to host or sponsor events involving the community, such as a golf or fishing tournament, citizen's academy, or various other special events. It is important that the Sheriff determine whether existing insurance covers these events or whether additional coverage should be procured.

If a Sheriff's Office trains or certifies School Guardians employed by another agency or entity, the Sheriff should determine whether existing insurance covers potential liability stemming from such training or certification.

Given the potential exposure to every Sheriff's Office to liability for a malicious data breach or an accidental data loss, a Sheriff should consider securing insurance for such exposures, typically referred to as Cyber Liability coverage.

B. Evidence Control System

Each sheriff must maintain a centralized, evidence custodian controlled, storage system which has been designed exclusively to provide tracking, accountability and legal chain of custody and control of property seized as evidence, contraband, lost and found property, or any property temporarily held for investigative or security purposes by the Sheriff. This chapter discusses the basics of an evidence control system. The Commission for Florida Law Enforcement Accreditation ("CFA") standards can assist in further establishing best practices, which can be found here: www.flaccreditation.org/#.⁵⁴¹

1. Security Requirements

A secure area must be provided for the storage of such property. Some items, such as firearms, jewelry, controlled substances, or frangible evidence may require a more secure area than others (i.e. within a segregated and locked area within the secure evidence storage facility, lockable refrigeration, etc. further limiting access only to authorized personnel). Increased or additional security should be dictated by the value, volatility and the importance of the property to be stored and secured.

2. Property Custodians

Subject to the volume of evidence handled, one or more persons should be appointed as secure property custodians. The number of persons assigned should be kept to an absolute minimum to protect the legal chain of custody of property to be presented as evidence at court trials. All evidence and property must be delivered to the property custodian as soon as possible after it is taken into official custody by an employee of the sheriff. Regardless of the number of secure property custodians assigned, one supervising or senior property custodian should be held fully responsible and accountable for all items of property delivered to the centralized evidence custodian system.

3. Initial Seizure

It shall be the responsibility of the person who initially seizes or receives property or evidence to ensure such property or evidence is delivered to the centralized, evidence custodian system and that the chain of legal custody is preserved and documented. The person submitting the evidence or property must complete an Initial Property Receipt/Entry.

⁵⁴¹ Standards 27.01, 27.02, 27.06, 27.07, 27.09, 27.10, 27.12, 28.01, 28.03, 28.04, and 28.05 of the Florida Law Enforcement Accreditation specifically relate to the Evidence Control System. 27.01m, 27.02m, 27.03m, 27.06m, 27.07m, 27.08m, 27.09m, 27.10m, 27.11m, 27.13m, 27.14m, 27.15m, 27.16m

4. Procedures

a. Initial Property Receipt Form/Entry

A form or a searchable data entry into an electronic evidence tracking system should be created and completed for all property which is held by the sheriff. This excludes personal tangible property owned by the department, which is governed by Chapter 274, Florida Statutes, and is further discussed in the next chapter, C. Tangible Personal Property, of this Manual. All property must be fully described to the extent possible to avoid ambiguity and to reconcile disputes about seized items (i.e. instead of “two rings” list “one silver ring and one gold ring”). Do not mix property between different complaints or investigative reports. If in doubt, separate the property and cross reference the property under each complaint or report number. If in paper format, the form must be signed by both the person delivering the property, which in most cases should be the person who seized or received the property, and by the property custodian who received and accepts the custody of the property. If a data entry is made in an electronic evidence tracking system, the tracking system must be able to identify the submitting individual’s acknowledgement and the receiving custodian’s acknowledgment by use of a unique identifier, user name, and password. If property or evidence is delivered by someone other than the deputy seizing the property or evidence, the chain of custody from point of seizure should be documented in a case or offense report or supplement or properly documented in an electronic evidence tracking system.

The Initial Property Receipt or data entry into the electronic evidence tracking system should also document when all property listed on an initial property receipt has been disposed of or released, as discussed further below. This will ensure a permanent tracking of property which may be audited, and creates accountability for property held by the sheriff.

b. Property Inspection and Custody Record/Entry

A form or a searchable data entry made into an electronic evidence tracking system must document all transactions pertaining to property listed on a specific initial property receipt. Examples include, but are not limited to:

- 1) Producing evidence for examination by the State Attorney’s Office or Public Defenders Office before or during trial;
- 2) When court hearing requires producing the property in Court;
- 3) When submitting or returning evidence or property to and from assisting agencies for evidentiary examination or processing, (i.e. the Florida Department of Law Enforcement or the Federal Bureau of Investigation’s Crime Lab).

c. Property Release Receipt/Entry

A form or a searchable data entry made into an electronic evidence tracking system must record the return of such property to its owner(s). It is very important that the authority to release the

property or evidence is notated in sufficient detail to justify the release of the item(s). If a court order is issued, attach a copy of the order to the property release form and attach to the initial property receipt.

d. Property Disposition Order/Entry

This form or a searchable data entry made into an electronic evidence tracking system is to be used in all situations where the property is disposed of in any manner other than by returning the property or evidence to the owner. This will include:

- 1) Destruction;
- 2) Sale;
- 3) Transfer (to another agency or conversion to use by the sheriff; if to be used by the sheriff, add the property to the sheriff's personal tangible property records); etc.

e. Master Property Control Ledger/Entry

The assigned property control number sequentially generated at the submission to the centralized evidence custodian system or contained in the Initial Property Receipt for all seized evidence or property must be maintained in a ledger, spreadsheet, or a searchable electronic database. This ledger or database should include all property control numbers in a chronological listing of property received by the agency. There should be no missing numbers. If necessary, show a cancellation of any unused property control numbers. The Master Property Control Ledger serves as a cross reference source for tracking and auditing purposes. The form/data entry should include the classification of the evidence or property as well as the ultimate disposition of the evidence or property.

a. Under Classification of Property, insert one of the following:

- 1) Evidence;
- 2) Lost/Found;
- 3) Security

b. Under Disposition, note the date and how disposed of:

- 1) Returned to owner;
- 2) Destroyed;
- 3) Transferred to: (where).

f. Master “Controlled Substance” Log

A separate form or a searchable data entry made into an electronic evidence tracking system should be made to provide additional accountability of controlled substances, to adhere to any applicable accreditation standards or Florida Department of Law Enforcement audit requirements. Controlled substances stored should be fully described. If the exact chemical makeup of the substance is unknown at the time of seizure, state “unknown pill, capsule, tablet,” etc. Substances are controlled and described as listed in schedules pursuant to Section 893.03, Florida Statutes.

g. Retention of Records

Sufficient paper copies of all forms should be printed and retained, or electronic evidence tracking system data should be duplicated (i.e. secure, electronic data storage backup), in order to ensure compliance with any accreditation standards and the Evidence Processing Records, Item #39, of the State of Florida General Records Schedule GS2 for Law Enforcement, Correctional Facilities, and District Medical Examiners.

C. Tangible Personal Property

Chapter 274 of the Florida Statutes regulates the acquisition, supervision, accountability, control, transfer and disposal of all tangible personal property owned by the sheriff’s office.

The Chief Financial Officer has the authority to establish the requirements for the recording of property and for the periodic review of property for inventory purposes.⁵⁴² For purposes of this section, “property” means fixtures and other tangible personal property of a non-consumable nature and does not include real property (buildings or land) or bonds.

Property Control

The sheriff is the custodian of the property of the Office of the Sheriff. Property shall not be withdrawn from the sheriff’s office without his or her consent.⁵⁴³

Property Acquisition

The sheriff may pay the purchase price or use a trade-in towards the cost. The receipts of property sold may be used to purchase new equipment within the same fiscal year in which the property sold is disposed of. These funds do not have to be returned to the board of county commissioners like other sale proceeds.⁵⁴⁴

⁵⁴² Fla. Stat. § 274.02.

⁵⁴³ Fla. Stat. § 274.03.

⁵⁴⁴ Fla. Stat. § 274.04

Property Disposition

The sheriff's office should record the authority for disposal of property in sheriff's office minutes.⁵⁴⁵ Property sold that was purchased with law enforcement trust funds need to be deposited back into the law enforcement trust fund. Property sold that was purchased with other grant funds needs to be researched to see if those receipts are due back to the grantor.

Surplus Property

The sheriff may classify any of its property as surplus that is obsolete, inefficient or which serves no useful function.⁵⁴⁶ Items under \$5,000 can be disposed or donated at the discretion of the sheriff.

If the property is valued at or above \$5,000 then the property will be sold only to the highest bidder or by public auction after publication notice not less than 1 week or more than 2 weeks prior to the sale in a newspaper of general circulation in the county in which the sheriff is located.⁵⁴⁷

Penalty

Any person who violates any provision of F.S. Chapter 274 or any rule prescribed pursuant to the sheriff's authority will be guilty of a misdemeanor of the second degree.⁵⁴⁸

Florida Administrative Code

Chapter 69I-73 of the Florida Administrative Code outlines the procedures and records deemed appropriate by the Chief Financial Officer for marking, recording, and accounting for local government-owned property as defined by Florida Statutes, and the information to be recorded in each agency's public records regarding such property. Each sheriff's office is advised to obtain a copy of these rules and abide by them.

Threshold for Recording Property

All property with a value or cost of \$5,000 or more and a projected useful life of 1 year or more shall be recorded in the local government's financial system as property for inventory purposes. Attractive items with a value or cost of less than \$5,000 shall be recorded in the local government's financial system as property for inventory purposes.⁵⁴⁹

⁵⁴⁵ Fla. Stat. § 274.07.

⁵⁴⁶ Fla. Stat. § 274.05.

⁵⁴⁷ Fla. Stat. § 274.06.

⁵⁴⁸ Fla. Stat. § 274.08.

⁵⁴⁹ Fla. Admin. Code R. 691-73.002.

1. Unaccounted for Property

This section addresses lost and abandoned property and unclaimed evidence, unless the lost or abandoned property was on any campus in the state university system or any public use airport having regularly scheduled international passenger service as those locations are excluded by statute.⁵⁵⁰ Nor would this include contraband articles seized by a law enforcement agency as part of a local or Federal seizure. These items are accounted for through the forfeiture statute.⁵⁵¹ “Lost Property” means all tangible personal property which does not have an identifiable owner and which has been mislaid on public property, upon a public conveyance, on premises used at the time for business purposes, or in parks, places of amusement, public recreation areas, or other places open to the public in a substantially operable, functioning condition or which has an apparent intrinsic value to the rightful owner. An example of this would be a laptop or bicycle in good condition.⁵⁵²

“Abandoned Property” means all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has not apparent intrinsic value to the rightful owner. An example of this would be derelict vessels⁵⁵³ or a bicycle missing its wheels.⁵⁵⁴

“Unclaimed Evidence” means any tangible personal property, including cash which was seized by a law enforcement agency, was intended for use in a criminal or quasi-criminal proceeding, and is retained by the law enforcement agency or the clerk of the county or circuit court for 60 days after the final disposition of the proceeding and to which no claim of ownership has been made.⁵⁵⁵

a. Reporting Lost or Abandoned Property

A person is required to report the description and location of any lost or abandoned property to a law enforcement officer.⁵⁵⁶ The law enforcement officer taking the report will determine whether the person reporting the property wishes to make a claim to it if the rightful owner cannot be identified or located. If the person does wish to make a claim to it, the person who is making the claim will deposit with the law enforcement agency a reasonable sum sufficient to cover the agency’s cost of transportation, storage, and publication of notice. This sum shall be reimbursed to the finder by the rightful owner should the owner identify and reclaim the property.

It is unlawful for any person who finds any lost or abandoned property to appropriate the property for their own use or refuse to deliver the property when required. Any person who does this

⁵⁵⁰ Fla. Stat. § 705.17.

⁵⁵¹ Fla. Stat. § 932.701.

⁵⁵² Fla. Stat. § 705.101(2).

⁵⁵³ Fla. Stat. § 823.11.

⁵⁵⁴ Fla. Stat. § 705.101(3).

⁵⁵⁵ Fla. Stat. § 705.101(6).

⁵⁵⁶ Fla. Stat. § 705.102.

commits a theft as defined in F.S. 812.014.

b. Procedure Regarding Unclaimed Evidence

Title to unclaimed evidence or unclaimed personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency will be permanently in the law enforcement agency 60 days after the conclusion of the proceeding.

If the property is not of an appreciable value, the law enforcement agency may elect to destroy it. If the property is of appreciable value, the agency may elect to:

- 1) Retain the property for the agency's own use;
- 2) Transfer the property to another unit of the state or local government;
- 3) Donate the property to a charitable organization;
- 4) Sell the property at public sale if they follow statutory procedures.⁵⁵⁷

2. Weapons and Firearms

a. Custody of Firearm

Every officer making an arrest under F.S. 790.07, will take possession of any weapons, electric weapons or devices, or arms mentioned in F.S. 790.07, found upon the arrested person and deliver them to the sheriff, or the chief of police of the city where the arrest was made.⁵⁵⁸ They shall retain the weapon as custodian for the State until after the trial of the arrested person.

b. Forfeiture of Weapons

If the person arrested is convicted of violating F.S. 790.07 or any other offense involving the use or attempted use of weapons, electric weapons or devices, or arms then these will become forfeited to the state without any order of forfeiture being necessary. The making of a forfeiture order is deemed proper. These weapons will be delivered to the sheriff or chief of police with the sheriff made the custodian of such weapons.

c. Return of Weapons

If the arrested person is acquitted, then the weapons taken from them shall be returned to them. If this person fails to call for or receive the weapons within 60 days from his acquittal or the dismissal of charges against him, the weapons will be delivered to the sheriff.

⁵⁵⁷ Fla. Stat. § 705.103.

⁵⁵⁸ Fla. Stat. § 790.08.

d. Abandoned Weapons

All weapons which have been found abandoned or otherwise discarded, or left and not reclaimed by their owners be delivered to the sheriff in that county within 60 days.

e. Weapons Sent to the State

Weapons that have been abandoned or not returned to an acquitted person that have gone to the sheriff will become forfeited to the state unless reclaimed by the owner within six months.

Weapons held by the sheriff that have been abandoned or not returned to an acquitted person will be listed, kept and held as custodian for the state. Any or all such weapons suitable for use by the sheriff may be used by him. All weapons not needed by the sheriff may be loaned to any other department of the state or to any county or city having use for such weapons. The sheriff will take the receipt of the other party for these weapons loaned to them.

All weapons that are not needed or which are useless or unfit for use can be destroyed or disposed of by the sheriff as described in F.S. Chapter 705 or in the Florida Contraband Forfeiture Act. All monies received from the sale or other disposition of the weapons disposed of by the sheriff under Chapter 705 will be paid into the State Treasury for the benefit of the State School Fund.⁵⁵⁹ This section on disposal does not apply to any municipality in any county having home rule under the State Constitution.

D. Law Enforcement Trust Fund

There are several sources of law enforcement trust fund monies. The first is through the Florida Contraband Forfeiture Act (FCFA), which governs contraband seizures by local law enforcement agencies. The second is through federal forfeiture programs with the U.S. Departments of Justice and Treasury. While contraband seizures at the local law enforcement level are governed by the Florida Statutes, the federal forfeiture programs are governed by rules developed by these U.S. government agencies. Receipts can also be obtained from other agencies if your agency participates with them on a seizure. Separate accounts are required for each of the three categories; local, Treasury and Justice. Separate bank accounts are not required as long as the forfeitures and interest earned on each can be clearly identified.

1. Florida Contraband Forfeiture Act⁵⁶⁰

Florida Statutes codifies the requirements that must be followed by a law enforcement agency in order for the agency to seize and forfeit contraband articles.

It is the state policy that law enforcement agencies use the FCFA to deter and prevent the

⁵⁵⁹ Fla. Stat. § 790.08(6).

⁵⁶⁰ Fla. Stat. §§ 932.701-932.7062.

continued use of contraband articles for criminal purposes while protecting the propriety interests of innocent owners and lien holders. The Act authorizes law enforcement agencies to use the proceeds collected for specific purposes outlined by the statute.

Each state or law enforcement agency that seizes property for the purpose of the forfeiture shall review such seizures, any settlements, and any forfeiture proceedings initiated by the law enforcement agency to determine whether they comply with the FCFA.⁵⁶¹ All settlements must be approved by the head of the agency.⁵⁶² If this review shows agency deficiencies, the state or law enforcement agency will correct these to comply with the FCFA.

A seizing agency is also required to adopt and implement written policies, procedures and training to ensure compliance with all applicable legal requirements of the FCFA.⁵⁶³

Law enforcement agency personnel involved in the seizure of property for forfeiture shall receive basic training and continuing education as required by the FCFA with training records showing compliance to the FCFA being maintained by the agency.⁵⁶⁴

a. Disposition of Forfeited Property

The FCFA authorizes a law enforcement agency to sell or otherwise salvage or transfer property acquired through a forfeiture to any public or nonprofit organization or retain it for the agency's use.⁵⁶⁵ If seized property is sold, the proceeds are disbursed in the following priority: satisfaction of any liens preserved by the court in the forfeiture proceedings; payment of costs incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of the property; and payment of court costs incurred in the forfeiture proceeding.

If the seizing agency is a county, the remaining proceeds are deposited in a special law enforcement trust fund established by the board of county commissioners. The funds may be expended upon request by the sheriff to the board of county commissioners or by the chief of police to the governing body of the county or municipality, accompanied by a written certification that the request complies with the provisions of this subsection, and only upon appropriation to the sheriff's office or police department by the board of county commissioners or the governing body of the municipality.

Agencies or organizations other than the seizing agency may apply to the sheriff or chief of police for an appropriation and its application must be accompanied by a written certification that the moneys will be used for an authorized purpose. The request must include a statement describing anticipated recurring costs for the agency for subsequent fiscal years. The funds may be expended for the same purposes listed above for sheriffs. Such funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency.

⁵⁶¹ Fla. Stat. § 932.704.

⁵⁶² Fla. Stat. § 932.703.

⁵⁶³ Fla. Stat. § 932.704.

⁵⁶⁴ Fla. Stat. § 932.704.

⁵⁶⁵ Fla. Stat. § 932.7055.

b. Use of Funds

- 1) Proceeds and interest earned from the forfeited funds must be used for school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, purchasing automated external defibrillators for use in law enforcement vehicles or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise and providing matching funds to obtain federal grants.⁵⁶⁶ The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.
- 2) Any local law enforcement agency that acquires at least \$15,000 pursuant to the FCFA within a fiscal year must expend or donate no less than 25 percent of such proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program(s). The local law enforcement agency has the discretion to determine which program(s) will receive the designated proceeds.
- 3) A law enforcement agency is prohibited from anticipating future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.⁵⁶⁷

Like most grants, forfeitures cannot be used to supplant the agency's budget. A common use of these funds are donations to charitable organizations with any type of crime prevention goal. This would include examples like Boys and Girls Club, Sheriff's Youth Ranch, Salvation Army, etc. The emphasis in the statute is on approval by the board of county commissioners upon written certification by the sheriff that the request complies with Florida Statute on use of funds. Unlike the use of Federal asset sharing funds, the Board has the right to deny a request they deem inappropriate.

The Attorney General's Office provides guidance when requested on what types of expenditures are appropriate from the Special Law Enforcement Trust Fund ("LETF"). The most common problem with expending moneys from the LETF is whether the proposed use is a normal operating expense of the agency that may not be paid from the LETF under the law. The following are some of the Attorney General Opinions that may be used as guidance when determining whether an expenditure would be an allowable expense:

Allowed:

- 1) Support of a time-limited task force.⁵⁶⁸

⁵⁶⁶ Fla. Stat. § 932.7055(5)(a).

⁵⁶⁷ Fla. Stat. § 932.7055(9).

⁵⁶⁸ AGO 2014-05.

- 2) Hosting an annual Sheriff's conference where issues facing law enforcement and training sessions are offered.⁵⁶⁹
- 3) A high school program emphasizing crime and drug prevention.⁵⁷⁰
- 4) Cost of a narcotics trained police dog under 932.7055(5)(a) as defraying the cost of protracted or complex investigations, providing additional equipment or expertise.⁵⁷¹
- 5) Creating or contributing to a Police Athletic League.⁵⁷²

Not Allowed:

- 1) Augmenting salaries of law enforcement officers because this is a normal operating expense.⁵⁷³
- 2) Updating the communication system because this is a normal operating expense of a law enforcement agency.⁵⁷⁴
- 3) Lasik eye surgery for a law enforcement officer because this is primarily a personal benefit.⁵⁷⁵
- 4) Upgrading computers because it is a normal expense of an agency.⁵⁷⁶
- 5) Repaying the General Fund for "loaning" money to the law enforcement trust fund. While there is no prohibition from the General Fund contributing money to the law enforcement trust fund, there is no provision for the reimbursement of these funds. This alludes to the anticipation of future forfeitures which is not allowed. In other words, it is best to wait until the funds are in hand before spending.⁵⁷⁷

c. Reporting requirements:

Every law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the FCFA shall submit a completed annual report to the Florida Department of Law Enforcement (FDLE) by October 10, documenting the receipts

⁵⁶⁹ AGO 2003-39.

⁵⁷⁰ AGO 2005-62.

⁵⁷¹ AGO 2205-47.

⁵⁷² AGO92-76.

⁵⁷³ AGO 89-78.

⁵⁷⁴ AGO 97-46.

⁵⁷⁵ AGO 2001-48.

⁵⁷⁶ AGO 96-62.

⁵⁷⁷ AGO 93-06.

and expenditures. At a minimum, the annual report must specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

Penalty for noncompliance with reporting requirements is a civil fine of an amount up to \$5,000, to be determined by the Chief Financial Officer and payable to the General Revenue Fund.⁵⁷⁸ However, such agency is not subject to the fine if, within 60 days after receipt of written notification from the FDLE of noncompliance with the reporting requirements of the Florida Contraband Forfeiture Act, the agency substantially complies with those requirements. The Office of the Chief Financial Officer shall be responsible for the enforcement of this section.

2. Federal Asset Sharing Program

Equitable sharing is a Federal program designed to enhance cooperation among federal, state and local law enforcement agencies through the sharing of proceeds resulting from federal forfeitures. Federal asset sharing programs are available through the U.S. Departments of Justice and Treasury, depending on the source of the funds. “Adoption” occurs when the state or local law enforcement initially seizes the item for forfeiture, but the U.S. Departments of Justice or Treasury subsequently proceeds with the forfeiture under federal statutes.⁵⁷⁹ All of these programs are designed to share federally forfeited property with participating state and local law enforcement agencies that directly participate in an investigation or prosecution that results in a federal forfeiture.

Supplanting

These funds **cannot** be used to supplant the agency’s budget. They are for expenses above and beyond the budget approved by the governing body.

- Department of Justice
 - DOJ handles forfeitures for DEA, FBI, ATF, Dept. of Agriculture, US Postal Service, FDA, Defense Criminal Investigative Service and the Dept. of State. The majority of cases submitted by sheriffs are with DEA and the FBI.
- Department of Treasury
 - The Treasury Executive Office for Asset Forfeiture (TEOAF) administers the Treasury Forfeiture Fund. They handle forfeitures for ICE, IRS, US Secret Service, US Coast Guard, Customs and Border Patrol and the Tax and Trade Bureau.

⁵⁷⁸ Fla. Stat. § 932.7061

⁵⁷⁹ <https://www.justice.gov/criminal-mlars/file/985631/download>

Audits

Both the Justice and Treasury funds are subject to single audit rules and must be reported on the agency's Schedule of Expenditures of Federal Awards prepared during the agency's annual audit.

Reporting Requirements

Within 60 days after the close of their fiscal year, agencies that receive equitable sharing must submit an Equitable Sharing Agreement and Certification (ESAC) report. Both the Department of Justice and the Department of Treasury are reported on the same report. This report itemizes the annual receipts and expenditures of federally shared funds and is done through the eShare Portal at <https://systems.forfeiture.gov>.

Newsletter

To receive the Equitable Sharing Wire newsletter send an email to eswire@lists.usdoj.gov. This newsletter keeps agencies up to date on new requirements or enhancements to the program.

Participation

As a prerequisite for participating in these programs, the agency must submit a Participant Request Form. After this is approved you must obtain access to the eShare Portal. This form and more information regarding this program is on the Department of Justice website at: <https://www.justice.gov/criminal-mlars/equitable-sharing-program>.

Applying for Payment

Once an agency participates in an investigation or seizure that results in a federal forfeiture, it must request a share of the forfeited assets within 45 days. A complete description of the role of the agency in the seizure needs to be detailed to justify the percentage the agency will ultimately receive. If an informant is used be sure to add that information as well. Proceeds received are based on the net after all other costs are paid.

The U.S. Department of Justice and the U.S. Department of Treasury publish a combined Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies. The most recent version at the time this manual was published was released in March of 2024. It can be found at on the U.S. Department of Treasury's website at <https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/asset-forfeiture/equitable-sharing>.

The guide outlines important topics and the processes from initial participation to applying to receive a share, to allowed uses of funds received through the equitable sharing programs, and finally reporting and audit requirements. When participating in the equitable sharing programs, it is important to always check allowed uses and required processes, and be sure to check the website to ensure the most recently released guide is being followed as allowed and disallowed uses of funds change over time.

Proceeds from the Equitable Sharing Program are not received directly by the sheriff's office. Instead, proceeds are deposited in a separate account held by the Board of County Commissioners. Sheriffs may submit the proposed use of the proceeds to the county commission for approval.

E. Training Funds

1. Sources of Training Funds

Florida law provides for a number of sources for funds that may be used for law enforcement training. Counties may assess \$2.00 for expenditures for criminal justice education degree programs and training, to include basic recruit training.⁵⁸⁰ This is generally referred to as "2nd dollar" funds. However, any education degree programs or training programs must be approved by an Agency administrator using Criminal Justice Standards and Training Commission (CJSTC or the Commission) approved forms.⁵⁸¹ Additionally, Florida law provides that when disposing of a traffic infraction, a \$2.50 court cost must be paid and distributed by the Clerk of Court to help pay for criminal justice education and training programs.⁵⁸²

Access to, and transfer of these funds should be coordinated through the local clerk of court and personnel in the local county administrator's office. Careful review of any applicable county ordinance should also take place. Coordination with local officials will assist in management of approved training funds. Ultimately, it is the responsibility of the sheriff and other county officers to establish appropriate methods for the proper retention, distribution and use of training funds.⁵⁸³

2. Criminal Justice Standards and Training Trust Fund

Florida law has provided for the creation of the Criminal Justice Standards and Training Trust Fund.⁵⁸⁴ One purpose of this fund is to provide commission-approved criminal justice advanced and specialized training.⁵⁸⁵ Training, room, or board cost may not be assessed against any officer or employing agency for any advanced and specialized training course funded from the Criminal Justice Standards and Training Trust Fund and offered through a criminal justice training school certified by the commission. Such expenses shall be paid from the trust fund and are not reimbursable by the officer.⁵⁸⁶ Florida law provides that ninety-two percent of the required \$3.00 court cost shall be deposited in the Department of Law Enforcement Criminal Justice Standards and Training Trust Fund.⁵⁸⁷

⁵⁸⁰ Fla. Stat. § 938.15.

⁵⁸¹ *Id.*

⁵⁸² Fla. Stat. § 318.18(11)(c).

⁵⁸³ AGO 76-64 (1976).

⁵⁸⁴ Fla. Stat. § 943.25 (2).

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.*

⁵⁸⁷ Fla. Stat. § 938.01 (1)(a)1.

3. Proper Expenditure

As noted above, Florida law authorizes the expenditure of “2nd dollar” funds for criminal justice education degree programs and training courses, to include basic recruit training.⁵⁸⁸ Additionally, Attorney General opinions have provided that funds secured from the Criminal Justice Standards and Training Trust Fund may be used to purchase equipment for an agency, provided that the equipment purchase relates to an existing educational, training or development program.⁵⁸⁹ Keep in mind that the educational, training or development program must be programs approved by the Commission.⁵⁹⁰ Use of these funds for payment of salaries is not permissible.⁵⁹¹

There is no bright line test for approval of a training program for purposes of fund expenditure, and the determination is to be made by the sheriff. However, consideration should be given to the following factors:

- a. Is the purpose of the training program related to a criminal justice degree;
- b. Is the purpose of the training program criminal justice training;
- c. Is the training basic recruit training;
- d. Is the training program currently established;
- e. Is there a direct nexus between the training program and a criminal justice purpose or employment need;
- f. Is the training program one that is approved by the Commission.

While no single factor is determinative, they should be used as guidelines when evaluating whether an expenditure is appropriate.

F. Bonds

The Florida Constitution and Florida Rules of Criminal Procedure provide that unless a person is charged with a capital offense or an offense punishable by life imprisonment, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If the Court finds that no conditions of release can 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, then the accused may be detained and held without bail.⁵⁹²

⁵⁸⁸ Fla. Stat. § 938.15.

⁵⁸⁹ AGO 73-284 (1973); AGO 78-55 (1978).

⁵⁹⁰ AGO 78-55 (1978).

⁵⁹¹ AGO 73-284 (1973).

⁵⁹² Fla. Const. art. I § 14 (1982); Fla. R. Crim. P. 3.131(a).

Further, a person is prohibited from being released on bail when appealing a felony conviction for an offense requiring registration as a sex offender or predator where the offender was 18 years or older and the victim was a minor.⁵⁹³

1. Setting and Accepting Bonds

The Sheriff has the authority, in limited circumstances, to release an arrested person on their own recognizance through issuance of a notice to appear.⁵⁹⁴ However, only the Court having jurisdiction to try the defendant may set bail.⁵⁹⁵ Many courts will establish “bond schedules” through Administrative Orders which set a uniform amount of bail for a variety of offenses. There is no specific statute or rule which authorizes this practice. Though the Court is required to consider criteria for bond as set forth by statute and rule⁵⁹⁶, the longstanding practice of Courts establishing a bond schedule has never been specifically condemned by Appellate Courts in Florida.

Regarding the acceptance and custody of bonds, Florida law provides that for bonds given by defendants before trial and until appeal shall be approved by either the committing trial court or the sheriff.⁵⁹⁷ This language does specifically clarify what entity is ultimately responsible for acceptance and custody of bonds. However, the Florida Attorney General has indicated that when the sheriff approves a bail bond, the sheriff has the responsibility for, and is the custodian of, the bond. In the alternative, when a bail bond is approved by the Court, the Court can either direct that the Clerk of Court or the Sheriff to act as custodian of the bond.⁵⁹⁸ In either case, the sheriff may remit the bond money to the clerk to retain pending court action or return to the defendant or depositor.⁵⁹⁹ The clerk is required to accept money or bonds remitted by the sheriff.⁶⁰⁰

2. Sureties

An individual who resides or owns property in the state may act as a surety on the condition that they are a resident of the state or own real estate within the state.⁶⁰¹ However, the person acting as a surety must have a net worth at least equal to the amount of the bail.⁶⁰² Additionally, the person acting as a surety must execute an affidavit verifying that they meet the qualifications as required by statute to include their property and any encumbrances as well as the number and

⁵⁹³ Fla. Stat. § 903.133(3).

⁵⁹⁴ Fla. Stat. § 30.56; Fla. R. Crim. P. 3.125.

⁵⁹⁵ Fla. Stat. § 903.03; Fla. R. Crim. P. 3.131(b).

⁵⁹⁶ *Hollander v. Crowder*, 952 So.2d 1289, (2007).

⁵⁹⁷ Fla. Stat. § 903.34.

⁵⁹⁸ AGO 74-365 (1974).

⁵⁹⁹ Fla. Stat. § 903.16.

⁶⁰⁰ *Id.*

⁶⁰¹ Fla. Stat. § 903.05.

⁶⁰² Fla. Stat. § 903.08.

amounts of any bonds they have before any court that remain un-discharged.⁶⁰³ Two or more people may combine to act as sureties.⁶⁰⁴

Professional bondsmen are subject to licensing requirements as administered by the Florida Department of Financial Services.⁶⁰⁵ They must register with the sheriff and the clerk of the circuit court in the county in which they reside with the registration including a certified copy of their appointment by power of attorney from each insurer which they represent.⁶⁰⁶ Thereafter, registration and the filing of a certified copy of a renewed power of attorney shall occur on April 1 of each odd numbered year.⁶⁰⁷ The valid registration of a bondsman in the county of their residence satisfies the statutory registration requirements and authorizes the bondsman to act as a surety in other counties without registering in those counties as well.⁶⁰⁸ However, Florida law provides that the sheriff *shall not* permit the registration of a bail bond agent unless they are currently licensed and appointed by the Department of Financial Services.⁶⁰⁹ There are no other provisions in statute that allow the sheriff discretion to refuse to allow a bondsman to register. Additionally, any person meeting the statutory requirement to act as a surety and who is licensed by the Department of Financial Services shall be allowed equal access to the jail for the purpose of posting bonds.⁶¹⁰ While there is no statutory prohibition of a deputy sheriff acting as a surety, Florida law prohibits a sheriff, deputy sheriff or any employees of any sheriff's office from acting as a bail bond agent, temporary bail bond agent, employee of a bail bond agent or bail bond business; or benefiting either directly or indirectly from the execution of any bail bond.⁶¹¹

3. Security for the Bond

A defendant or another person acting on their behalf may deposit U.S. Currency, nonregistered bonds of the United States, the state, or a city, town or county in the state for use as bail money.⁶¹² No other form of security is specifically authorized by statute. However, the situation may arise when an individual wishes to use a certificate of deposit, a check or real property as security. While there is not specific statutory prohibition (or requirement) that the sheriff accept these instruments, the Florida Sheriffs Association has recommended that only cash be accepted due to the array of legal and administrative difficulties that may arise should the bond be forfeited. Courts will, on occasion, order a Sheriff to accept a property bond. When this occurs, or when

⁶⁰³ Fla. Stat. § 903.09.

⁶⁰⁴ Fla. Stat. § 903.05; 903.08.

⁶⁰⁵ Fla. Stat. § 648.26; 648.30.

⁶⁰⁶ Fla. Stat. § 648.42.

⁶⁰⁷ *Id.*

⁶⁰⁸ AGO 58-180 (1958).

⁶⁰⁹ Fla. Stat. § 648.42.

⁶¹⁰ Fla. Stat. § 903.101.

⁶¹¹ Fla. Stat. § 648.44.

⁶¹² Fla. Stat. § 903.16.

the sheriff otherwise accepts a property bond, the defendant should be required to provide the following:

- a. Proof that the property is not homestead property. Homestead property is generally exempt from seizure by creditors pursuant to Article 10, Section 4 of the Florida Constitution.⁶¹³ Though courts have found that individuals may specifically waive homestead protection as to homestead property,⁶¹⁴ this course of action is not recommended.
- b. Proof that taxes are current on the property;
- c. Proof that the person posting the bond is the sole owner of the property;
- d. Verification of the current appraised value of the property;
- e. Verification that there are no liens, judgments, or mortgages on the property;
- f. A legal description of the property.

The sheriff shall determine whether the documentation provided by the defendant is acceptable and whether the above-referenced requirements have been met. The Florida Sheriffs Association has suggested that the defendant be required to obtain affidavits from the appropriate county officers or other governmental officials attesting to the current tax status, appraised value, and any other requirement of the sheriff. Lien information can be secured through title companies.

4. Release on Recognizance

Florida law provides that a sheriff or their deputies may, in their discretion, release a person on their own recognizance or upon acceptance of a cash bond in all cases of arrest for traffic violations.⁶¹⁵ Additionally, absent the existence of circumstances outlined in Florida Rule of Criminal Procedure 3.125 (b) and (c), an arresting officer or booking officer may issue a notice to appear in lieu of physical arrest. The notice to appear may be issued in cases where the offense is a misdemeanor of the first or second degree or a violation of a municipal or county ordinance triable in county court.⁶¹⁶

5. Surrender and Exoneration

When a surety desires to surrender a defendant, they are required to deliver a copy of the bond and the defendant to the Sheriff, at which time the sheriff shall take the defendant into custody

⁶¹³ Sherbill v. Miller Manufacturing Co., 89 So. 2d 28 (Fla. 1956).

⁶¹⁴ Tronz v. Winig, 905 So. 2d 1026 (Fla. 2005).

⁶¹⁵ Fla. Stat. § 30.56.

⁶¹⁶ Fla. R. Crim. P. 3.125.

and issue a certificate acknowledging the surrender.⁶¹⁷ The surety shall be exonerated of liability on the bond if it is determined prior to the breach of the bond that the defendant was in any jail or prison and the surety agrees, in writing, to pay the transportation cost of returning the defendant.⁶¹⁸ Though the method of determining the transportation costs is not outlined in the statute, the determination is customarily made by the sheriff. Additionally, the bondsman must file a motion with the Court having jurisdiction to be relieved of the bond. Thereafter the bondsman must place money into an escrow account to cover costs.

6. Handling Bond Money

As a general proposition, bail in the form of U.S. Currency is not public money. Bond money is held in trust by the sheriff for the State until and unless forfeited upon default or until the defendant is entitled to return.⁶¹⁹ The bond still belongs to the defendant/depositor absent a default and forfeiture and while the bond may appear to be “public funds”, they are actually private money until forfeited.⁶²⁰

Regarding the use of a cash bond for payment of court costs and fines, there appears to be a conflict within the law. Certain statutes provide that when money has been deposited by or on behalf of the defendant, and upon a judgment for the payment of a fine and costs, the court can order the money deposited to be used to satisfy the fine and costs, with the remainder being returned to the depositor.⁶²¹ Additionally, the Office of Financial Regulation - Department of Banking and Finance and some clerks have interpreted this language as permitting withholding of costs from appearance bonds. However, a separate statute specifically provides that an appearance bond does not guarantee the payment of fines.⁶²² As a result of this unresolved conflict in the law, the Florida Sheriffs Association suggests that sheriffs not withhold fines and costs from cash appearance bonds.

G. Victim/Witness Assistance

Each sheriff’s office is required by law to have guidelines for the fair treatment of victims and witnesses that implement the provisions of Article I, Section 16(b) of the Florida Constitution and to achieve specific objectives outlined in Chapter 960, Florida Statutes.⁶²³ The guidelines require that specific information and notifications be made to victims and witnesses.⁶²⁴ To the extent that these rights do not interfere with the constitutional rights of the accused, the guidelines should

⁶¹⁷ Fla. Stat. § 903.21 (1).

⁶¹⁸ Fla. Stat. § 903.21 (3).

⁶¹⁹ AGO 82-72 (1982); Young v. Stoutamire, 179 So. 797 (Fla. 1937).

⁶²⁰ AGO 82-72 (1982).

⁶²¹ Fla. Stat. § 903.105; 939.17.

⁶²² Fla. Stat. § 903.31.

⁶²³ Fla. Stat. § 960.001.

⁶²⁴ *Id.*

allow victims to be informed, present, and heard at all crucial stages of criminal proceedings.⁶²⁵ Special circumstances apply for victims of homicide, allowing their next of kin to have the same rights.

In addition, a sheriff's office may release any information deemed relevant to adequately inform the victim if the offense was committed by a juvenile. For juvenile cases, victims must not reveal any information gained pursuant to Chapter 960 to any outside entity.⁶²⁶

A victim, surviving spouse, parent or guardian, sibling or dependent of a deceased victim, and any person injured in attempting to aid a victim (intervenor) may make claims to the Crime Victims' Services Office (the Office) for compensation to alleviate financial hardship caused by the crime.⁶²⁷ Victims of sexually violent offenses may file a claim for compensation for mental health services within a year of filing a petition to involuntary civilly commit the offender.⁶²⁸

This Office, housed in the Department of Legal Affairs, is responsible for developing victim/witness programs and administering the Crimes Compensation Trust Fund.⁶²⁹ Monies for the Fund come from additional costs assessed against the defendant,⁶³⁰ state appropriations, restitution, federal grants, fines, and other sources.⁶³¹ A victim may apply for compensation in person or by mail to the Tallahassee office.⁶³² State Attorney's Offices are required to aid victims seeking compensation.⁶³³ The Office can make an emergency award in cases of severe hardship or if the claimant is a recipient of Social Security benefits for up to \$1,000, and can pay up to \$500.00 for initial medical examinations for victims of sexual battery, regardless of whether the exam is covered by the victim's medical insurance.⁶³⁴

1. Guidelines for Fair Treatment of Victims & Witnesses / Notice to Victims

All offices should currently have guidelines in place. The agency's guidelines and any changes must also be filed with the Governor's Office, including a copy of the budget request prepared pursuant to Ch. 216 for the purpose of carrying out the activities and services outlined in the guidelines.⁶³⁵ Model guidelines will be supplied by the Florida Sheriffs Association upon request. Guidelines for Fair Treatment of Victims and Witnesses should include the following statutory elements:

⁶²⁵ This was passed as an amendment to the State Constitution in 1988, adding, Article I, Section 16. Chapter Law 88-96 codified the Constitutional Amendment in Chapter 960, Florida Statutes.

⁶²⁶ Fla. Stat. § 960.001(8).

⁶²⁷ Fla. Stat. § 960.07.

⁶²⁸ Fla. Stat. § 960.07(4). Sexually violent crimes as defined in Fla. Stat. § 394.912.

⁶²⁹ Fla. Stat. § 960.05.

⁶³⁰ Fla. Stat. § 938.03.

⁶³¹ Fla. Stat. § 960.21(2).

⁶³² Fla. Stat. § 960.07.

⁶³³ Fla. Stat. § 960.07(7).

⁶³⁴ Fla. Stat. § 960.12; Fla. Stat. § 960.28(2).

⁶³⁵ Fla. Stat. § 960.001(3).

- Services available to victims, including a “Victim Rights Information Card,” listing the following rights:⁶³⁶
 - The right to be informed about: available victim service providers, social services, crisis intervention and the availability of crime victim compensation; the role of the victim, including what the criminal justice system expects from the victim and what the victim may expect from the system so that the victim is informed and heard at all crucial stages of judicial proceedings; schedule changes when the victim is scheduled to appear; the submission of written and oral impact statements; the arrest, escape and release of the offender from incarceration; the right to receive information regarding proceedings relating to the accused.
 - The right to request and receive restitution and return of property held as evidence if appropriate.
 - The right to assistance with notifying creditors, notifying the victim’s employer due to absences, and requesting that a victim advocate be present at discovery depositions.
 - The right that incarcerated victims have to be informed and submit written statements at crucial stages of judicial proceedings.
 - The right to prompt and timely disposition of the case.
 - The right to be provided with general assistance and a victim’s rights information card or brochure.
 - Victims of felony involving physical or emotional injury or trauma shall be consulted by the state attorney regarding disposition of the case.
 - Upon request, the state attorney shall permit the victim to review a copy of portions of the pre-sentence investigation report prior to the sentencing hearing.
 - Both the victim and the state attorney (with consent of the victim) have standing to assert the rights of a crime victim.
- Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim
- Information concerning protection available to victim or witness

⁶³⁶ Fla. Stat. §§ 960.001(1)(a), (1)(k) and (1)(o).

- Notification of Scheduling Changes
- Advance notification to victim or relative of victim concerning judicial proceedings; right to be present
- Notification of Release from Incarceration
- Return of property to victim.
- Notification to Employer and explanation to Creditor
- Notification of Right to Request Restitution
- Victim Assistance Education and Training
- General Victim Assistance
- Notification of Inmate Escape
- Implementing crime prevention in order to protect the safety of persons and property
- Use of a polygraph examination or other truth-telling device with victim
- The refusal from the victim to submit does not prevent the investigation, charging or prosecution of the offense.⁶³⁷

Additionally, the Guidelines should include the victim notification requirements below. A sheriff's office should work with the local state attorney to determine which agency is responsible for the following the notification requirements⁶³⁸:

- In the case of a juvenile victim, the victim's parent or legal guardian shall be notified of the right to attend the sentencing or disposition of the offender and request that the offender be required to attend a different school.
- Policies should contain a required notification for all additional persons who need to be notified. "The victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim..."
- The right of the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the

⁶³⁷ Fla. Stat. § 960.001(3)t.

⁶³⁸ Fla. Stat. § 960.001(4).

victim is a minor, and the next of kin of a homicide victim to be notified upon request when an inmate has been approved for community work release.

- Victims of domestic violence have the right to be provided information regarding the address confidentiality program.
- Upon request by the victim of the sexual assault, the Court shall clear the courtroom of certain persons as provided in Section 918.16, Florida Statutes, when the victim is testifying concerning the offense.
- Victims of certain sexual assault offenses where the transmission of body fluids, or which involves certain sexual offense in which the victim is a minor, disabled adult, or elderly person, is entitled to the results of the Hepatitis and HIV testing of the persons charged with or who has allegedly committed the certain offenses.⁶³⁹

2. Arrest Policy

When a law enforcement officer investigates an allegation of domestic violence, the officer shall handle the incident pursuant to Section 901.15(7), Florida Statutes.

Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates the alleged offense was an incident of domestic violence. Such report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled.⁶⁴⁰ Whenever possible, the officer should get written statements from victim and witnesses concerning the alleged domestic violence.

A law enforcement officer is authorized to arrest without a warrant when:

- There is probable cause to believe that the person has committed a criminal act according to Sections 790.233 or according to 741.31, or 784.0487, which violates an injunction for protection entered pursuant to Section 741.30 or 784.0485, or a foreign protection order accorded full faith and credit pursuant to Section 741.315, over the objection of the petitioner, if necessary; or
- There is probable cause to believe that the person has committed an act of domestic violence, as defined in Section 741.28. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence on each other and to encourage training of law enforcement and prosecutors in this area.⁶⁴¹

⁶³⁹ Fla. Stat. § 960.003(1).

⁶⁴⁰ Fla. Stat. § 741.29(2).

⁶⁴¹ Fla. Stat. § 901.15(7).

- A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection, under Section 741.31(4) or 784.047, or pursuant to a foreign order of protection accorded full faith and credit pursuant to Section 741.315, is immune from civil liability that otherwise might result by reason of his or her action.⁶⁴²
- Additionally, a law enforcement officer may arrest without a warrant when there is probable cause to believe that the person has committed an act that violates a condition of pretrial release provided in Section 903.047 when the original arrest was for an act of domestic violence as defined in Section 741.28, Florida Statutes, or when the original arrest was for an act of dating violence as defined in Section 784.046.⁶⁴³

3. Types of Violence

The following is a summary of various types of violence for which an injunction can be sought. A thorough review of the entire law is recommended.⁶⁴⁴

a. Domestic violence

Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.⁶⁴⁵ With respect to this provision, a “family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.⁶⁴⁶

b. Repeat Violence

Two incidents of violence⁶⁴⁷ or stalking committed by the respondent, one of which must have

⁶⁴² Fla. Stat. § 901.15(6).

⁶⁴³ Fla. Stat. § 901.15(13).

⁶⁴⁴ Refer to Chapter 741 for Domestic Violence; for Repeat Violence, Sexual Violence, and Dating Violence refer to Fla. Stat. § 784.046, and Fla. Stat. § 784.048 for Stalking and Cyberstalking.

⁶⁴⁵ Fla. Stat. § 741.28(2).

⁶⁴⁶ Fla. Stat. § 741.28(3).

⁶⁴⁷ “Violence,” with respect to “repeat violence” or “dating violence” is defined as “[a]ny assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment or a criminal offense resulting in physical injury or death by a person against any other person.” Fla. Stat. § 784.046(1)(a).

been within six months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.⁶⁴⁸

c. Sexual Violence

Any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony where a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.⁶⁴⁹

d. Dating Violence

Violence between individuals who have or have had continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship is determined based on the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.
- The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.⁶⁵⁰

e. Stalking and Cyberstalking

Stalking is when a person willfully, maliciously, and repeatedly follows, harasses,⁶⁵¹ or cyberstalks another person. Aggravated stalking is when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat⁶⁵² to that person.

⁶⁴⁸ Fla. Stat. § 784.046.

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.*

⁶⁵¹ Harass is defined as, "engaging in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose." Fla. Stat. § 784.048.

⁶⁵² Credible threat is defined as, "a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the

Cyberstalking is defined as engaging in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.⁶⁵³

4. Legal Rights and Remedies

Any law enforcement officer who investigates an allegation of domestic violence shall assist the victim with obtaining medical treatment if necessary. Any law enforcement officer who investigates an allegation of domestic violence shall advise the victim that there are domestic violence centers that can provide services to victims. The law enforcement officer shall give the victim immediate notice of the legal rights and remedies available on a standard form developed and distributed by FDLE.⁶⁵⁴ This notice of legal rights is a general summary of Section 741.30.

a. Cause of Action

There are several types Causes of Action available for victims or for someone who has a reasonable belief that he/she is in imminent danger of becoming a victim:

- Section 741.30, Florida Statutes, creates a cause of action for an injunction for protection against domestic violence.
- Section 784.046(2), Florida Statutes, creates three separate causes of action for an injunction for protection for each cases of repeat violence, dating violence, and sexual violence.
- Section 784.0485, Florida Statutes, creates a cause of action for an injunction for protection against stalking and cyberstalking.

b. Out of State Injunctions

Out of state injunctions are to be enforced as if they arose out of the State of Florida.⁶⁵⁵ This applies for an injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking. The issuing court of a foreign state must be accorded full faith and credit by the Florida courts and enforced by a law enforcement agency as if it were the order of a Florida court issued under Florida law. There is a requirement that the out of state court gave the person against whom the order is sought reasonable notice and an opportunity to be heard that was sufficient to protect the right to due process. Ex parte injunctions are not eligible to full faith and credit unless there was notice and an opportunity to be heard.

person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section.” Fla. Stat. § 784.048.

⁶⁵³ Fla. Stat. § 784.048.

⁶⁵⁴ Fla. Stat. §§ 741.29(1), 39.906.

⁶⁵⁵ Fla. Stat § 741.315(2), pursuant to 18 U.S.C. § 2265

Law enforcement officers must enforce foreign orders of protection as if they were entered by a court of this state.⁶⁵⁶ Upon presentation of a foreign protection order by a protected person, a law enforcement officer shall assist in enforcement of all of its terms, pursuant to federal law, except matters related to child custody, visitation, and support. As to those provisions only, enforcement may be obtained upon domestication of the foreign order unless the foreign order is a “pickup order” or “order of bodily attachment” requiring the immediate return of a child.⁶⁵⁷

Before enforcing a foreign protection order, a law enforcement officer should confirm the identity of the parties present and review the order to determine that, on its face, it has not expired. Presentation of a certified or true copy of the protection order is not required as a condition of enforcement, provided that a conflicting certified copy is not presented by the respondent or the individual against whom enforcement is sought.⁶⁵⁸

c. Immunity

No law enforcement officer shall be held liable, in any civil action, for an arrest based on probable cause, enforcement in good faith of a court order, or service of process in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.⁶⁵⁹

d. Protective Services

The Sheriff’s Office is authorized to provide protective services to a victim or witness, including a member of the victim’s or witness’ immediate family, who is at risk of harm as a result of cooperating in an investigation or prosecution of a serious felony offense (i.e., murder, manslaughter, sexual battery, aggravated stalking, kidnapping, etc.) or an attempt, solicitation, or conspiracy to commit any of the enumerated felonies, and has been subjected to violence or other forms of intimidation or who is the subject of a substantial threat to commit violence.⁶⁶⁰

5. Resources

Numerous resources exist to aid sheriffs’ offices in providing victims with information and assistance. Information about victim and witness issues may be obtained from the Attorney General’s Crime Victims’ Services Office.

The Crime Victims’ Services Office publishes a Directory of Victim/Witness Services in Florida, which is provided to all law enforcement agencies. The Crime Victims’ Services Office can be reach at (850) 414-3300, and is located at Crime Victims’ Services Office, Office of the Attorney

⁶⁵⁶ The Florida Enforcement of Foreign Judgment Acts is 55.501-55.509, Florida Statutes.

⁶⁵⁷ Fla. Stat. § 741.315(4)(a).

⁶⁵⁸ Fla. Stat. § 741.315(3)(b).

⁶⁵⁹ Fla. Stat. § 741.29(5).

⁶⁶⁰ Fla. Stat. § 914.25.

General, The Capitol PL-01, Tallahassee, FL 32399-1050; or visit <https://www.myfloridalegal.com/crime-victims-services/crime-victims-services> for more information.

A further resource in your area may be the local witness coordinating office. Pursuant to statute, each county in each judicial circuit is required to have such an office operating under the direction of the Court Administrator.⁶⁶¹

Additional resources include:

Office of the State Attorney, 11th Judicial Circuit, Miami, FL; 305-547-0100
<http://www.miamisao.com/>

U.S. Department of Justice, National Institute of Justice, Washington, D.C.
<http://www.nij.ojp.gov/>

The National Organization for Victim Assistance, Alexandria, VA
<http://www.trynova.org/>

National Center for Victims of Crime
<http://www.victimsofcrime.org>

National Sheriffs Association Victim Assistance Program, Alexandria, VA
<https://www.sheriffs.org/programs/domestic-violence-crime-victim-services>

H. Biased Based Policing/Discriminatory Profiling

Biased based policing is the detention, interdiction, or other disparate treatment of any person on the basis of race, color, national origin, ethnicity, religion, economic status, cultural group, any other identifiable group, gender, sexual orientation, or age. Every effort must be made to eradicate this inherently discriminatory conduct. Strong policies and immediate follow-up inquiries are essential to reducing complaints of biased-based profiling. Agencies should always strive for **transparency** where these types of inquiries and investigations are concerned. Another important factor to consider is how trust is gained by police agencies. When communities truly feel that we are “all in this together”, they begin to value one another as much more than service recipients and service providers, but as partners.

The points below highlight the best practices that are intended to promote fair treatment for all members of the public. There is no specific order, as each point is equally important.

1. Professionalism

Agencies must insist upon law enforcement officers treating everyone with courtesy and respect. Courtesy and respect do not impair an officer from doing their job. Courtesy and respect must

⁶⁶¹ Fla. Stat. § 43.35.

become an agency pillar, and must be monitored at every rank and position. In a professional agency, there is no need for a written script for deputies to follow while on a traffic stop that tell them to say “Sir” or “Ma’am”, “Good morning” or Good Afternoon”, “May I please see your license, registration, and proof of insurance”.

2. Policy

An agency should have a policy in place that addresses racial profiling/biased based profiling, and this policy must be reviewed regularly. Florida law requires that agencies have an antiracial or other antidiscriminatory profiling policy.⁶⁶² Such policies should include definitions, corrective measures if profiling is found to exist, community education and awareness, complaint procedures, and a documented annual administrative review of agency practices in the areas of forfeitures, traffic stops and seizures. The Florida Sheriffs Association can provide model policies upon request.

3. Training

Officers must be regularly trained on changing and emerging issues within the country that may affect policing the communities within their jurisdictions. Every officer must receive mandatory training on the topic of “Discriminatory Profiling and Professional Traffic Stops.”⁶⁶³

4. Community Partnerships

Sheriffs’ offices must forge community partnerships. Becoming and remaining a community partner must be an agency goal. Education and awareness programs concerning law enforcement and citizen interaction are beneficial in establishing community partnerships. It is equally important to offer the community insight into the sheriff’s office by various other means, such as Civilian Police Academy, Senior Programs, Neighborhood Watch, etc. These types of programs are priceless and foster citizen support and respect.

5. Complaints

All complaints of biased based profiling must be taken seriously, and all complaints must be addressed immediately. These types of complaints should be assigned to the most senior public integrity investigators, and must be resolved in a timely manner. The mere appearance of predisposition can be catastrophic to an agency and its existing community partnerships. Agencies must remain vigilant, and ensure that first line supervisors and managers seriously review initial complaints of biased based and racial profiling.

6. Transparency

All agencies must strive to be transparent. Citizens are watching, and noting how these matters are handled. Public trust is paramount, and no person should ever feel discouraged or intimidated from filing a complaint.

⁶⁶² Fla. Stat. § 30.15(3).

⁶⁶³ Fla. Admin. Code R. 11B-27.00212 (b).

I. Mutual Aid

Mutual aid agreements are agreements entered between two or more law enforcement agencies to work together for a particular purpose that crosses jurisdictional lines.⁶⁶⁴ Mutual Aid agreements can be used to assist with routine law enforcement matters or as a request for assistance in a law enforcement emergency or a combination of both.

An example of an agreement for routine law enforcement matters is the creation of a task force consisting of the sheriff's office and two or more city police departments who jointly operate within the county for narcotics enforcement.

An example of an agreement for emergency assistance is the agreement among all sheriffs in the state to assist another sheriff's office in the event of a hurricane.

All Mutual aid agreements must be in writing and must specify the nature of the law enforcement assistance to be rendered, the agency or entity that shall bear any liability arising from acts undertaken under the agreement, the procedures for requesting and for authorizing assistance, the agency or entity that has command and supervisory responsibility, a time limit for the agreement, the amount of compensation or reimbursement to the assisting agency or entity, and any other terms and conditions.⁶⁶⁵ The agreement must also be filed with FDLE fourteen (14) days after it has been signed.

Mutual aid agreements can also be entered between law enforcement and a school board that employs school safety officers or a state university that employs or appoints university police officers, or a Florida College System institution that employs police officers.

A mutual aid agreement ends when the presiding sheriff leaves office. As such, the agreements must be signed once the new sheriff takes office. A sheriff does not need prior board of county commission approval to enter into an agreement under this section.

The Florida Sheriffs Association can assist in creating and updating mutual aid agreements between sheriffs for the Florida Sheriffs Task Force and other state agencies as needed.

⁶⁶⁴ See Chapter 23 Fla. Stat.

⁶⁶⁵ Fla. Stat. § 23.1225.

VI. Finance

The Florida Sheriffs Association assists sheriffs in their efforts to maintain the highest possible professional standards for the financial administration of the Office of Sheriff.

- Financial accounts and records must clearly show that:
- The sheriff is properly managing the financial affairs of the office;
- The fidelity of all employees handling public funds is safeguarded; and
- All transactions and decisions carefully and fully comply with applicable administrative rules and statutory provisions.

The Finance Section of this manual aims to provide a basic understanding of the major components that support the financial operations of the Office of the Sheriff. Topics include:

- Uniform Accounting System
- Annual budget process
- Operating funds and expenditures
- Accounting for public money
- Audits
- Fiscal guidelines during a transition of Sheriff

A. Uniform Accounting System

1. Introduction to Uniform Accounting System

The basis to any financial accounting and reporting system is its chart of accounts. Florida law requires local governments to use uniform accounting practices and procedures, including a standardized classification of accounts.⁶⁶⁶ This Uniform Accounting System was designed by the Department of Financial Services (DFS) to provide a level of uniformity for financial reporting and accounting. DFS promulgates the rules to assure the use of proper accounting and fiscal management techniques are in place at the local government level. Local governments cannot create new classifications without prior approval from the Department of Financial Services.

The Uniform Accounting System is designed to standardize budgetary and actual financial information that will facilitate the comparison and evaluation of financial reports. Whether the financial information is used in internal management reporting or external financial reporting, the uniform classification of accounts creates consistency. The uniform classification is especially important in external financial reporting because it allows for the standardization of financial information for all units of local government.

⁶⁶⁶ Fla. Stat. § 218.33.

The Uniform Accounting System is updated frequently and the latest version can be found online at <http://www.myfloridacfo.com/Division/AA/Manuals/default.htm>.

The Uniform Accounting System (UAS) includes the following sections:

- Fund Classifications
- Balance Sheet Accounts
- Revenue Accounts
- Expenditure/Expense Accounts
- Object & Sub-Object Classifications

Implementing the UAS requires local governments, including sheriffs, to:

- Follow generally accepted accounting principles;
- Classify all funds and account groups according to the definitions provided in the classification of funds;
- Classify all revenues, expenditures, and balance sheet items by the account titles defined in the classification of accounts.

The classification of funds and the classification of revenues, expenditures, and balance sheet accounts include a digital numbering system that is an integral part of the Uniform Accounting System. Local governments are required to use these digits in their accounting system. These digits are used in other state reporting formats.

The following sections provide an overview of the areas of the Uniform Accounting System that are most relevant to sheriffs. Additionally, all sheriff's offices should maintain a copy of the Uniform Accounting System Manual for reference purposes.

There are two types of account structures: one for Revenues and one for Expenditures.

2. Revenue Account Structure

There are many types of revenues received by local governments, and so the goal of this structure is to assist with reporting and summaries of this revenue. The following account structure is designed to classify local government revenue by fund and by source. The revenue code consists of nine digits.

Example: 101-331-200

101	–	Fund Identification (e.g. Special Revenue Fund)
3	–	Transaction Code (e.g. revenue)
3	–	Type (e.g. intergovernmental)
1	–	Source (e.g. Federal grants)
2	–	Function, if applicable (e.g. public safety)
0	–	Category, if applicable (e.g. law enforcement grant)
0	–	Sub-Category, if applicable

The first three digits identify the fund. The next six specifically identify the revenue source. The fourth digit identifies that the transaction is a revenue. The fifth digit identifies the type of revenue. The sixth digit further classifies the type of revenue by funding source. The seventh digit classifies the transaction by function, such as public safety. The eighth digit specifically identifies the transaction within the function, such as law enforcement being a part of public safety. The ninth digit will be used to itemize specific grants or funding sources within the function and category identified by the seventh and eighth digits. All digits beyond the eighth are assigned by the unit of local government and not specifically defined by the Department of Financial Services. It is allowable for a local government to use a 10th digit for a more detailed approach.

3. Expenditure Account Structure

Expenditures are classified by fund, organizational unit, function, activity, and object. It is the intent of the Legislature that units of local government summarize their financial data in a manner which facilitates comparison and analysis. The classification of expenditures has been developed to fulfill this requirement and to meet the external and internal reporting needs of local governments.

The Uniform Accounting System provides an expenditure code consisting of twelve digits. The first three digits indicate the fund, as is consistent with the revenue account coding structure. The next four digits identify the organizational unit, or department and division. The assignment of the organization units will be made by each local government according to its own organization structure. Finally, the remaining five digits identify the transaction and describe specific details related to the expenditure.

Example: 101-2132-521.31

101	–	Fund Identification (e.g. Special Revenue Fund)
21	–	Department ID
32	–	Division ID
5	–	Transaction Type (e.g. expenditure)
2	–	Function Code (e.g. public safety)
1	–	Activity Code (e.g. law enforcement)
3	–	Object Code (e.g. operating expenditures)
1	–	Sub-object Code (e.g. professional services)

Within the last section of the expenditure account number are five digits that indicate specific details for the transaction. The first digit identifies the transaction as an expenditure. The digit “5” is used for all expenditures. The next two digits identify the function and activity for which the expenditure was made.

a. Function and Activity Classifications

The following outline of the function and activity classifications (digits 9 and 10 of the account number) used primarily by sheriffs will serve as a quick reference to the classification of expenditures. Please refer to the Uniform Accounting System Manual for a more detailed look at Expenditure Classifications.

- 1) 520.00 PUBLIC SAFETY
A major category of services for the security of persons and property.
- 2) 521.00 LAW ENFORCEMENT
Providing police services for the local government’s jurisdiction. This includes Police Department, Sheriff, Other Law Enforcement Agencies, Director of Safety, and Armories.
- 3) 522.00 FIRE CONTROL
Providing general firefighting and prevention services for the citizens. This includes Fire Departments, Fire Districts, and Fire Control Services.
- 4) 523.00 DETENTION AND/OR CORRECTIONS
Cost of confinement of prisoners, sentenced or otherwise, and rehabilitation of offenders. This account series should be utilized whether costs are directly incurred or paid to another local unit for provisions of such services. This includes Parole and Probation Services, Juvenile Homes, County Jail, Convict Camp, Correctional Facilities (not includable above), Work Release Program, and Board of Corrections. Do not use these accounts if detention services constitute an insignificant and indistinguishable element of law enforcement.
- 5) 524.00 PROTECTIVE INSPECTIONS
Cost of providing inspection services relevant to the issuance of a license, permit, or certificate, where such inspections are primarily for purposes of public safety and are not included in any other expenditure account. This includes Building and Zoning Inspections and Public Transportation Vehicles Inspection.
- 6) 525.00 EMERGENCY AND DISASTER RELIEF SERVICES
Cost involved in providing for defense against and relief for civil, military, and natural disasters. Includes emergency services not properly related to highway safety. This includes Civil Defense, Emergency Medical Services

Council, County Fuel Allocation Office, and Emergency Communications System

- 7) 526.00 AMBULANCE AND RESCUE SERVICES
Cost of providing rescue and ambulance services for the sick and injured where such services are not more directly related to highway safety purposes.
- 8) 527.00 MEDICAL EXAMINERS
Payments made to district medical examiners.
- 9) 528.00 CONSUMER AFFAIRS
Cost of operating an organization within local government that protects citizens from unfair and deceptive trade acts or practices.
- 10) 529.00 OTHER PUBLIC SAFETY
Include all other costs primarily related to public safety which are not provided for elsewhere.
- 11) 711.00 COURTHOUSE SECURITY
All personnel, contractual and operating costs associated with maintaining the security of the courthouse, including bailiffs and sheriff's deputies.

b. Object and Sub-Object Classifications

The last two digits of the account number (digits 11 and 12) designate the object and sub-object classifications. All local governments are required to use the following six (6) object classifications. Suggested sub-object classifications are not absolutely required and may be expanded at the discretion of the local government.

.10 Personnel Services

.30 Operating Expenses

.60 Capital Outlay

.70 Debt Service

.80 Grants and Aids

.90 Other Uses

4. U.A.S. Organizational Unit Codes

UAS has set aside an optional two-digit code for the sheriff to use in identifying the various organizational units within the activities of the office.

The Sheriff is not required to budget for organizational units within the UAS defined activities but may, if he or she wishes to provide additional detail.

B. Budget: Preparation, Amendment & Appeals

The fiscal year of the Office of the sheriff commences on October 1 and ends on September 30.⁶⁶⁷

On or before June 1 of each year, the sheriff shall submit to the board of county commissioners (BOCC or the Board) a tentative budget for the ensuing fiscal year. However, the board of county commissioners may, by resolution, require the tentative budgets to be submitted by May 1 of each year.⁶⁶⁸

1. Budget Format and Submission

Section 30.49(2)(a), Florida Statutes, outlines the required format for submitting the proposed budget to the Board. The proposed budget shall show the estimated amounts of all proposed expenditures for operating and equipping the sheriff's office and jail, *excluding the cost of construction, repair, or capital improvement of county buildings*. Estimated expenditures from revenue sources other than the BOCC (i.e. training funds, commissary funds, inmate accounts, or other funds held in a fiduciary capacity) are not included in the proposed budget. The expenditures must be categorized at the appropriate fund level in accordance with the following functional categories:

- General law enforcement
- Corrections and detention alternative facilities
- Court Service, excluding service of process

Within the appropriate fund and functional category, expenditures must be itemized in accordance with the Uniform Accounting System prescribed by the Department of Financial Services.⁶⁶⁹

The sheriff must submit a sworn certificate along with the proposed budget stating that the proposed expenditures are reasonable and necessary for the proper and efficient operation of the office for the next fiscal year.⁶⁷⁰

The sheriff must also submit additional information the county deems necessary, including information pertaining to prior year expenditures and proposed expenditures, down to the sub-

⁶⁶⁷ Fla. Stat. § 30.49(1).

⁶⁶⁸ Fla. Stat. § 129.03(2).

⁶⁶⁹ Fla. Stat. § 30.49(2)(c).

⁶⁷⁰ Fla. Stat. § 30.49(2)(b).

object code level. This information is not required to be included in the sheriff's budget submission or certification.

The Board cannot amend, modify, increase, or reduce any proposed budget expenditure at the sub-object code level.⁶⁷¹

It is recommended that sheriffs include a cover letter with their proposed budget and sworn certificate highlighting any significant budget changes and accomplishments from the prior year.

2. Budget Justification Strategy

The Florida Sheriffs Association recommends that the sheriff present and justify the budget in four (4) levels of need, beginning with the most critical level of service needed. The following procedure is suggested:

- a. To maintain the same level of service
The first objective should be to obtain continued funding for those absolutely essential services presently being performed. This should include, at least, cost of living adjustments for current personnel, increased costs of pension, health insurance, or any other benefits provided to employees, price increases in the costs of operating expenses, and the replacement cost of capital outlay items.
- b. To meet increased workloads
The second objective should be to seek funding to enable the sheriff to keep pace with increasing demands for clearly justified additional services. This could require additional funding for personal services, operating expenses, and capital outlay.
- c. To improve current services
This level of additional services should be used when the sheriff is requesting funding for a substantive change (complete reorganization) in an existing service, such as "computerizing a manual record system."
- d. To add new services
This level of need would be used when requesting funds to add a service not previously provided, such as a new "Neighborhood Watch Program."

3. Making the Budget Available to the Public

While this section requires implementation by the county and not by individual constitutional officers, sheriffs should be aware of this requirement. The Board of County Commissioners must post the tentative budget on the county's official website at least two days prior to the public

⁶⁷¹ Fla. Stat. § 30.49(3)

hearing when the budget will be considered. In addition, the final budget must be posted on the website within 30 days after adoption.⁶⁷²

4. Budget Approval Process

The board of county commissioners must take the following steps in approving the sheriff's budget:

- The county budget officer receives property appraiser's certification of the taxable value of all property no later than July 1.⁶⁷³
- The BOCC receives and examines the tentative budgets proposed by the county budget officer (typically the County Manager) including the Sheriff's budget.⁶⁷⁴
- Within 80 days, but not earlier than 65 days, after the property appraiser's certification of value, the BOCC must hold a public hearing to adopt the tentative budget.⁶⁷⁵
- Within 15 days after the meeting where the tentative budget is adopted, the BOCC must advertise its intent to adopt a final budget. A public hearing to adopt the final budget shall be held not less than 2 days, nor more than 5 days, after the advertisement is published.
- If the final budget is not adopted by October 1, the BOCC may either authorize the sheriff to expend funds based upon the tentative budget adopted by the BOCC; or Adopt the sheriff's last year's budget.⁶⁷⁶ The decision resulting above would prevail until the final budget is adopted.

5. Budget Transfers

Notwithstanding any other law, and in order to effectuate, fulfill, and preserve the independence of the sheriffs, a sheriff may transfer funds between the fund and functional categories and object and subobject code levels after his or her budget has been approved by the BOCC, city council, or budget commission.

6. Budget Amendments

Any amendments to the sheriff's budget by the Board of County Commissioners, except for those requests from the sheriff, are expressly prohibited.⁶⁷⁷ An exception to this is in a transition year

⁶⁷² Fla. Stat. §§ 129.03(3)(c) and 193.023(1).

⁶⁷³ Fla. Stat. § 129.03(1).

⁶⁷⁴ Fla. Stat. § 129.03(3)(a).

⁶⁷⁵ Fla. Stat. § 200.065(2)(c).

⁶⁷⁶ Fla. Stat. § 200.065(2)(g).

⁶⁷⁷ Fla. Stat. § 30.49(8).

in which the incumbent sheriff is not reelected or does not seek reelection.⁶⁷⁸ In this situation, budget amendments and budget transfers are prohibited by the exiting sheriff without BOCC approval.

There is another provision in law that allows the sheriff to apply to the Board for an additional appropriation in the event of an emergency. In the judgment of the sheriff, this emergency must prohibit the sheriff from performing the required duties without additional monies.⁶⁷⁹ If the county commission disapproves a portion or all of the sheriff's request, the sheriff may apply to the Administration Commission for the appropriation of additional amounts.

7. Budget Appeals

Section 30.49 outlines the process for budget appeals between the sheriff and the Board. Only a sheriff can appeal the budget to the Administration Commission; the county commission cannot. It should be noted that the process of appealing a sheriff's budget takes a local issue into the spotlight at the state level.

The process begins when a sheriff files a petition challenging the approved budget with the Administrative Commission. The Administration Commission is comprised of the Governor and the Cabinet officials, which currently includes the Attorney General, the Chief Financial Officer, and the Commissioner for Agriculture and Consumer Services.⁶⁸⁰

The sheriff must file the initial petition within 30 days of receiving the approved budget; and the Board has five days to file a response.⁶⁸¹

The initial petition and supporting documentation are reviewed by the staff within the Executive Office of the Governor, and subsequently set for a public hearing. The initial hearing is typically attended by the staff for the Administration Commission and not the elected officials. Additional materials may be requested from the sheriff and the county commission after the initial hearing.

Once all information has been requested from both parties, and if the appeal has not been resolved by this point, a public hearing will be scheduled with the Administration Commission. The decision by the Administrative Commission is binding on both parties.⁶⁸²

The Florida Sheriffs Association can provide the guide on how to file a budget appeal.⁶⁸³

⁶⁷⁸ Fla. Stat. § 129.06(5).

⁶⁷⁹ Fla. Stat. § 30.49(10).

⁶⁸⁰ Fla. Stat. § 14.202.

⁶⁸¹ Fla. Stat. § 30.49(4)(a)-(b).

⁶⁸² Fla. Stat. § 30.49(5).

⁶⁸³ This guide was published in 2016 by the Executive Office of the Governor. It includes the required narrative and data that must be completed in order to file the initial petition.

C. Sources of Operating Funds

1. The Annual Budget

The sheriff shall requisition, and the Board shall pay him or her, one-twelfth of the amount budgeted for the office upon adoption by the Board of County Commissioners. In January, the sheriff may request one-sixth of the total appropriated, and one-twelfth each month thereafter. This means there would be no draw in September since two were received in January. Total payments can't exceed the total appropriation. Lastly, the amount budgeted for capital equipment shall be paid to the sheriff at any time during the year upon the request of the sheriff.⁶⁸⁴

Upon receipt of the monthly amounts requisitioned, the sheriff must deposit the funds in the official bank account, which must be a qualified public depository. The funds are then used for payment of the various items which make up the monthly expenses of his or her office. Unexpended balances remaining at the end of the fiscal year must be refunded to the Board of County Commissioners within 30 days after the close of the fiscal year for credit to the fund or funds from which payment was originally made.⁶⁸⁵

An exception to this is in a transition year in which the incumbent sheriff is not reelected or does not seek reelection.⁶⁸⁶ In this situation, budget amendments and budget transfers are prohibited by the exiting sheriff without BOCC approval. Additionally, the exiting sheriff is prohibited from expending in a single month more than one-twelfth of any itemized approved appropriation without BOCC approval.⁶⁸⁷

a. Contingency Funds

The sheriff is authorized by law to have a budget contingency.⁶⁸⁸ This contingency is governed by the same provisions as the county budget for the prescribed use and amount.⁶⁸⁹ This section also requires the county commission to appropriate contingency funds upon written request of the sheriff.

b. Current Period Refunds-Sales of Surplus Property

The proceeds from the sale of surplus property are to be treated as a current period refund. The law provides the money be spent on capital outlay items and be obligated within the same fiscal year in which the property was disposed. Approval by the board of county commissioners is not required for this action.⁶⁹⁰

⁶⁸⁴ Fla. Stat. § 30.50(1).

⁶⁸⁵ Fla. Stat. § 30.50(1)

⁶⁸⁶ Fla. Stat. § 129.06(5).

⁶⁸⁷ *Id.*

⁶⁸⁸ Fla. Stat. § 30.49(7).

⁶⁸⁹ Fla. Stat. § 129.01(2)(c)(1); Fla. Stat. § 129.06.

⁶⁹⁰ Fla. Stat. § 274.04.

D. Expending Operating Funds

All expenditures must meet the test of serving a public purpose. This includes but is not limited to salaries for sworn and civilian personnel; costs to operate the county jail if under the purview of the Sheriff; purchases of capital (excluding real property), repair and maintenance of equipment; IT equipment; and numerous other expenses in connection with the operation of his or her office. All expenditures should be supported by original itemized invoices.⁶⁹¹ The original itemized invoice should be approved by the sheriff or an authorized representative to establish official approval for the payment. The delivery receipts and original itemized invoice should be filed and preserved for audit.

1. The Local Government Prompt Payment Act

The Local Government Prompt Payment Act was established to ensure prompt payments by local governmental entities to vendors when purchasing goods, services, purchase or lease of personal property, or the lease of real property. The Local Government Prompt Payment Act is found in Sections 218.70-218.80, Florida Statutes.

Each entity must establish procedures for determining the date of receipt of an invoice and will be required to make payments within 45 days of the receipt of invoice or completion of services for non-construction expenses. If partial deliveries are permitted, time for payment will be calculated from the time of partial delivery.

If the payment is not timely, the amount of the overdue unpaid balance will bear a mandatory one percent (1%) interest per month beginning 30 days from the due date and will be compounded monthly. The vendor must invoice the sheriff's office to receive an interest payment. If the sheriff's office receives an improper invoice, they have 10 days to notify the vendor. A dispute resolution procedure must be adopted, under Chapter 218, Florida Statutes.

2. Sheriff's Salary

The sheriff shall receive for the performance of official duties as sheriff an annual salary.⁶⁹² However, sheriffs are prohibited from receiving additional compensation outside the official duties for the Office of Sheriff.⁶⁹³ As a service to county governments, the Office of Economic & Demographic Research calculates the salary figures and posts them on their website: <http://edr.state.fl.us>.

As soon as these salary figures are posted on EDR's website, the Florida Sheriffs Association sends notices to all sheriffs notifying them of the new salary figures.

⁶⁹¹ Fla. Stat. § 30.40.

⁶⁹² Fla. Stat. § 145.071.

⁶⁹³ Fla. Stat. § 145.17.

The sheriff's salary is payable only after it is earned and is payable monthly, semi-monthly, or bi-weekly.⁶⁹⁴ Performance of duties for less than a full pay period shall be paid on a pro-rated basis for the days worked in relation to the total days in the pay cycle. Sheriffs are also entitled to a salary supplement for completing training programs approved by FDLE.⁶⁹⁵

More information on salary incentives and the salary supplement can be found in the Personnel Chapter of this Manual.

3. Travel

Pursuant to Section 112.061(14)(a), the sheriff may elect to follow the rates of per diem, subsistence and mileage for state travelers as established in Section 112.061, or he or she can establish his/her own travel policy. Absent a formal policy established by the Sheriff, rates for state travelers would apply.

Travel Reimbursement

A voucher is used to report travel expenses, including per diem or meals, mileage, and incidental expenses. A travel reimbursement voucher should contain the following information:

- Travel Dates
- Origins, Destinations, and Any Overnight Stops
- Arrival and Departure Times
- Purpose for the travel
- Per Diem for each day based on policy
- Mileage including vicinity mileage
- Incidentals
- Other Pertinent Information (Ex: whether a sheriff office vehicle or personal vehicle was used.)

Travel Advances

Sheriffs can provide advances to cover anticipated costs of travel.⁶⁹⁶ A system to properly account for travel advances should be in place that:

⁶⁹⁴ Fla. Stat. § 30.48.

⁶⁹⁵ Fla. Stat. § 145.071.

⁶⁹⁶ Fla. Stat. § 112.06(12).

- Requires submission of anticipated costs on a standard travel voucher prior to traveling signed by the traveler and approved by the supervisor prior to issuing a check for the advance.
- Requires a travel reconciliation after traveling that accurately reports expenses incurred.
- Routinely matches the estimated cost to actual costs and either issues a subsequent check to cover additional expenses or recovers from the traveler the unused portion of the advance on a timely basis.

4. Petty Cash Funds

The check drawn to establish a petty cash fund should not be posted to any of the expense classifications since it represents merely a transfer of cash from the bank to the office. The cash resources will always be in the amount of money in the bank plus the authorized revolving petty cash amount. Checks for reimbursing the petty cash fund should be posted as any other expense item, after an analysis of the cash receipts, making up the amount of the check necessary to restore the petty cash fund to its original amount.

The petty cash fund should be kept in a secure place in the department. Safe combinations should be changed when there is a change in personnel. Surprise audits of these funds should be done annually.

5. Investigative and Evidence Funds

A sheriff's budget can include funds to be used in investigations. The sheriff has total discretion as to what if any information is divulged on the use of the funds.⁶⁹⁷ However, this grant of confidentiality is accompanied by a requirement that policies be adopted to provide for accountability of such funds, and that law enforcement agencies are to provide for annual audits of these funds while still protecting the identity of confidential informants and other information as exempted by law.⁶⁹⁸

E. Funds Collected

The sheriff collects fees, commissions, and remuneration for services to which the sheriff is entitled by law. However, since the county appropriates funds to the sheriff's office including the sheriff's salary, all such fees must be remitted to the county on a monthly basis.⁶⁹⁹ This applies only to the General Fund as other funds (such as special revenue funds) have their own source of revenue which is not remitted to the board of county commissioners.

⁶⁹⁷ Fla. Stat. § 30.50(2).

⁶⁹⁸ Fla. Stat. § 925.055.

⁶⁹⁹ Fla. Stat. § 30.51.

F. Reporting

Each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles is required to submit to the Department of Financial Services (DFS), a copy of its annual financial report for the previous fiscal year in a format prescribed by the department.⁷⁰⁰ The department sends the reporting forms (known as the Local Government Annual Financial Report) directly to the Chief Financial Officer of the county. Since the sheriff's office is deemed to be part of the county reporting entity, the sheriff's office is required to submit their year-end information directly to the county. Subsequently, the county submits the annual financial report to the department which contains a list of each local governmental entity included in the report. It also lists each local governmental entity that failed to provide financial information required by the statute.

The annual financial report, along with the entity's audited financial statements must be presented to Department of Financial Services within 45 days of completion of the audit report, or 9 months after the end of the fiscal year.⁷⁰¹

If the sheriff has a website, he or she must provide a link to the Department of Financial Services website to view the annual financial report submitted to DFS. If the sheriff does not have a website, the county government's website must provide the required link.⁷⁰²

1. County Officers; Record and Report of Fees and Disposition of Same

Each county officer who receives any expenses or compensation in fees, commissions, or other remuneration shall keep a complete record of all fees, commissions, or other remuneration collected by that county officer and shall make an annual report to the board of county commissioners within 31 days of the close of his or her fiscal year.⁷⁰³ This requirement applies to sheriffs, and requires that reports must provide the purposes, character, and amount of all official expenses and the amount of net income or unexpended budget balance as of the close of the fiscal year. The sheriff must also prepare the reports and subscribe under oath as to their accuracy and propriety.

On or before the date for filing the annual report, the sheriff must pay into the county general fund all money in excess of the sum to which he or she is entitled under the provisions of Chapter 30, Florida Statutes.

The board of county commissioners shall, on the 32nd day following the close of the fiscal year, notify the Governor of the failure of any county officer to comply with the provisions of this section. Such notification shall specify the name of the officer and the office held by him or her at the time of such failure and shall subject said officer to suspension from office at the Governor's discretion.

⁷⁰⁰ Fla. Stat. § 218.32(1)(a).

⁷⁰¹ Fla. Stat. § 218.32(1)(d).

⁷⁰² Fla. Stat. § 218.32(1)(g).

⁷⁰³ Fla. Stat. § 218.36.

Compliance by a county officer with the provisions of this section shall exempt said officer from making any report required pursuant to section 116.03, Florida Statutes.

G. Purchasing and Procurement/Competitive Bids

Sheriffs are not required to purchase through competitive bids. However, in order to prevent potential public scrutiny surrounding the expenditure of public funds, the Florida Sheriffs Association strongly recommends that bids be used when certain purchasing thresholds are met. Additionally, many grants have requirements where certain purchases must be made using competitive bids, or have other specific procurement requirements or procedures. In order to avoid disqualification from receiving a grant award or from having to return grant funds, Sheriffs should consult the grant terms for any additional procurement requirements. The following procurement guidelines should be considered, along with Chapter 287, Florida Statutes when adopting purchasing policies or directives. Sheriffs may also choose to adopt any part or all of the procurement policy enacted by resolution or ordinance by their county commission in an effort to facilitate coordinated purchasing (i.e. commodities and services, infrastructure, buildings, or property acquisition for Sheriff's Office use, control, or maintenance or shared by the Sheriff and other county agencies or entities).

1. When to Use Competitive Bids

Each agency should have a policy requiring competitive bids for a purchase of commodities, services, or personal property when the purchase price/cost thereof is in excess of a specified threshold. The threshold may vary depending on the size of the agency. However, written policy or directives may outline the following exceptions to the requirement for receiving competitive bids even when the price/cost exceeds the established threshold:

- a. **Emergency:** If the Agency determines that an emergency exists and the time delay to perform competitive bidding would be harmful, the Agency shall prepare a statement describing the emergency and may forego bidding requirements.
- b. **Single Source:** Commodities available only from a single source may be excepted from the bid requirements. A single source justification letter should be provided to the Agency from the vendor or provider of the commodities detailing how the item is only available from that vendor/provider. This justification letter should be retained as part of the procurement documentation
- c. **Existing Contracts:** Purchasing agreements, contracts, and maximum price regulations executed or adopted by other units of government may be used, including but not limited to, Florida State Contract, FSA contract and GSA pricing, and are excepted from bid requirements. If the Agency is able to secure the acquisition, purchase, or lease of commodities, services or personal property from any party at the same or lower price/cost otherwise available under a contract, purchasing agreement, or maximum price regulation previously executed by another government unit, the Agency may purchase or procure from that party, with proper documentation of the same or lower price/cost.

- d. Insurance by Negotiation: When it is in the best public interest, the agency may purchase insurance by negotiation. However, pursuant to Section 112.19(4) (a), Florida Statutes, law enforcement death benefits insurance must be awarded by public bid to the lowest best bidder.

2. Bidding Procedures

All contracts for purchases, leases, or acquisition of commodities, services, or personal or real property exceeding the established threshold amount as described in this Section should, whenever possible, be based on two (2) or more competitive bids. If less than two bids are responsive to the request for a bid or proposal, sheriffs may award a contract or procure the commodity, service, or property as appropriate without further competitive bidding. A record of such competitive bids shall be made a permanent part of the agency's financial accounts and records.

Sheriffs should consider and establish as a best practice a written policy or directive pertaining to the use of written or verbal quotes obtained by direct contact or request by the agency to possible vendors or providers of commodities, services, or personal property, for procurement in values and amounts less than the threshold established for competitive bids. For example, all expenditures in excess of \$5,000 but less than \$35,000 require three verbal or written quotes. Verbal or written quotes should be documented and retained, as appropriate, as part of the procurement documentation.

Sheriffs should consider and establish as a best practice a written policy or directive pertaining to the delegation of authority for the expenditure of agency funds and the purchasing of all commodities, services, or personal property at any threshold below the value or amount set for competitive bids and verbal and written quotes. For example, all expenditures less than \$5,000 require the authorization of a Division Commander; all expenditures in excess of \$5,000, but less than \$35,000 require the authorization of the sheriff or chief deputy upon presentation of three written or verbal quotes, and all expenditures in excess of \$35,000 shall follow the agency's policies to obtain competitive bids for procurement.

3. Convicted Vendor List

All invitations to bid, requests for proposals, and invitations to negotiate shall contain a statement informing persons of the prohibitions for the convicted vendor list.⁷⁰⁴ A person or affiliate who has been convicted of a public entity crime may not place a bid, proposal, or reply on a contract:

- to provide goods or services to a public entity;
- for the construction or repair of a public building or public work;

⁷⁰⁴ Fla. Stat. § 287.133(3)(a).

- for leases of real property to a public entity;
- to work as a contractor, supplier, subcontractor, or consultant under a contract; with any public entity;
- and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.⁷⁰⁵

Additionally, a public entity may not transact business with any person on the convicted vendor list in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.⁷⁰⁶

H. Accounting for Public Money

The term “public money” means all money collected by a county officer which he or she is required or authorized by law, to collect, and underpayments, overpayments, partial payments, and deposits of such money.

The following guidelines are compiled in accordance with Chapter 219, Florida Statutes.

1. Handling of Public Money

Receipts must be given for each collection of public money and the receipt must be retained by the sheriff’s office and is a public record. This receipt can take several forms:

- Cash register or validating machine tape;
- Pre-numbered license;
- Pre-numbered receipt blank;
- Any other form of the Sheriff’s own design which will record collections of public money in a manner adequate for a proper post audit.

Once collected, the public money shall be kept safely in a suitable facility with adequate insurance.

2. Cash Books

All receipts and disbursements of public money shall be entered in a daily cash book, either by items or by summaries of itemized entries in other records, including machine tapes, kept in the

⁷⁰⁵ *Id.*

⁷⁰⁶ Fla. Stat. § 287.133(3)(b).

office. The cash book must be balanced, must show the amount of money on hand, and must be a permanent record of the office.

3. Depositories

Public money, as defined by Section 219, Florida Statutes, may be deposited in a depository qualified under Section 136, Florida Statutes.

The title of each depository account shall include the name of the office, the name of the county, and such other designation as may be required or desired.

Withdrawals shall be made only by checks signed with (a) the title of the account, (b) by the sheriff or by a duly authorized and bonded deputy or employee, or (c) by warrants.⁷⁰⁷

If the office of sheriff is vacated, the retiring sheriff shall transfer each of the official depository account(s) to the incoming sheriff, and if the retiring sheriff should fail to do so, the depository shall transfer such account(s) to the succeeding sheriff, upon a written request, and exhibition to the depository of the commission.

No handling or service charges shall be deducted by the depository from the amounts deposited. Any handling or service charges which are authorized by the depository agreement or by applicable federal law shall be billed to the board of county commissioners and paid by the board of county commissioners from the general fund of the county.

4. Disbursements

All fees, commissions, or other funds collected by the sheriff for services rendered or performed by his or her office shall be remitted monthly to the county, unless a particular law or court order specifies a different disbursement schedule. Further, money collected by the county officer on behalf of the state must be deposited directly to the account of the State Treasury within seven working days from the close of the week in which the officer received the funds.

5. Investment of Surplus Funds

County officers are required to invest surplus funds in accordance with Section 218.415, Florida Statutes.⁷⁰⁸ Under this section, local governments are required to conduct investment activity consistent with a written investment plan adopted by the governing body. The investment policy should be commensurate with the nature and size of the public funds within its custody.

Requirements for the written investment policy are outlined in Sections 218.415(1)-(16), Florida Statutes, however the governing body can elect to follow the guidelines outlined in 218.415(17), Florida Statutes.

⁷⁰⁷ Fla. Stat. § 136.06.

⁷⁰⁸ Fla. Stat. § 219.075.

Given the limited amount of surplus funds held by most sheriff's offices, many agencies will likely elect to follow the guidelines stated in subsection (17) in lieu of a detailed investment policy. If the agency elects to follow (17), a policy should be included which states its intention "to invest according to the guidelines included in Section 218.415(17), Florida Statutes."

Allowable investments according to subsection (17) include the following:

- The Local Government Surplus Funds Trust Fund or any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act of 1969, as provided in Section 163.01, Florida Statutes.
- Direct obligations of the United States Treasury.
- Interest-bearing time deposits or savings accounts in qualified public depositories, as defined in Section 280.02, Florida Statutes.
- Securities and Exchange Commission registered money market funds with the highest credit quality rating from a nationally recognized rating agency.

6. Public Deposits

All units of Florida government, including sheriffs' offices, must comply with Chapter 280, Florida Statutes when placing any public funds on deposit in a bank or savings association. The specific statutory requirements for Florida public depositors are listed in Section 280.17, F.S., but include three main responsibilities:

- Use a qualified public depository ("QPD") for all deposit accounts. A QPD is a bank or savings association that has been approved by the Florida Treasury's Bureau of Collateral Management to accept public funds for deposit.
- At the time of opening a deposit account – or as soon as possible if one is not on file – complete and sign a Public Deposit Identification and Acknowledgment Form, present it to the QPD for their signature, and then retain the form as an important record. The completed forms are valid indefinitely, but must be replaced if 1) the QPD name changes, or 2) the deposit account number changes. These forms need to be filed with the Florida Division of Treasury, Bureau of Collateral Management, only if a QPD fails and the sheriff's office needs to make a claim for reimbursement of funds. Otherwise, the forms must just be kept on file.
- File the Public Depositor Annual Report to the Chief Financial Officer each year by November 30th. When filing this report, the sheriff's office is representing that it has in its possession a completed Public Deposit Identification and Acknowledgment Form for each of its accounts.

Both the Public Deposit Identification and Acknowledgement Form and the Public Depositor Annual Report to the CFO Form can be found on the Division of Treasury's website at www.myfloridacfo.com.

I. Audits

Florida Statutes require all local governmental entities to have annual financial audits. Section 11.45 of the Florida Statutes gives audit oversight to the State of Florida, Auditor General.

The county audit report must be a single document that includes a financial audit of the county as a whole and, for each county entity other than a board of county commissioners, an audit of its financial accounts and records. This includes reports on compliance and internal control, management letters, and financial statements as required by rules adopted by the Auditor General.⁷⁰⁹ The audit of the accounts and records of the sheriff's office is included in the final report with the county.

The Auditor General may elect to perform the audit of a county in any given year. If they do elect to do so, the county must be notified by the first day of the fiscal year that the Auditor General will be doing the annual financial audit for that year.

If a county has not been notified by the first day in any fiscal year that the audit will be performed by the Auditor General, then the county is required to have an independent certified public accountant perform a financial audit of its accounts and records for the year. This audit must be completed within nine months after the end of its fiscal year and submitted to the Auditor General by that time.⁷¹⁰

1. Financial Audit

A financial audit is required annually. The independent auditor conducts their audit in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and Chapter 10.550, *Rules of the State of Florida, Office of the Auditor General*. Based upon the results of the audit, the independent auditor expresses an opinion as to whether the financial statements present fairly, in all material respects, the respective financial position of the Sheriff's Office, and the respective changes in financial position and cash flows, where applicable, for that applicable fiscal year.

Auditor Selection Processes

Florida Statutes require counties to use certain auditor selection procedures when selecting an auditor to conduct the annual financial audit, which requires the establishment of an auditor

⁷⁰⁹ Fla. Stat. § 218.39(2).

⁷¹⁰ Fla. Stat. § 218.39(1).

selection committee.⁷¹¹ The primary purpose of the audit committee is to assist the governing body in selecting an auditor to conduct the annual financial audit. Although the auditor selection process is not solely the responsibility of the Office of the Sheriff, the sheriff is included in the process.

The committee for non-charter counties consists of each county constitutional officer and one county commissioner, or someone designated by the Board of County Commissioners. Florida statutes do not dictate the members of the auditor selection committee for charter counties.

Florida statutes establish the duties of the audit committee to include establishing factors to be used to evaluate potential audit firms, publicly announce a request for proposal for audit services, provide interested firms with the request for proposal, evaluate the proposals submitted by qualified firms using the established factors, rank the proposed firms, and ultimately, give recommendations as to which firms are most qualified.⁷¹²

Further information regarding the auditor selection process and the sheriff's role on the auditor selection committee can be found in Section 218.391 of the Florida Statutes, or by visiting the State of Florida, Auditor General's website at http://flauditor.gov/pages/tech_localgovt.html.

The Financial Audit Process/Fieldwork

The audit is usually conducted after the end of the fiscal year, which is September 30th. However, it is not uncommon for an audit firm to complete preliminary work before the end of the fiscal year. In either case, the auditor will first contact each constitutional officer to determine an agreeable time to being the audit work.

During fieldwork, the audit firm personnel will work with sheriff office staff to obtain documents necessary to complete the audit process. Examples of documents reviewed for financial audits include deposit slips, bank statements, invoices and contracts.

Concluding the Financial Audit

At the conclusion of the audit, an Independent Auditor's Management Letter will be prepared by the auditing firm and it will be included as a part of each financial report. The auditor's management letter includes any findings or internal control related issues, or other matters that the auditor deems important to report. The auditor is required to discuss with the elected official of each county entity all of the auditor's comments that will be included in the audit report.⁷¹³ If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his or her office.

⁷¹¹ Fla. Stat. § 218.391.

⁷¹² Fla. Stat. § 218.391.

⁷¹³ Fla. Stat. § 218.39(5)

The sheriff must prepare a written statement of explanation or rebuttal concerning the auditor's findings, including corrective action to be taken. This is required to be filed with the board of county commissioners within 30 days of the delivery of the auditor's findings.

All audit reports and the sheriff's written statement of explanation or rebuttal must be submitted to the Auditor General within 45 days after delivery of the audit report to the board of county commissioners, but no later than nine months after the end of the fiscal year.

Sheriffs' financial staff is advised to review the contents of Sections 11.45 and 218.39, Florida Statutes, as well as Chapter 10.550, Rules of the Auditor General for Local Government Entity Audits, for complete details on audit and reporting requirements. The Rules of the Auditor General can also be accessed through their website <https://flauditor.gov/pages/rules.html>.

2. Possible Audits for a Sheriff's Office

Performance Audit

This is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The focus can be on issues related to:

- Economy, efficiency or effectiveness of the program
- Structure or design of the program to accomplish its goals and objectives
- Adequacy of the program to meet the needs identified by the Legislature or governing body
- Alternative methods of providing program services or products
- Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments
- The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies
- Compliance of the program with appropriate policies, rules, or laws
- Any other issues related to governmental entities as directed by the Legislative Auditing Committee

Florida statutes provide the authority to the Board of County Commissioners to request a performance audit of the Office of the Sheriff.⁷¹⁴

⁷¹⁴ Fla. Stat. § 125.01(1)(x).

Operational Audit

The purpose of this audit is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.

Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

J. Fiscal Change of Office Checklist

The purpose of this checklist is to assist in a smooth, complete, and well documented transition of office. Every situation varies and unique circumstances may require steps not included on this checklist.

Procedures should be performed as close to the end of business on the retiring sheriff's last day as is practical. Many of the procedures such as tangible property and evidence inventory, require advance planning and coordination.

Both the outgoing and incoming sheriff, or their designee, should be present to acknowledge transition documents. If possible, the auditor may wish to observe the transition. Copies of all lists, inventories, and other transition papers signed by both the outgoing and incoming sheriff should be furnished to the auditor and copies retained by both sheriffs.

1. Cash on Hand

An audit should be performed to count all cash and checks on hand, to include:

- Petty cash funds (and associated receipts to replenish the fund)
- Change funds
- Un-deposited checks and cash
- Un-deposited cash bonds
- Confidential Informant money
- Listing of cash fund locations and their balances
- Balances of inmate accounts
- Forfeiture Cash and Property
- The audit report should be signed by the person performing the audit and directed to the successor sheriff. Copies of all cash and check counts should also be retained.

2. Bank Accounts

The incoming sheriff should open new bank accounts and order checks and deposit tickets titled

in the manner required by Section 219.05(2) and Section 30.52, Florida Statutes. The outgoing sheriff should provide reconciled bank account statements and coordinate with the bank for:

- Stopping payments on all stale dated checks
- An interim statement cut-off as of the last day of his or her term, when the accounts are closed or balances transferred

As soon as possible the outgoing sheriff should transfer the reconciled account balances to the incoming sheriff either by bank transfers or checks drawn on the accounts. The new accounts are not officially established until the incoming sheriff takes office in January, and new signature cards and Corporate Resolution documents have been completed and returned to the bank.

For any new bank accounts, ensure new Qualified Public Depository (QPD) forms are completed and filed with the Florida Department of Financial Services. Send the new Public Depositor Annual Report to the State of Florida Chief Financial Officer.

While this may be a simple approach, it does not impose as much accountability as opening new accounts and cancelling all un-paid drafts, and re-issuing under the new Sheriff's name. However, for continuity of operations, a suggested approach may be to have the bank re-name the bank accounts to the incoming sheriff (and staff) after completion of new signatory cards, without physically opening new accounts. With large agencies, there are often ACH and/or EFT transactions that come into, and out of, the bank accounts. This is especially true in the case of the receipt of equitable sharing proceeds that are set up with automatic deposits from other federal agencies.

Prepare a physical inventory of all unused, pre-numbered financial papers on hand as of the close of business, including checks, receipts books and cash bonds.

3. Physical Inventories

The sheriff is required to inventory all assets over \$5,000 in value upon change of office.⁷¹⁵ The audits can be completed by an external accounting services firm, or by an internal audit team, appointed by the outgoing sheriff. Lists should be prepared for:

- Tangible personal property (including weapons, Tasers, bullet proof vests)
- Evidence – 100% audit is recommended
- Confiscated property awaiting forfeiture
- Office and jail supplies, if material in amount

⁷¹⁵ Fla. Stat. § 274.02.

- Commissary inventory held for resale
- Aviation and Fleet parts inventory

A copy of these lists should be furnished to the incoming sheriff well in advance of the date of transition. This will allow the successor, a representative, or the auditor to test the accuracy and completeness of the inventories. While there is no required time period to begin, the process should begin as soon as the incoming sheriff is allowed access to the buildings.

4. Commercial Credit and Purchasing Cards

Most large agencies have both commercial credit cards and purchasing cards, which are used for training and travel, investigations, and even general purchasing and supply needs. The following should be provided to the incoming sheriff:

- A listing of the cancelled cards for the outgoing sheriff and the outgoing command staff
- Provide a listing of currently issued cards, to include credit limits and merchant category codes
- A listing from the incoming sheriff of new cards to be ordered with associated credit limits

5. Recommended Lists

While some of these areas are covered by Florida Statutes, it is recommended that additional lists be prepared including:

- Listing of Salary Ranges and Pay Grades for all positions
- All current employees by department
- Open positions by budgeted FTE and allocation status
- Salary incentives
- Retirement choices
- Benefits – Insurance and any Death Benefit
- All open requisitions and purchase orders
- Unsigned contracts and/or bid proposals

- All major contracts including out clauses and expiration dates. Major contracts typically include:
 - Inmate food and medical
 - Employee benefits and insurance broker
 - Trust documents and contracts, if self-insured
 - Worker compensation administration
 - Custodial services, if not provided by county
 - Towing
 - Capital leases
 - Phone services
 - Banking services
 - Memorandums of Understanding
 - Grants and/or Task Force agreements
- Security levels and access for buildings and software
- All outstanding legal actions and pending lawsuits
- Name and address of all facilities
- Board and Commissioners where the title of sheriff is listed as a member
- Unserved Criminal/Civil Processes and Inmate Count⁷¹⁶

6. Signature Changes

Documents which contain the sheriff's signature should be changed. Examples of possible documents include:

- Checks: have signature chip programming complete for electronic signatures on checks
- Policies and Procedures (after review and revision)
- Wallet Identification for employees and retirees (collect old one)
- Contracts involving bank draws (county draws, investments, insurance administrators or brokers)
- Equitable Sharing Agreement for federal seizures (must also be signed by BOCC Chairman or County Manager)

⁷¹⁶ Fla. Stat. § 30.14.

- File Certificate of Facsimile Signature with Department of State 717

7. Documents and/or Systems with Sheriff's Name

- Stationery, envelopes, or business Cards
- Wallet identification
- Employee I.D. tags and photographs
- Organizational charts
- Website, intranet
- Policies and Procedures
- Update payroll and business check header and purchase order printing in financial system
- Signage with buildings and correctional facilities

8. Other Items for Consideration

- Decals for vehicles
- Telephone message systems
- Change of locks or ensure collection of keys
- Review professional services (insurance, legal, medical, etc.)
- Consider recycling predecessor outgoing sheriff's letterhead, or cut down and bind for note tablets
- Oath of Office
- Writs & Possessions

⁷¹⁷ Fla. Stat. § 116.34.

FLORIDA SHERIFFS MANUAL



Part B

COURTS & JUDICIAL PROCESS



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I. Sheriff as Executive Officer

A. General Duties

Sheriffs, in their respective counties, in person or by deputy, shall, at the will of the board of county commissioners, attend, in person or by deputy, all meetings of the boards of county commissioners of their counties, for which services they shall receive such compensation, out of the county treasury, as said boards may deem proper.¹

The courts of the state administer justice by punishment of crime and by determining the rights of parties with respect to life, liberty, and property. As Executive Officer of the Court, it is the Sheriff's duty to carry out all lawful orders of the judiciary, in addition to the duties specifically defined by law. As Executive Officer, the Sheriff is also required to attend, either in person or by a deputy, all sessions of the Circuit and County Court held in the Sheriff's county.²

The Court may appoint a person to act as Executive Officer in the absence or disqualification of the Sheriff or a deputy. The appointment is for the specific term only, and the appointee is entitled to receive the compensation which otherwise would have been payable to the Sheriff for services rendered.³

B. Executive Officer of County Court

The Sheriff is the Executive Officer of the County Court. However, if the Sheriff is for any reason disqualified or unable to act, the County Judge may appoint any individual, not interested in the case or trial, to serve process and perform all the duties of the Executive Officer.⁴

C. Duty of Sheriff; Process

Sheriffs are required to execute in their respective counties, either in person or by their deputies, all process of the Supreme Court, Circuit Courts, County Courts, and Boards of County Commissioners, whenever the process of these Courts or Boards is required to be executed in their counties.⁵ The Sheriffs of the State are also required to execute such other writs, processes, warrants, and papers directed to them, which may come into their hands for execution in their counties.⁶ The service and return of civil process is discussed in Service and Return of Civil Process, Levies and Sales, and Criminal Process of this Manual.

¹ Fla. Stat. § 30.15(2).

² Fla. Stat. §§ 30.15(1)(c) and 26.49.

³ Fla. Stat. § 30.12.

⁴ Fla. Stat. §§ 30.15(1)(c), 30.12, and 34.07.

⁵ Fla. Stat. § 30.15(1)(a).

⁶ Fla. Stat. § 30.15(1)(b).

D. Court Attendance and Other Related Court Duties

A Sheriff is required to attend either in person or by a deputy, all sessions of the Circuit Court and County Court held in the Sheriff's county.⁷ Where the Sheriff fails to do so by reason of sickness, death, or any other cause, the Judge attending the Court may appoint an interim Sheriff for only the term of nonattendance.⁸ Therefore, where a Sheriff is unable to attend a Court, it is his or her duty to appoint a deputy or deputies to be in attendance on the Court in the Sheriff's place.⁹ If a deputy is appointed by the Sheriff to attend the Court in the Sheriff's place and perform all the duties required by law for the Sheriff in the responsibility as the Executive Officer of the Court, the deputy is called a "bailiff." The bailiff is an officer of the Court and is required to perform numerous functions by law and as requested by the judge. The bailiff is an assistant to the Sheriff.¹⁰ These other related court duties may be performed by bailiffs, if they are deputy sheriffs, in connection with their other court responsibilities as bailiffs.

1. Calling Jury

This duty constitutes calling the roll of the venire to ascertain the ones who have responded to the summons for jury duty, and calling the roll of jurors to ascertain those present after an adjournment and reconvening of the Court.¹¹ This service is generally performed by the Clerk of the Court, but in some counties, the duty devolves upon the Sheriff by custom.¹²

2. Bailiff as Witness

A deputy sheriff who is a material witness in a case should not be designated as bailiff to take charge of the jury. The deputy may perform other services in the Court or act as Executive Officer in the absence of the Sheriff.

3. Conduct of Jury and Verdicts

The bailiff oversees the jury when it has retired to deliberate upon a verdict, but he may not be present at such deliberations. Upon the request of the jury, they shall be conducted into the courtroom by the bailiff for additional instructions. When the jurors have reached a verdict, the bailiff shall conduct them into the courtroom for rendition of the verdict as provided by law.¹³

⁷ Fla. Stat. § 30.15(1)(c).

⁸ Fla. Stat. § 30.12.

⁹ *Nicholson v. State*, 20 So. 818 (Fla. 1896).

¹⁰ *Id.*

¹¹ Fla. Stat. § 40.50.

¹² Fla. Stat. § 40.221.

¹³ Fla. R. Crim. P. 3.440. 2016.

4. Meals for Jurors

When required by Order of the Court, the Sheriff shall provide juries with meals and lodging. The expenses are paid by the Clerk of the Court.¹⁴ The authority of the Sheriff to feed jurors, when required by the Court, applies only to the jury accepted in a case, and not to those who are merely under summons for jury duty. Neither does the authority to feed the jury authorize the payment for meals of a bailiff, even if he is required to remain with the jury. However, a Sheriff may provide meals and lodging to bailiffs appointed by the Sheriff who, by order of any court, provide security to sequestered juries.¹⁵

5. View by Jury

In a civil or criminal case, the Court may order a view of the premises, property, or things relating to the cause in controversy. When a view by the jury has been ordered, the jury is placed in the custody of the bailiff to be conducted in a body to the place to be viewed. The bailiff shall permit no person to speak or otherwise communicate with the jury, nor may the bailiff speak to the defendant on any subject connected with the trial. The bailiff shall return the jury into the courtroom without unnecessary delay or at a time specified by the Court. On taking the jury to view any place, witnesses or parties should not be permitted to occupy vehicles with the jurors. The same rule applies to a return of the jury from the place viewed.¹⁶

6. Persons Present at Grand Jury Session

When the bailiff is in attendance upon a grand jury, the bailiff should ensure that no one is present at its sessions except those authorized by law. While the grand jury is considering evidence, no person is allowed in the room except the witnesses under examination, the prosecuting attorney, and an interpreter if any be necessary, one attorney representing the witness for the sole purpose of advising and consulting with the witness, the state attorney and assistant state attorneys, designated assistants as provided by statute, the court reporter or stenographer, and the interpreter.¹⁷ While the grand jury is deliberating or voting, only the members of the jury and persons allowed by law may be present, unless an interpreter has been appointed.¹⁸

7. Jury of Circuit and County Courts

The duties of the Sheriff regarding regulation of the jury apply in the Circuit and County Courts.¹⁹

¹⁴ Fla. Stat. § 40.26.

¹⁵ Fla. Stat. § 30.501.

¹⁶ Fla. Stat. § 918.05.

¹⁷ Fla. Stat. § 905.17(1).

¹⁸ Fla. Stat. § 905.17(3).

¹⁹ Fla. Stat. § 30.15(1)(a).

8. Jury Services

The primary responsibility of drawing and summoning jurors is the responsibility of the Clerk of the Court.²⁰

9. Court Security

Following the passage of Florida House Bill 131 in 2020, each county sheriff is required, beginning July 1, 2020, to coordinate with the board of county commissioners and the chief judge of the judicial circuit to develop a comprehensive security plan for trial court facilities. Under the plan, the sheriff is in charge of court security and the chief judge retains decision-making authority to ensure the protection of due process rights through the scheduling and conduct of trials and other judicial proceedings.²¹

HB 131 ensures that the roles of the sheriff and chief judge in trial court facilities are properly determined by both parties. The sheriff retains authority to implement and provide law enforcement services associated with the comprehensive security plan.

E. Court Orders

In addition to numerous Orders of the Court which the Sheriff may be required to execute, there are certain specific required orders to be executed:

1. Notice to Parent on Trial of Minor

When any minor, not married, is charged with an offense in any court, due notice of the charge is required to be given to the parents or guardian prior to the trial, if the name and address is known to the Court or to the Sheriff. If the name is not known and cannot be reasonably ascertained, the notice shall be given to any other relative or friend the minor may designate. The service of the notice may be made in the same manner as the service of summons. If the person designated to be notified is beyond the jurisdiction of the court, notice may be made by registered mail or by telegram. Return of the service will be made by the Sheriff in the same manner as the return made upon summons.²²

2. Commitment to Department of Juvenile Justice

When any child is committed to the Department of Juvenile Justice the commitment form to be used by the Judge of the committing court shall be as prescribed by the Department of Juvenile Justice. The Clerk of each Court committing a child to the Department of Juvenile Justice, or the Judge thereof if it has no clerk, will prepare and attach to each commitment form a certified copy of the petition upon which the person is being committed to the Department of Juvenile Justice.

²⁰ Fla. Stat. §§ 40.221 and 40.23.

²¹ Fla. Stat. § 30.15(4)(a) and (4)(b)

²² Fla. Stat. § 925.07.

In executing an order of commitment to the Department of Juvenile Justice, the Sheriff should see to it that a certified copy of the charge is attached to the commitment. This copy is furnished by the Court or its Clerk. Both the commitment and the copy of the charge must be delivered with the person to the Department.²³

3. Insanity Inquiries

When there is an inquisition into the sanity of any person in the county, the Sheriff is required to serve Orders of the Court.²⁴

4. Mental Illness, Emergency Admissions

A law enforcement officer may take a person who appears to meet the criteria for involuntary examination into custody and deliver him/her or have him/her delivered to an appropriate, or the nearest facility within the designated receiving system pursuant to s. 394.462 for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Additionally, if law enforcement is transporting a minor and the parent or legal guardian is present, before departing, the law enforcement officer must provide the parent or guardian of the minor with the name, address, and contact information for the facility within the designated receiving system to which the law enforcement officer is transporting the minor, subject to any safety and welfare concerns for the minor.²⁵

5. Obscene Literature

When a person is convicted under Section 847.011, Florida Statutes, the Court in passing sentence will make an order confiscating said obscene material and authorize the Sheriff of the county in which the material is held to destroy the same. The Sheriff shall file with the Court a certificate of compliance.²⁶

6. Gambling Devices

When seized, and upon conviction, a gambling apparatus is to be destroyed by the Sheriff under order of the Court and in the presence of the Clerk of the Circuit Court of such county.²⁷

²³ Fla. Stat. § 985.442.

²⁴ Fla. Stat. §§ 30.15(1) and 394.463(2).

²⁵ Fla. Stat. § 364.463(2)2.

²⁶ Fla. Stat. § 847.02.

²⁷ Fla. Stat. § 849.18.

7. Counterfeit

When counterfeit coins or bills or counterfeiting equipment have been seized, they are required to be destroyed by the Sheriff through an Order of the Court.²⁸

F. Inquest of the Dead

1. “Inquest” Defined

The term “inquest” means a formal, non-adversary, non-jury presentation of evidence concerning a death, discovered by the Medical Examiner, State Attorney and law enforcement agency during their respective examinations and investigations into the death.²⁹ The procedure for inquests are defined in statute.³⁰

2. Examinations, Investigations, and Autopsies

In any of the following circumstances involving the death of a human being, the medical examiner of the district in which the death occurred or the body was found will determine the cause of the death and shall make or have performed such examinations, investigations, and autopsies as deemed necessary or as requested by the State Attorney:

- a. When any person dies in the State:
 - i) Of criminal violence.
 - ii) By accident.
 - iii) By suicide.
 - iv) Suddenly, when in apparent good health.
 - v) Unattended by a practicing physician or other recognized practitioner.
 - vi) In any prison or penal institution
 - vii) In police custody.
 - viii) In any suspicious or unusual circumstance.
 - ix) By criminal abortion.

²⁸ Fla. Stat. § 831.20.

²⁹ Fla. Stat. § 936.002.

³⁰ Fla. Stat. §§ 936.003.

- x) By poison.
 - xi) By disease constituting a threat to public health.
 - xii) By disease, injury, or toxic agent resulting from employment.
- b. When a dead body is brought into this State without proper medical certification.
- c. When a body is to be cremated, dissected, or buried at sea.
- d. The Medical Examiner's Commission shall adopt rules, pursuant to Chapter 120, Florida Statutes, providing for the notification of the next of kin that an investigation by the Medical Examiner's Office is being conducted.³¹

3. Examiner's Report; Maintenance of Records

Upon receipt of a report of a death, the district medical examiner or associate will examine or otherwise take charge of the dead body and notify the appropriate law enforcement agency. When the cause of death has been established within reasonable medical certainty by the District Medical Examiner or associate, the Medical Examiner will report or make available to the State Attorney, in writing, the determination as to the cause of said death. Duplicate copies of records and the detailed findings of autopsy and laboratory investigations will be maintained by the district Medical Examiner. Any evidence or specimen coming into the possession of the Medical Examiner about any investigation or autopsy maybe retained or be delivered to one of the law enforcement officers assigned to the investigation of the death.³²

4. Duty of Law Enforcement Officers

Any evidence material to the determination of the cause of death in possession of the law enforcement officers assigned to the investigation of the death will be made available to the Medical Examiner. It is the duty of the law enforcement officer assigned to and investigating the death to immediately establish and maintain liaison with the Medical Examiner during the investigation into the cause of death.³³

5. Unidentified Persons; Reporting Requirements

When an unidentified body is transported to a district medical examiner pursuant to this chapter, the medical examiner shall immediately report receipt of such body to the appropriate law enforcement agency, provided such law enforcement agency was not responsible for transportation of the body to the medical examiner. If the medical examiner cannot determine the law enforcement agency having jurisdiction, the Sheriff of the county in which the medical examiner is located shall be notified, who shall determine the law enforcement agency responsible

³¹ Fla. Stat. § 406.11.

³² Fla. Stat. § 406.13.

³³ Fla. Stat. § 406.14.

for the identification. It is the duty of the law enforcement officer assigned to and investigating the death to immediately establish the identity of the body. If the body is not immediately identified, the law enforcement agency responsible for investigating the death shall enter data concerning the body, through the Florida Crime Information Center, into the Unidentified Person File of the National Crime Information Center.³⁴

6. Designation of Substitute in Absence of Official Examiner

In the absence of the District Medical Examiner or associate medical examiner, the State Attorney of the county may appoint a competent physician to act in their stead.³⁵

³⁴ Fla. Stat. § 406.145.

³⁵ Fla. Stat. § 406.15.

II. Service and Return of Civil Process

A. In General

1. Introduction

The Sheriff is responsible for serving process originating in the Supreme Court, Circuit Court, County Courts, and Boards of County Commissioners.³⁶ The Sheriff is required to serve such other process as may be directed for execution in the county.³⁷ Witness subpoenas, in civil cases, may be served by any person who is not a party and who is not less than eighteen (18) years of age.³⁸ Service of a subpoena upon a person named therein should be made as provided for by law and by tendering the fee for one (1) day's attendance and the mileage allowed by law.³⁹ Proof of such service should be made by affidavit of the person making service if not served by an officer authorized by law to do so.⁴⁰

2. Definition

Although the term "judicial process," in its broad significance comprehends all the Acts of the Court from the beginning of a proceeding to its end, in its narrower sense, it contemplates the means by which the Court obtains jurisdiction in a cause of action and compels defendants to appear in court in civil and criminal cases. The term "judicial process" includes non-enforceable writs such as summons, notice of hearing, general restraining order, witness subpoena, jury summons, subpoena duces tecum, writ of garnishment, eminent domain proceedings, writ of scire facias, notice to vacate, incompetency proceedings, rule nisi, and writ of mandamus and enforceable writs such as writ ne exeat, distress writ, writ of assistance, writ of possession, civil arrest, writ of replevin, and writ of attachment.

3. Purpose

The primary purpose of the service of process is to give a defendant notice that a legal proceeding has been instituted against the defendant and to afford the opportunity to defend against it. The process advises the defendant of the nature of the action brought against the defendant and vests jurisdiction in the Court that issued the process. Process is the means by which a court obtains jurisdiction in a cause to determine controversies involved therein, and to enforce its orders against parties involved.

³⁶ Fla. Stat. § 30.15(1)(a).

³⁷ Fla. Stat. § 30.15(1)(b).

³⁸ Fla. R. Civ. P. 1.410(d).

³⁹ Fla. Stat. § 92.151.

⁴⁰ Fla. R. Civ. P. 1.410(d).

4. Direction of Process

Summons, subpoenas, and other process in civil actions run throughout the State and all process except subpoenas shall be directed to all and singular the Sheriffs of the State.⁴¹

B. Duties and Responsibilities of Sheriff

1. Introduction

The powers, duties, and obligations of the Sheriffs are set forth by statute in Chapter 30, Florida Statutes. Accordingly, the civil deputy serves the writ, makes the personal contacts, signs the return, and in general, performs the functions of service of process in the name of the Sheriff of the county. Whether the service results in compliments, criticism, or penalties, it is always the Sheriff and deputy who are held responsible for the service and only they can be penalized. Any false return on any writ may subject the Sheriff to an action for damages by any person injured thereby.⁴² Negligence or refusal to execute and return any process may constitute a crime committed by the Sheriff.⁴³

The service of civil process is one of the most important functions performed by the Sheriff of each county. Expediency and efficiency in the service of writs and the making of legal and correct returns are of great importance, but of equal importance is the attitude and ability of the deputy making such service. Deputies should never argue or discuss the merits of the case, never offer legal advice under any circumstances, or recommend any attorney. This conduct may subject the deputy and the Sheriff to criticism and censure. A good civil deputy reads each writ and becomes familiar with its contents, especially the dates, times and requirements imposed by the writ on the person being served. The more familiar the deputy becomes with the process to be served the easier it will be to make proper service.

After completing the service, the deputy must complete and sign the return of service; then the writ is ready to be returned to the court of issue. This return should be returned to the Court together with the original process.

It is important that each return be signed individually by the deputy who made the service. This includes process with more than one (1) defendant where more than one (1) deputy obtains service on the defendants. Each deputy who makes service must sign the return as to the defendants he has served. When electronic signatures are used, the deputy who served or enforced the process must electronically sign the return of service; this cannot be delegated.

⁴¹ Fla. Stat. § 48.011.

⁴² Fla. Stat. § 30.20.

⁴³ Fla. Stat. § 839.19.

2. Deposits for Costs

The service of process is among the required duties of the office for which the Sheriff has given bond and made the oath of office.⁴⁴ Under our statutes and decisions of the Court, the Sheriff is required to serve process directed to the Sheriff.⁴⁵ He may not be compelled to do so, however, except upon the payment in advance of the fees to be incurred, or upon receipt of an indigency form issued by the Clerk of the Court⁴⁶. The fees authorized, or a deposit sufficient to cover them, shall be collected in advance from the party who requests the service; provided that services may be performed for any governmental agency or unit without advance payment, and the officer shall bill and collect the fees earned from such agency after the service is performed or when the amount due is determined.⁴⁷ The Sheriff may charge \$40.00 for processing each writ of execution, regardless of the number of persons involved.⁴⁸ Fees for other than government agencies are nonrefundable and earned upon request.⁴⁹

3. Service on Sunday

The Sheriff may not serve process on Sunday without special authorization such as, court order or by statute. If process is served on Sunday without such special authorization, the Sheriff may be subject to a suit for damages by the party so served. The Sheriff may be authorized to serve process on Sunday upon an individual who is about to escape the service of process by leaving the State. However, to be so authorized, the Sheriff is required to have an order authorizing service or execution by a judge or by statute and there after such writ, process, warrant, order or judgment may be served or executed on Sunday, and it is as valid as if it had been done on any other day.⁵⁰

4. Sheriff, a Party

When the Sheriff is sued, the Sheriff may accept service and may serve the codefendants. The Sheriff is entitled to receive the fees allowed by law for service upon the codefendants, but not for acceptance of service on the Sheriff, even though the Sheriff was served by one of the Sheriff's deputies.⁵¹

5. Powers of Sheriff When Serving Process Issued by Florida Courts

The process served by the Sheriff is the command of the Court issuing the writ, and the command of the Sheriff serving the writ. The Sheriff will be protected in the service of any process which is valid on its face, and he may raise the power of the county to effect service when it is necessary.⁵²

⁴⁴ Fla. Stat. § 30.01 and 30.02.

⁴⁵ Fla. Stat. § 30.15(1).

⁴⁶ Fla. Stat. § 27.52

⁴⁷ Fla. Stat. § 30.51(2).

⁴⁸ Fla. Stat. § 30.231(1)(d)1.

⁴⁹ Fla. Stat. § 30.231(4).

⁵⁰ Fla. Stat. § 48.20.

⁵¹ Fla. Stat. § 30.22.

⁵² Fla. Stat. § 30.15(1).

Persons are subject to punishment for obstructing the Sheriff in the service of civil process, as well as for obstructing criminal process or resisting arrest.⁵³ In an instance where the named person to be served refuses to accept service, lay the copy of the writ on the table or floor in his presence. This constitutes a legal service.

There is a difference between serving enforceable and non-enforceable writs. In executing enforceable writs, the Sheriff is required to take some positive action against a person or thing, whereas, in serving a non-enforceable writ, the Sheriff's responsibility is to make contact with the defendant (in person if possible, if not, substitute service may be sufficient), produce identification and explain the contents of the writ to be served if possible (required when making substitute service at the usual place of abode). It is not required that the defendant accept or sign for the service of process.

6. Powers of Sheriff When Serving Process Issued by Out-Of-State Courts

The Sheriff may serve civil process issued out of a court other than in Florida; however, the authority is limited to the service of process and shall not be interpreted to permit a Sheriff to take any action against personal property, real property or persons even though directed to do so by the out-of-state court.⁵⁴ (Exception: action can be taken on an out-of-state order if the order is domesticated in a Florida court first.)

7. Failure to Serve Process

If the Sheriff fails to serve process in the manner provided by law, or if the Sheriff fails to make proper return, the Sheriff may be subject to an action for damages by any party injured thereby.

This does not mean that the Sheriff must obtain service on all processes. It means that service which is possible must be made in the manner prescribed by law, inasmuch as a faulty service may be set aside, usually to the injury of the plaintiff. Since the law protects the Sheriff in the service of process, the Sheriff cannot refuse to perform this duty. Any willful or corrupt refusal or neglect to execute and return any process delivered to him constitutes a crime committed by the Sheriff.⁵⁵

This penalty applies to process lawfully directed to the Sheriff from the Court of another county, as well as from courts of the Sheriff's own county. The payment of the Sheriff's fees, in absence of a court order to the contrary, is one condition which the Sheriff may impose before lawfully executing any process directed to the Sheriff.⁵⁶ A Leon County Circuit Court has ruled Section 30.231(2), Florida Statutes as constitutional.

⁵³ Fla. Stat. §§ 843.01 and 843.02.

⁵⁴ Fla. Stat. § 48.195.

⁵⁵ Fla. Stat. § 839.19.

⁵⁶ Fla. Stat. §§ 30.51(2) and 30.231(2).

8. Process of Supreme Court

Process issued by the Supreme Court may be served by the Sheriff as deputy of the Marshal of the Supreme Court, or may be served by the Sheriff through one of the Sheriff's deputies. Such process may be executed throughout the State.⁵⁷ The Court will take judicial notice of the fact that the Sheriff or the Sheriff's deputy, is the deputy of the Marshal of the Supreme Court.

9. Process of District Courts of Appeal

Process issued by the District Courts of Appeal may be served by the Sheriff as deputy of the Marshal(s) of the District Court(s) of Appeal or may be served by the Sheriff through one of the Sheriff's deputies. Such process may be executed throughout the State.⁵⁸ The Court will take judicial notice of the fact that the Sheriff or the deputy is the deputy of the Marshal(s) of the District Court(s) of Appeal.⁵⁹

10. Copies

In making service, the Sheriff should be careful that copies served by the Sheriff are actually true and correct copies. If there is any variance between the copy served and the actual process such difference should be noted by the deputy serving the process and, if such difference cannot be corrected before service, it should be documented on the deputy's return, so the court can make a legal determination of any such defect.

C. Service and Return of Civil Process

1. Introduction

In many instances, civil suits are jeopardized because of lack of service, inadequate service, or improper return. These factors reflect on the ability of the Sheriff to properly perform his function in the service of such writs.

The duty of the Sheriff is an important one in the settlement of disputes between parties in accordance with due process of law. All process runs in the name of the State of Florida and is served by the Sheriff as authorized by the State. The process, when appropriate, shall indicate the authority of the Clerk or Judge issuing it, shall be signed by the Clerk or Judge. Under our statutes and decisions of the Court, the Sheriff is required to serve process directed to the Sheriff, but may not be compelled to do so except upon the payment in advance of the fees to be incurred.⁶⁰ A deposit for costs may be demanded by the Sheriff before serving any civil process except when the fees are waived upon receipt of a certificate of indigence, or when payable by any governmental agency or unit.⁶¹

⁵⁷ Fla. Stat. §§ 25.251, 25.262, and 30.15(1).

⁵⁸ Fla. Stat. § 35.26(2).

⁵⁹ Fla. Stat. § 35.26.

⁶⁰ Fla. Stat. § 30.231(2).

⁶¹ Fla. Stat. §§ 30.51(2) and 30.231(2).

2. Serving of Process

Service of original process is made by delivering a true copy thereof, with the time and date of service initials or signature of the person making service, and their identification number thereon, to the person to be served with a copy of the complaint, petition, or other initial pleading or paper, or by leaving such copy at his/her usual place of abode with any person residing therein who is 15 years of age or older and informing such person of the contents or by leaving such copy at such other place with such person as authorized by law to be served as provided for by Sections 48.031(2),(a),(b) and 48.061(1), Florida Statutes. If a person is served as stated above, it is not necessary to show or read the original process to him/her. Never leave the original process with person served. It must be returned to the Court from which it was issued with an account of your actions (called a “return of service”).⁶²

After service is made, the original writ must have a return stating the manner of service and signed by the deputy making such service. Only then can the original writ be returned to the court of issue. Where no service is made, the return should state the reason for such failure. An incomplete return invalidates the service. Once a “return of service” has been completed and returned to the Court it may not be amended except by leave of the Court that issued said process.⁶³

The party requesting service of process must furnish to the sheriff the original process, a certified copy of the process, or an electronic copy of the process, which was signed and certified by the clerk of court, and sufficient copies to be served on the parties receiving the service of process. The party requesting service of process shall provide the sheriff with the best-known address where the person may be served. Failure to perfect service at the address provided does not excuse the sheriff from his or her duty to exercise due diligence in locating the person to be served.⁶⁴

3. By Whom Served

Although the civil deputy serves the writ, makes the personal contacts, signs the return, and in general, performs the functions of service, he does so in the name of the Sheriff of the county.

If a suit originates in another county, the process is to be served by the Sheriff of the county in which service may be had. The Sheriff is protected in the execution of process, provided it appears on the face of the process that the Court has jurisdiction of the subject matter. Summons, subpoenas, and other process in civil actions run throughout the State. All process except subpoenas shall be directed to all and singular the Sheriffs of the State.⁶⁵

⁶² Fla. Stat. §§ 48.031 and 48.21.

⁶³ *Id.*

⁶⁴ Fla. Stat. § 30.231(3).

⁶⁵ Fla. Stat. § 48.011.

Civil witness subpoenas may be served by any other person who is not a party and who is not less than 18 years of age.⁶⁶

The Sheriff is authorized to appoint special process servers. For a complete wording of the law see, Statutory Law of Florida (Civil) Section 48.021(2)(3) and (4), Florida Statutes.

The Chief Judge of a Judicial Court is authorized to appoint certified process servers. For a complete wording of the law see, Statutory Law of Florida (Civil) Section 48.25 through 48.31, Florida Statutes.

4. Where Served

Service of a writ may be had by serving the individual named anywhere he/she may be found. This is a personal service and normally considered the best service. When personal service is not required or personal service cannot be obtained on the defendant, then service of the original process shall be effected by leaving a copy of the process and other pleadings at his/her usual place of abode with any person residing therein who is 15 years of age or older and informing such person of the contents therein or by leaving such copy at such other place with such person as authorized by law to be served as provided for by Sections 48.031(1)(a),(2)(a)(b),(4)(a), and 48.061(1), Florida Statutes.⁶⁷

A gated residential community, including a condominium association or a cooperative, shall grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.⁶⁸

Pursuant to Section 48.031(1)(b) an employer, when contacted by an individual authorized to serve process, shall allow the authorized individual to serve an employee in a private area designated by the employer. An employer who fails to comply with this paragraph commits a noncriminal violation, punishable by a fine of up to \$1,000.

5. When Served

When a writ is received, the return date or hearing date, if any, should be noted to insure proper service during the time of its effectiveness. Others may indicate the time of the hearing, trial, or other conditions to be met, and can only be served within the time specified, therefore, process should be examined to determine how much time is available for service of the process. Some writs (e.g., 20-day summons) may be served without regard to a time limitation because the time limitation on filing a response to such pleadings does not commence until the day after the service. There are other writs (e.g., subpoenas and notice of hearings) that must be served a fixed

⁶⁶ Fla. R. Civ. P. 1.410(c), and Section 48.021(1), Florida Statutes.

⁶⁷ Fla. Stat. § 48.031(1)(a).

⁶⁸ Fla. Stat. § 48.031(7).

number of days prior to the hearing. Where process is placed in the hands of the Sheriff, service should be made at the earliest practical moment and within a reasonable time after the Sheriff receives it.⁶⁹

6. Personal or Individual Service

Personal service of process is made by delivering a copy thereof to the person to be served with a copy of the complaint, petition, or other initial pleading or paper.⁷⁰

7. Substituted Service

- a.) General substituted service at the usual place of abode is accomplished by delivering a copy thereof to the usual place of abode of the person named in the process and leaving a copy thereof with a copy of the complaint, petition, or other initial pleading or paper with any person residing therein who is 15 years of age or older and informing such person of the contents, or by leaving such copy at such other place with such person as authorized by law to be served as provided for by Sections 48.031(1)(a), (2)(a)(b)(4)(a) and 48.061(1), Florida Statutes.⁷¹
- b.) Spousal service is accomplished by serving the spouse if:
 - 1) the spouse is not an adverse party in relation to the person sought for service;
 - 2) the spouse is still legally married to the person sought for service;
 - 3) the spouse still resides with the person sought for service; and
 - 4) the spouse requests (accepts) the process when not a party to the case (not a co-party with person sought for service); but if the spouse is a co-party, acceptance is not required.⁷²

8. Minor and Incompetent Service

- a. Process against a minor who has never been married and is not emancipated shall be served:
 - 1) By serving a parent or guardian of the minor as provided for in Section 48.031, Florida Statutes; or

⁶⁹ Op. Att’y Gen. Fla. 61-100 (1961).

⁷⁰ Fla. Stat. § 48.031.

⁷¹ *Id.*

⁷² *Id.*

- 2) When there is a legal guardian appointed for the minor, by serving the guardian as provided for in Section 48.031, Florida Statutes.
- 3) By serving said process on the guardian ad litem or other person, if one is appointed by the Court to represent the minor. Service on the guardian ad litem is unnecessary when the guardian ad litem appears voluntarily or when the Court orders him/her to appear without service of process on him/her.⁷³
- 4) In delinquency and dependency cases, by serving a copy on the minor, as an adult, and additional copies on the minor's parent, and/or legal guardian, if one has been appointed.⁷⁴

b. Process against an incompetent shall be served:

- 1) By serving two copies of the process to the person who has care or custody of the incompetent; or
- 2) When there is a legal guardian appointed for the incompetent, by serving the guardian as provided in Section 48.031, Florida Statutes.
- 3) By serving said process on the guardian ad litem or other person, if one is appointed by the Court to represent the incompetent. Service on the guardian ad litem appears voluntarily or when the Court orders him to appear without service of process on him.⁷⁵

9. Service on Public Agencies and Officers

Process against any municipal corporation, agency, board or commission, department, or subdivision of the State or any county which has a governing board, council, or commission or which is a body corporate, shall be served on the president, mayor, chairman, or other head thereof; and in his/her absence, on the vice-president, vice-mayor, or vice-chairman, or in the absence of all of the above, on any member of the governing board, council, or commission, the manager of the government entity, if any, or an in-house attorney for the governmental entity.

Process against any public agency, board, commission, or department not a body corporate or having a governing board or commission shall be served on the public officer being sued or the chief executive officer of the agency, board, commission, or department.

In any suit in which the Department of Revenue or its successor is a party, process against the Department shall be served on the executive director of the Department. This procedure is to be

⁷³ Fla. Stat. § 48.041.

⁷⁴ Fla. Stat. §984.16(4) and 985.319(5)

⁷⁵ Fla. Stat. §§ 48.042 and 744.331(1).

in lieu of any other provision of general law; and shall designate said Department to be the only state agency or department to be so served.⁷⁶

10. Service on State Prisoner

Process against a state prisoner shall be served on the prisoner by delivery to the prisoner.⁷⁷

11. Service on the State

When the State is sued, process against the State shall be served on the State Attorney or an assistant state attorney for the judicial circuit within which the action is brought and by sending two copies of the process by registered or certified mail to the Attorney General. The State may serve motions or pleading within 40 days after the service is made.⁷⁸ The party filing the above lawsuit is responsible for mailing.

12. Service on Partnerships

Process against a partnership shall be served on any partner and is as valid as if served on each individual partner. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee to accept such service. After one attempt to serve a partner or designated employee has been made, process may be served on the person in charge of the partnership during regular business hours. After service on any partner, plaintiff may proceed to judgment and execution against that partner and the assets of the partnership. After service on a designated employee or other person in charge, plaintiff may proceed to judgment and execution against the partnership assets but not against the individual assets of any partner.

Service of process on the partnership, made on a single partner, binds partnership property, but not property of each individual partner. Therefore, in order to bind the individual assets of the members of a partnership each member of such partnership must be served in compliance with Section 48.031, Florida Statutes. Also, by leaving such copy at such place with such person as authorized by law to be served as provided for by Section 48.061(1), Florida Statutes.

13. Service on Limited Partnerships

Process against a domestic limited partnership must be served on any general partner or on the agent for service of process specified in its certificate of limited partnership or in its certificate as amended or restated and is as valid as if served on each individual member of the partnership. After service on a general partner or the agent, the plaintiff may proceed to judgment and execution against the limited partnership and all of the general partners individually. If a general partner cannot be found in this state and service cannot be made on an agent because of failure

⁷⁶ Fla. Stat. § 48.111.

⁷⁷ Fla. Stat. § 48.051.

⁷⁸ Fla. Stat. § 48.121.

to maintain such an agent or because the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181.⁷⁹

14. Service on Corporations

A corporation service should be made on the highest statutory officer of such corporation that may be found in the county, such as president, vice-president, director, secretary, treasurer, cashier, or general manager. But you must specify in your return which officer of the corporation was served and his/her title and that he/her was served in the absence of higher-ranking officers.⁸⁰

As an alternative to the foregoing, process may be served on the agent designated by the corporation under Section 48.091, Florida Statutes. However, if service cannot be made on a registered agent because of failure to comply with Section 48.091, Florida Statutes, service of process shall be permitted on any employee at the corporation's principal place of business or on any employee of the registered agent. A person attempting to serve process pursuant to this paragraph may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is temporarily absent from his or her office.⁸¹

When process is to be served upon a corporation and it is summoned by its corporate name, service may be made upon the registered agent designated by the corporation at the place specified for such service. This place shall be kept open from 10:00am in the morning until noon of every day, except Saturdays and Sundays and legal holidays so that service may be accomplished.⁸² However, if service cannot be made on a registered agent because of failure to comply with Section 48.091, Florida Statutes, service of process shall be permitted on any employee of the registered agent, or in their absence, on any employee at the corporation's place of business.⁸³

If the corporation to be served was dissolved before July 1, 1990, service may be made personally upon any one or more of the directors of the dissolved corporation as trustees of the dissolved corporation. Process against any other dissolved corporation shall be served in accordance with s. 48.081.⁸⁴

Service of process on a licensed insurance company is accomplished by serving upon the insurance commissioner or upon his assistant, deputy, or other person in charge of his office, as process agent of the insured, copies in triplicate of the process.⁸⁵

⁷⁹ Fla. Stat. § 48.061(2)

⁸⁰ Fla. Stat. § 48.081(2).

⁸¹ Fla. Stat. § 48.081 (3)(a).

⁸² Fla. Stat. §§ 48.081(3) and 48.091.

⁸³ *Id.*

⁸⁴ Fla. Stat. § 48.101.

⁸⁵ Fla. Stat. §§ 624.422, 624.423.

Service on a limited liability company (LLC) is in line with similar types of process, like corporations. It simplifies the process and makes the service of process more uniform across the spectrum of corporations. More information on this type of service can be found in Section 48.062, Florida Statutes.

15. Limited Liability Companies (LLC)⁸⁶

As in corporations above, service can be made upon the LLC's registered agent, or an employee thereof, in the absence of the registered agent, during the appropriate periods previously described.

If service cannot be made on a registered agent of the LLC because of failure to comply with statute or because the LLC does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the LLC, domestic or foreign, may be served on: a member of a member-managed LLC; a manager of a manager-managed LLC; or if a member or manager is not available during regular business hours to accept service on behalf of the LLC, the LLC may designate an employee of the LLC to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the LLC during regular business hours.

If, after reasonable diligence, service of process cannot be completed under (a) or (b), service of process may be affected by service upon the Secretary of State as agent of the LLC as provided for in s. 48.181.

If the address for the registered agent, member, or manager is a residence, a private mailbox, a virtual office, or an executive office or mini suite, service on the domestic or foreign LLC may be made by serving the registered agent, member, or manager in accordance with s. 48.031.

16. Non-Service

A non-service occurs when the process is not served; this includes two separate categories:

- 1) When the Sheriff has been unable to obtain service on the defendant within the bounds of the county within the effective time period of the process.⁸⁷
- 2) When the plaintiff requests the process be returned unserved.

If none of the foregoing services can be made and the person to whom the paper is directed cannot be found, this constitutes a non-service. Some notation should be made setting forth the time and date of each attempted service on a work slip that should be attached to the copy of the return that is filed in the Sheriff's Office.

⁸⁶ Fla. Stat. §§ 48.062.

⁸⁷ Fla. Stat. § 48.021, Op. Att'y Gen. Fla. 61-100 (1961).

17. Return of Process

The return of the process served is a report of the Sheriff's actions in the matter. The return of process is highly important, it is evidence of the fact that service was made, and that the service conformed to the requirements of law. It is also notice that the Court has properly acquired jurisdiction of the party upon whom service was made. The obligation of the Sheriff to make proper return of process is as strong as the obligation to make proper service. The return of the Sheriff is made under the sanction of the Sheriff's official oath and responsibility, and it will not be lightly set aside. Clear and convincing evidence is required to impeach a return valid on its face. While it is the service of the process and not the Sheriff's return which binds the party served, it is important that the return clearly set forth all the facts describing the manner in which service was made. The return is important, not only because it is evidence that the Court has acquired jurisdiction and that the defendant has received notice in compliance with the constitutional mandate of due process, but also because the nature of the return may control further proceedings and rights of parties in the matter. Therefore, the return should speak the truth, not only as to the manner of service, but also as to reasons for non-service upon the party to be served or upon an officer of superior rank, where one of an inferior rank is served.⁸⁸

All officers to whom service directed shall note on it, or on a return-of-service form, the time and date when it comes to hand, the time and date when it is executed, the manner of execution, the name of the person on whom it was executed and if such person is in a representative capacity, the position occupied by him/her. A failure to state the foregoing facts invalidates the service, but the return is amenable to state the truth at any time on application to the Court from which the process issued. On amendment, service is as effective as if the return had originally stated the omitted facts. A failure to state all the required facts in the return shall subject the officer so failing to a fine not exceeding \$10.00 at the Court's discretion.⁸⁹

A person serving process shall place, on the first page of at least one of the processes served, the date and time of service, his or her identification number, and initials or signature for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person issuing the process shall file the return-of-service form with the court.⁹⁰

A certified process server shall place the information required in Section 48.031(5), Florida Statutes, on the first page of at least one of the processes served. Return of service shall be made by a certified process server on a form which has been reviewed and approved by the court.⁹¹

18. By Whom Made

If the service was made by a deputy, the return must be in the proper name of the Sheriff as Sheriff and signed by the deputy making the service.

⁸⁸ Fla. Stat. §§ 48.21 and Section 48.031(5).

⁸⁹ Fla. Stat. § 48.21.

⁹⁰ Fla. Stat. § 48.031(5).

⁹¹ Fla. Stat. § 48.29(6).

Each person who effects service of process shall note on a return-of-service form attached thereto, the date and time when it comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served and, if the person is served in a representative capacity, the position occupied by the person. The return-of-service form must be signed by the person who effects the service of process. However, a person employed by a sheriff who effects the service of process may sign the return-of-service form using an electronic signature certified by the sheriff.⁹²

A failure to state the facts or to include the signature required by subsection (1) invalidates the service, but the return is amendable to state the facts or to include the signature at any time on application to the court from which the process issued. On amendment, service is as effective as if the return had originally stated the omitted facts or included the signature. A failure to state all the facts in or to include the signature on the return shall subject the person effecting service to a fine not exceeding \$10.00, in the court's discretion.⁹³

19. Contents

The return must specifically state the manner in which the service was had. If the manner of service is specifically prescribed by statute, the wording of the return should conform to the statutory manner of service. Thus, if service is had upon a defendant by leaving a true copy of the process together with a copy of the initial pleading at the usual place of abode of the defendant with any person residing therein who is 15 years of age or older, the return should state that it was served at the usual place of abode of the named defendant by leaving a true copy of process with a named person residing at the defendant's usual place of abode. The return should also state that such person was 15 years of age or older and that the contents of the process were explained to the person. If the law provides that service may be perfected in another manner the return should reflect the requirements of the stated statute.

20. Failure to Execute Process

Every Sheriff or deputy authorized to execute process, who willfully or corruptly refuses or neglects to execute and return, according to law, any criminal process delivered to the Sheriff may be charged with a criminal offense.⁹⁴

21. False Return

Every false return may subject the Sheriff to suit or to forfeit and pay \$500.00, one half to the party aggrieved, and the other half to him/her who will sue for the same, to be recovered with costs by action of debt, and the Sheriff shall be further liable to an action of the party aggrieved.⁹⁵

⁹² Fla. Stat. §§ 48.21(1) and 30.07.

⁹³ Fla. Stat. § 48.21(2).

⁹⁴ Fla. Stat. § 30.20.

D. Types of Process: Non-Enforceable Writs

1. Introduction

These processes will be listed and discussed under two headings. The first will be non-enforceable process such as summons where the Sheriff has only the responsibility to obtain service, and the second being enforceable process where the Sheriff is commanded by the Court to take some positive action.⁹⁶

Process is issued by the Court for the purpose of acquiring jurisdiction, and for the purpose of affording specific remedies. The various processes which the Sheriff may have occasion to serve will be discussed here.

2. Summons

Suits in action at law are commenced by the plaintiff, and a summons is issued by the Court.⁹⁷ A summons directs the Sheriff to summon the defendant or defendants to appear before the Court, on a date specified, or within a prescribed number of days. The summons will name the parties to the action and will always bear the name of the Court from which it was issued. It is designed to warn the defendant he must file and answer within a time and place specified to make his defense or suffer judgment (by default) to be entered against him. In some suits the party against whom the action is taken is referred to as “respondent.”

The summons is usually accompanied with a complaint, affidavit, petition, or initial pleading that explains why and how the action was brought about. The original summons must be stamped with the time and date received. The Sheriff shall serve a true copy of this summons together with a copy of the complaint or petition as furnished by the plaintiff to the defendant and mark the time and date of service, initials or signature, and identification number on the true copy. The original summons is ready for return of service and return to court of issue.⁹⁸

Sometimes a notice of hearing is used in the place of a summons and attached to this notice of hearing is a statement of claim and should be served the same as a summons, except it must be served several days (usually five) prior to the hearing date.⁹⁹

3. Notice of Hearing

A notice of hearing is a notice to appear at a specified time and place. A true copy is served upon said defendant or person specified in the notice and served in the same manner as a summons, by delivering a true copy of the notice to the person to be served and placing the time and date of

⁹⁶ Fla. Stat. §§ 30.15 and 48.021; Thompson v. Dept. of Revenue, 867 So. 2d 603, 605 (Fla. 1st DCA 2004); and Seymour v. Panchita, Inc., 288 So. 3d 194; 196 (Fla. 3d DCA 2010).

⁹⁷ Fla. Stat. § 48.031, and Fla. R. Civ. P. 1.070.

⁹⁸ Fla. Stat. § 48.031.

⁹⁹ Fla. Stat. § 30.15, and Fla. R. Civ. P. 1.090 and 1.510.

service and initials and identification number of the deputy on the copy. Then the original notice is ready to have a return of service made and the notice returned to the court of issue.¹⁰⁰

4. Restraining Order

A restraining order is a prohibitive writ issued by a judge forbidding a party to do certain things. It is of a temporary nature and its purpose is to restrain the party until a hearing can be had to determine whether or not an injunction will be granted. This writ should receive immediate attention and, if directed to an individual, must be personally served.¹⁰¹

NOTE: Injunctions for protection issued by courts of Florida are not addressed in this section.

5. Injunction

An injunction is very similar to the restraining order. However, it is of a permanent nature, except a temporary writ of injunction. It must also be personally served.¹⁰²

6. Witness Subpoena

Subpoenas for testimony before the court, subpoenas for production of tangible evidence, and subpoenas for taking depositions may be issued by the clerk of court or by any attorney of record in an action.¹⁰³

(Every subpoena for testimony before the court shall be issued by an attorney of record in an action or by the clerk under the seal of the court and shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at a time and place specified in it.)

A civil subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a civil subpoena upon a person named therein shall be made as provided by law. Proof of such service shall be made by affidavit of the person making service except as applicable under rule 1.351(c) for the production of documents and things by a nonparty without deposition, if not served by an officer authorized by law to do so.¹⁰⁴

Service is made by delivering a copy of the subpoena to the person named therein and by tendering to him the fees for one day's attendance and the mileage allowed by law.¹⁰⁵ No person

¹⁰⁰ Fla. Stat. § 48.031.

¹⁰¹ The Sheriff is under no obligation to enforce these civil injunctions/ restraining orders unless specifically directed to do so in the body of the writ, or the violation of said restraining order is made a crime by Statute (Fla. Stat. §§ 914.23 and 914.24).

¹⁰² Fla. Stat. § 526.131.

¹⁰³ Fla. R. Civ. P. 1.410(a).

¹⁰⁴ Fla. R. Civ. P. 1.410(d).

¹⁰⁵ Fla. Stat. § 92.151.

may be compelled to attend court as a witness in any civil cause unless the party in whose behalf he is summoned first pays or deposits with the Executive Officer of said court the amount of compensation to which he would be entitled for mileage and per diem for one day.¹⁰⁶

In addition to personal service a witness subpoena may be served by substitute service; however, service of a subpoena on a witness in a criminal or civil¹⁰⁷ traffic case, a misdemeanor case, or a second-degree or third-degree felony may be made by certified, United States mail directed to the witness at his or her last known address, and such service shall be mailed at least seven days prior to the date of the witness's required appearance.¹⁰⁸ Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court. Service of criminal witness subpoenas may be made at certain places of employment of the witness on certain persons there as provided for under Chapter 48.031(3) Florida Statutes.

7. Criminal Witness Subpoena for Deposition

Only one attempt to serve a criminal witness subpoena for deposition is required by a process server. In the event that this attempt to serve is unsuccessful, the process server may post the subpoena at the witness's residence.¹⁰⁹ The subpoena must be posted at least five days before the date of the witness's required appearance.¹¹⁰

8. Criminal Witness Subpoena for Court Appearance

A criminal witness subpoena commanding the witness to appear for a court appearance may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed.¹¹¹ The subpoena must be posted at least five days before the date of the witness's required appearance.¹¹²

9. Subpoena Duces Tecum

A subpoena may command the person to whom it is directed to produce the books, paper, documents, or tangible things designated therein.¹¹³ A subpoena duces tecum is a process by which the Court, at the instance of a party, commands a witness who has in his/her possession

¹⁰⁶ Fla. Stat. § 92.151.

¹⁰⁷ Chapter No. 2015-51, Laws of Florida, allows for the service of a subpoena in civil traffic cases.

¹⁰⁸ Fla. Stat. § 48.031(3).

¹⁰⁹ Chapter No. 2015-59, Laws of Florida.

¹¹⁰ Fla. Stat. § 48.031(3)(b).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Fla. R. Civ. P. 1.410(b).

or control some document or paper that is pertinent to the issues of a pending controversy to produce it at trial.¹¹⁴

A subpoena duces tecum is served in the same manner as a witness subpoena.

10. Writ of Garnishment

A writ of garnishment is summons to a third party or person other than the defendant to appear in the lawsuit. It requires the garnishee to give statement within twenty (20) days of any defendant's property or money owed defendant, in the garnishee's possession, at the time of service, pending settlement of the lawsuit.¹¹⁵ The service is made on the garnishee or third party in the same manner as a summons by delivering a true copy of the writ to the garnishee and although not mandatory, it is better to explain the contents thereof. The failure of the garnishee to answer such process may result in a money judgment rendered against him.

11. Writ of Habeas Corpus¹¹⁶

Application for writ of habeas corpus is made by a petition. Since habeas corpus is not in any respect a technical proceeding, and since the writ is one of right, the petition is not required to be in any particular form. The writ is signed by the issuing judge and directed to the person in whose custody the party is detained, commanding him to have the body of such party before the Court or Judge before whom the writ is returnable, in order that appropriate judgment may be rendered upon judicial inquiry into the alleged unlawful restraint.¹¹⁷

The writ must be served by the Sheriff of the county in which the petitioner is alleged to be detained, upon the officer or other person to whom it is directed, or, in his/her absence, from the place where the prisoner is confined, or the person having immediate custody of the prisoner. In a case where the Sheriff of the county is the person holding the party detained, a delivery to or a receipt of the writ by the Sheriff is sufficient service thereof. From the moment the Sheriff receives the writ, the custody of the prisoner is by virtue thereof, and not under any other writ he may have previously received. Any person who fails to return a writ served upon him/her with the cause of the prisoner's detention, or to bring the body of the prisoner before the Court, Justice, or Judge according to the command of the writ, within the time prescribed by law, must forfeit and pay to the prisoner the sum of \$300.00 the right to recover which does not cease by the death of either or both of the parties.¹¹⁸

After the hearing on the writ, the Court must dispose of the petitioner as the law and evidence may require. He/she may be discharged, remanded, or admitted to bail.¹¹⁹

¹¹⁴ Everglades Cypress Co. v Smith, 139 So. 794 (Fla. 1932), and Fla. Stat. §§ 48.0318 and 77.01.

¹¹⁵ Chapter 77, and Fla. Stat. §§ 77.01, 77.04, and 77.081.

¹¹⁶ Chapter 79, Fla. Stat.

¹¹⁷ Article I, Section 13, Florida Constitution, Fla. Stat. §§ 79.01 and 79.05.

¹¹⁸ Fla. Stat. § 79.05(1).

¹¹⁹ Fla. Stat. § 79.08.

12. Eminent Domain Proceedings

This is a proceeding where a public agency, and in some restricted cases a private agency, files suit to acquire private property for public use.¹²⁰ A petition and declaration of taking is filed with the Clerk of the Circuit Court in the county where the property to be acquired is located. The Clerk issues a summons and a notice of hearing. The original summons and notice of hearing with sufficient true copies of the petition and declaration of taking are delivered to the Sheriff for service. True copies of the summons and notice of hearing with the petition and declaration of taking attached, are delivered and served in the same manner as a summons, however, this process must be served not less than 20 days before the return date as stated in the notice of hearing.¹²¹

13. Rule to Show Cause

A rule to show cause is a writ commanding a party to appear or show cause why he should not be compelled to do the act required or why the object of the rule should not be enforced. Personal service of this writ is required before a judge will issue a pick up “order” for failure of a party to appear as commanded in a “Rule to Show Cause.” Sometimes this writ will have a petition to be served with the true copy of the writ.¹²²

14. Notice to Vacate

A notice to vacate is a notice to a tenant to move from certain premises within a specified time or meet certain conditions. The delivery of such writ shall be made by the landlord by delivering or leaving copy at last place of abode. This notice is not issued by a court and the Sheriff is not required to serve it.¹²³

15. Landlord-Tenant Summons or “Five-Day Notice”

This is similar to an ordinary summons but is used in eviction proceedings.¹²⁴ The answering period is five instead of 20 days and the rules governing service differ. It should be served as follows:
Non-residential property:¹²⁵

- a. Personal service. Substitute service on person 15 years of age or older residing at the tenant’s usual place of abode in the county.
- b. Posted on premises involved in proceedings provided defendant cannot be found in the county and there is no person 15 years of age or older residing at the tenant’s

¹²⁰ Chapters 73 and 74, Fla. Stat.

¹²¹ Fla. Stat. § 74.041.

¹²² Fla. R. Crim. P. 3.84.

¹²³ Fla. Stat. §§ 83.20(2) and 83.56(2),(3).

¹²⁴ Fla. Stat. § 83.22.

¹²⁵ *Id.*

usual place of abode in the county.

Residential property:¹²⁶

- a. Personal service. Substitute service on person 15 years or older residing at the tenant's usual place of abode in the county.
- b. Posted on property described if the tenant cannot be found in the county and there is no person 15 years of age or older residing at the tenant's usual place of abode in the county.

(**NOTE:** Requires two attempts to serve in a. or b. above before posting. The minimum time delay between the two attempts to obtain service shall be six hours.)¹²⁷

16. Incompetency

- a. Notice to alleged incompetent. A notice to an alleged incompetent is a writ requiring the alleged incompetent to appear for a hearing at a specified time and place. Service is made as set forth in Section 744.331(1) Florida Statutes. If the person to be served is already a declared incompetent service is perfected as described in Section 48.042 Florida Statutes.
- b. Detention order. A detention order is an order directing the Sheriff to take into custody the alleged incompetent and confine him/her where ordered, pending examination for further order of the Court. Service is made by showing the writ to subject and explaining the contents, and taking him into custody in accordance with the detention order.¹²⁸
- c. Order to summon a committee. An order to summon a committee is an order summoning one physician, one psychologist and one person with masters work in social work, special education or vocational rehabilitation to examine the alleged incompetent and make their report to the Court. Service is made by delivering a true copy of the writ to each of them and doctor's report form should also be given to the doctors for their report.¹²⁹

17. Rule Nisi

A rule nisi is an order that the Court will enforce at a given date, unless cause is shown why it should not, or unless it is changed by further proceedings. The service is made upon the

¹²⁶ Fla. Stat. § 48.183.

¹²⁷ Fla. Stat. § 48.183, Florida Statutes; and City of Manalapan v. Rechler, 674 So. 2d 789, 790 (Fla 4th DCA 1996); Rev. denied 684. So. 2d 1353 (Fla. 1996).

¹²⁸ Fla. Stat. §§ 48.042 and 397.463.

¹²⁹ Fla. Stat. § 393.11.

defendant by the Sheriff by delivering a true copy of said writ to the defendant. A rule nisi is an order issued by a court, usually the Circuit Court, for a party to appear in pending proceedings for whatever purposes are set forth in the rule. This is served by the Sheriff in the same manner as a summons.¹³⁰

18. Writ of Mandamus

When an officer or Sheriff fails or refuses to perform a lawful duty or do a specific act that is ordered, a writ of mandamus may be issued requiring the Sheriff to perform a lawful duty. A petition for alternative writ proceedings in mandamus in the Circuit Court may be instituted by petition stating briefly the basis for the relief sought. If the petition makes a prima facie case (established fact), the Court may either issue the alternative writ or an order to show cause why an alternative should not be granted returnable on a certain day.¹³¹

19. Miscellaneous

There are other writs such as writ of prohibition, writ of scire facias, unlawful detainer, supplementary proceedings, and others that require service by the Sheriff.

20. Going-Out-Of-Business Sales

It is necessary for persons or corporations to obtain a permit in order to conduct a “fire sale” or a “going-out- of-business sale.” The tax collectors have the authority to issue such a permit. The person requesting the permit shall make application to the tax collector. At the time of this application he/she must surrender his/her current licenses, submit an inventory of what he/she is offering for sale and pay a fee of \$50.00. The tax collector then issues a permit which is good for not more than 60 days. Persons conducting such sales are exempt from this provision if they are conducting the sale pursuant to license or permit issued by municipalities having ordinances similar to this law. Forms for the application and permit shall be approved by the Department of Banking and Finance.¹³²

21. Order to Show Cause in Replevin Action Issued By the Court After a Complaint in Replevin Has Been Filed

This writ directs the defendant to show cause why certain property shall not be taken in replevin. The order:¹³³

- a. Fixes the date and time of the hearing which shall be no sooner than five days from the date of service of the order.

¹³⁰ Fla. R. Civ. P. 1.630.

¹³¹ Fla. Stat. § 56.26.

¹³² Fla. Stat. §§ 559.20, 559.21 and 559.23.

¹³³ Fla. Stat. § 78.065(2)(a)(c).

- b. Directs the time within which service of the order shall be made on the defendant.
- c. Fixes the manner in which service shall be made.
 - 1) Service as provided in Section 48.031, Florida Statutes.
 - 2) In the event service as provided in Section 48.031, Florida Statutes, is not possible, the officer shall be directed to place the order and summons on or in the claimed property or on the main entrance of the defendant's residence. In that instance, the return should state that the officer was unable to locate the defendant and how the order was served.

E. Types of Process: Enforceable Writs

1. Introduction

An enforceable writ describes the action to be taken, commands it to be done and has the force of the Court behind it to see that it is done.

2. Writ of Ne Exeat

A writ of ne exeat is a writ which may forbid a defendant from leaving the jurisdiction of the Court, or from removing children or personal property from the same. A copy of the writ must be served upon the defendant and may command that he/she is taken into custody and may request him/her to post a bond, or to surrender articles or property described in the order to law enforcement, pending a future hearing. The condition of the bond should be specified in said writ.¹³⁴

3. Distress Writ

A distress writ shall be issued by a judge of the Court which has jurisdiction of the amount claimed. The writ shall enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the Sheriff levies on the property, the writ is vacated, or the Court otherwise orders. If the defendant does not move for dissolution of the writ as provided for in Section 83.135, Florida Statutes, the Sheriff shall, pursuant to a further order of the court, levy on the property liable to distress forthwith after the time for answering the complaint has expired.¹³⁵

The Sheriff shall execute the writ by service on the defendant and, upon the Order of the Court, by levy on property distrainable for rent or advances, if found in the Sheriff's jurisdiction. If the property is not so found but is in another jurisdiction, the Sheriff shall deliver the writ to the proper Sheriff in the other jurisdiction for levy.¹³⁶

¹³⁴ Fla. Stat. § 68.02, Op. Att'y Gen. Fla. 76-13 (1976).

¹³⁵ Fla. Stat. §§ 83.12 and 509.406.

¹³⁶ Fla. Stat. § 83.13.

The Sheriff is not authorized under the writ to change locks on the property without the defendant's permission. The alternative here, if the defendant refuses to allow the locks to be changed, is to remove the property and place it in a bonded warehouse.¹³⁷

The sale of the property levied on pursuant to a distress writ is made under a writ of execution or "order." The procedure to be followed once the writ of execution is issued is covered under this title; provided, however, it is advertised twice within a ten-day period.¹³⁸

4. Distress Writ, Residential Property

The distress writ, as it applies to residential properties, was abolished under Florida Statutes, effective July 1, 1973.¹³⁹

5. Writ of Possession (Mortgage Foreclosure)

The writ of possession is a form of process issued by a court to transfer the possession of land or personal property, the title or right of possession of which it has previously adjudicated, as a means of enforcing its decree. The writ of possession is executed by the Sheriff placing the party for whose benefit it has been granted in possession of the property.¹⁴⁰

6. Writ of Possession

A writ of possession is an order requiring the Sheriff to remove the defendant from premises described in said writ and to place the plaintiff or his/her agent in full possession thereof. In proceedings for the removal of a tenant, if the issues are for the plaintiff and judgment is entered that the plaintiff recover possession of the premises, the Clerk of the Court issuing such judgment shall issue a writ describing the premises and commanding the Sheriff to put the plaintiff in possession.¹⁴¹

This writ is used in landlord and tenant proceedings and usually follows a notice to vacate. When the defendant has refused to vacate after being served a notice to vacate, an eviction summons and the Court has found that the plaintiff is entitled to possession (property or premises) a final judgment is issued. The writ of possession is subsequently issue by the Clerk of the Court and the plaintiff or his agent is put in possession of the property after the writ has been posted for over 24 hours. Where personal property is involved, possession immediately goes to the plaintiff, pending further action.¹⁴²

¹³⁷ Fla. Stat. § 83.67.

¹³⁸ Fla. Stat. § 83.19.

¹³⁹ Fla. Stat. § 713.691(3).

¹⁴⁰ Mortgage Foreclosure Sale by Clerk, Fla. Stat. §§ 702.10(2)(h) and 83.62.

¹⁴¹ Fla. Stat. §§ 83.241, 83.62, and 713.691(1).

¹⁴² Fla. Stat. § 713.691.

7. Writ of Replevin

A writ of replevin is a court order which commands the Sheriff to transfer custody of specifically described property to the plaintiff in the case. Any person whose personal property is wrongfully detained by any other person may apply for a writ of replevin to recover the property and any damages sustained by reason of the wrongful taking or detention as herein provided.¹⁴³

Defined. A writ of replevin is a court order commanding the Sheriff to transfer custody of specifically described property to the plaintiff in the case. Replevin is a statutory writ having as its foundation the common law and is frequently referred to as a common-law action.¹⁴⁴

a. Types

- 1) Pre-judgment writ of replevin and the property seized delivered forthwith to the petitioners.¹⁴⁵
- 2) Writ of replevin after judgment.¹⁴⁶

It is absolutely essential to read carefully the body of the writ to determine if you are to hold the seized property for a specified period of time, deliver property forthwith to petitioners or take property from one party and deliver it to another party.

b. Issuance

A writ of replevin is issued by the Clerk of the Court:

- 1) After final judgment in a suit for replevin; or
- 2) Upon the filing of a court order authorizing the Clerk to issue the writ.

c. Procedure

Chapter 78, Florida Statutes, completely controls the procedure to be taken by all parties involved. The action shall be brought in the county where the property is at the time of the issuance of the writ, in the Court which has proper jurisdiction of the value of the property shown to be replevied. Service is made upon the defendant, by delivering to him/her a true copy of the writ, together with a copy of the complaint or initial pleading, as furnished by the plaintiff and by taking possession of the property described in the writ. In executing the writ, if the property, or any part, is concealed in a building or enclosure, the officer shall publicly demand delivery thereof, and if same is not delivered by the defendant or some other person to the officer, the officer shall

¹⁴³ Fla. Stat. § 78.01.

¹⁴⁴ Fla. Stat. § 78.02.

¹⁴⁵ Fla. Stat. § 78.068.

¹⁴⁶ Fla. Stat. §§ 78.19 and 78.21.

cause such building or enclosure to be broken open and make replevy according to the writ and, if necessary, he/she shall take to this assistance the power of the county.¹⁴⁷ Such breaking of the building or enclosure should take place only where the officer has reasonable grounds to believe that the particular article to be replevied is, in fact, concealed in the building or enclosure.

Where the defendant cannot be found the property can be taken by the officer, if the property can be found. When property to be replevied was in the possession of the defendant at the time of the issuance of the writ, but is in the possession of a third person, the officer shall serve a copy upon the defendant, and also serve a copy upon the third person, and take the property in the same manner.¹⁴⁸

(NOTE: Writ of replevin must be amended to name third party in possession if the writ was issued after the change in possession.)

The officer executing the writ by levying on the property described shall deliver the property forthwith to plaintiff unless the writ directs otherwise. The defendant may obtain release of the property seized within five (5) days after the seizure by posting with the Clerk of the Court who issued the writ the amount of 1 1/4 times the amount due and owing conditioned to have the property forthcoming to abide the result of the action; or on the agreement for the satisfaction of the judgment which may be rendered against him.¹⁴⁹ Where property was within the jurisdiction of the court at the time of the issuance of the writ, but has been removed from that jurisdiction before having been levied upon, the party having had the writ issued shall deliver it to the Sheriff of the county where the property is located and to whom the writ is directed, and the Sheriff shall execute the writ and shall, unless the writ directs otherwise deliver the property to the plaintiff.¹⁵⁰

d. Certain property may not be taken. What may not be taken by replevin:¹⁵¹

- 1) Property taken for taxes.
- 2) Property taken under execution or writ of attachment (by defendant).
- 3) Property already replevied (by defendant).
- 4) Property to which the plaintiff has no rights of possession.

8. Writ of Attachment

A writ of attachment is an order from the Court to the Sheriff commanding the Sheriff to take into possession and hold for further disposition of the Court, property of debtor for a creditor.

¹⁴⁷ Fla. Stat. § 78.10.

¹⁴⁸ Fla. Stat. § 78.11.

¹⁴⁹ Fla. Stat. § 78.13.

¹⁵⁰ Fla. Stat. § 78.12.

¹⁵¹ Fla. Stat. § 78.02.

If the property to be attached is of a perishable nature or if the costs of keeping the property taken is out of proportion to its value, an order may be obtained from the Court to dispose of the property. Defendant may re-take the property by giving a bond with surety to the officer payable to the plaintiff in an amount which shall exceed by 1/4 the value of the property, as determined by the Court, or which shall exceed by 1/4 the amount of the claim, whichever is less. One bond to be conditioned for the forthcoming of the property restored to abide by the final Order of the Court.¹⁵²

A writ of attachment is the authority of the Sheriff to take property of the defendant into the Sheriff's possession. Under such a writ, the Sheriff may not dispossess the tenant of any lands or tenements belonging to the defendant. In levying the writ, the Sheriff is required to take personal property into his/her control or custody by an action which, without the writ, would amount to trespass. Under a writ of attachment, the Sheriff may levy upon personal property or lands. The Sheriff must take into his/her custody property named in the writ or specifically described in an "Instructions for Levy" pursuant to Section 30.30, Florida Statutes.¹⁵³

9. Writ of Bodily Attachment (Non-Support Writs)

A writ of bodily attachment is an order of the Court to the Sheriff commanding the Sheriff to take a person into custody pursuant to the provisions set forth in the writ. In the case of writs of bodily attachment issued as a result of failure to pay child support, a sheriff may be commanded to take a person into custody or allow the payment of a purge by the person who is the subject of the writ in order to avoid jail. Section 61.11 outlines the procedures for the issuance and execution of a writ of bodily attachment for non-payment of child support. Most significantly, the writs will be entered into the Florida Crime Information Center, "FCIC", telecommunications system for statewide execution. These writs are still civil in nature, however, personnel should look on the face of the writ to determine whether the writ may be executed on Sunday.

The law provides that when a court issues a writ of bodily attachment in connection with a court-ordered child support obligation, the writ must contain, at a minimum, such information as the respondent's physical description and location as is required for entry of the writ on the FCIC telecommunications system and authorization for the assessment and collection of the actual costs associated with the service of the writ and transportation of the respondent in compliance with the writ.¹⁵⁴

The clerk of the court is responsible for forwarding a copy of any such writ for service to the Sheriff of the county in which the writ is issued. Upon receipt of the writ the sheriff must enter the information on any unserved writ into the FCIC telecommunications system to make the information available to other law enforcement agencies within the state. The writ is enforceable in all counties of the state.¹⁵⁵

¹⁵² Fla. Stat. § 76.18.

¹⁵³ Fla. Stat. §§ 76.14, 76.17 and 76.251.

¹⁵⁴ Fla. Stat. § 61.11(2)(a).

¹⁵⁵ Fla. Stat. § 61.11(2)(b) and (c).

Many of these writs will contain language which allows for the payment of a purge in lieu of arrest or that the person be held until such purge is paid. If a respondent pays the purge either on the spot or after some time in custody, the agency that receives the purge payment must give the respondent a written receipt acknowledging such payment. A Sheriff receiving the payment must forward the funds to the Sheriff that entered the information into the FCIC system who will then forward the funds to the appropriate clerk of court.¹⁵⁶

After a writ is modified, purged, recalled, terminated, or otherwise rendered ineffective by ruling of a court, the clerk must notify the Sheriff receiving the original writ. That agency is responsible for making the changes in the FCIC system in accordance with the notification.¹⁵⁷

10. Other Writs

Writs of execution, tax warrants, Florida Industrial Commission warrants, and Florida Revenue.

11. Orders

In addition to writs specifically described herein, the Sheriff, an Executive Officer of the Court, is required to execute whatever orders the Court may issue. These vary greatly in nature and compel the Sheriff to perform a specific action.

F. Injunctions for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, Dating Violence, Stalking and Cyberstalking, and Exploitation of Vulnerable Adults

1. Domestic Violence Injunctions

“Domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.¹⁵⁸

“Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

A petition for an injunction for protection against domestic violence may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where

¹⁵⁶ Fla. Stat. § 61.11(2)(d).

¹⁵⁷ Fla. Stat. § 61.11(2)(e).

¹⁵⁸ Fla. Stat. § 741.28(2).

the domestic violence occurred. There is no minimum requirement of residency to petition for an injunction.¹⁵⁹

The clerk of the court shall electronically transmit a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night.¹⁶⁰

When requested by the sheriff, the clerk of the court may transmit an electronic copy of an injunction that has been certified by the clerk of the court, and this electronic copy may be served in the same manner as a certified copy. Upon receiving an electronic copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy.¹⁶¹

The clerk of the court is responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the Florida Department of Law Enforcement to comply with verification procedures.¹⁶²

Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section shall use service and verification procedures consistent with those of the sheriff.¹⁶³

Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must electronically transmit a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner.¹⁶⁴

Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must electronically transmit the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.¹⁶⁵

Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other

¹⁵⁹ Fla. Stat. § 741.30(1)(j).

¹⁶⁰ Fla. Stat. § 741.30(8)(a) 1.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Fla. Stat. § 741.30(8)(c) 1.

¹⁶⁵ Fla. Stat. § 741.30(8)(c) 2.

law enforcement agencies by electronically transmitting such information to the department.¹⁶⁶ Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement.¹⁶⁷

Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the Domestic and Repeat Violence injunction Statewide Verification System officer within the Florida Department of Law Enforcement.¹⁶⁸

A person who willfully violates an injunction for protection against domestic violence issued pursuant to Section 741.30, Florida Statutes or a foreign protection order accorded full faith and credit pursuant to Section 741.315, Florida Statutes by:

- Refusing to vacate the dwelling that the parties share;
- 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;
- Committing an act of domestic violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court commits a misdemeanor of the first degree.

It is a first-degree misdemeanor for a person to violate a final injunction for protection against domestic violence by having in his or her care, custody, possession, or control any firearm or ammunition.¹⁶⁹

A person who has two or more prior convictions for violation of an injunction or foreign protection order, and who subsequently commits a violation of any injunction or foreign protection

¹⁶⁶ Fla. Stat. § 741.30(8)(c) 3.

¹⁶⁷ Fla. Stat. § 741.30(8)(c) 4.

¹⁶⁸ Fla. Stat. § 741.30(8)(c) 6.

¹⁶⁹ Fla. Stat. § 790.233.

order against the same victim, commits a third-degree felony. The term “conviction” means a determination of guilt which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

2. Repeat Violence, Sexual Violence, and Dating Violence

“Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member.¹⁷⁰

“Sexual violence” means any one incident of sexual battery, as defined in chapter 794; a lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in chapter 787; sexual performance by a child, as described in chapter 827; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.¹⁷¹

“Dating violence” means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

- A dating relationship must have existed within the past 6 months.
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.¹⁷²

The clerk of the court shall electronically transmit a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night.

When requested by the sheriff, the clerk of the court must electronically transmit a copy of an injunction that has been certified by the clerk of the court, and this electronic copy may be served in the same manner as a certified copy. Upon receiving an electronic copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of

¹⁷⁰ Fla. Stat. § 784.046(1)(b).

¹⁷¹ Fla. Stat. § 784.046(1)(c).

¹⁷² Fla. Stat. § 784.046(1)(d).

the court, the sheriff may electronically transmit a copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy.

The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section.

Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge's jurisdiction to affect this type of service and to receive a portion of the service fee. No person shall be authorized or permitted to serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.¹⁷³

Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.¹⁷⁴

Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must electronically transmit the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.¹⁷⁵

Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.¹⁷⁶

Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.¹⁷⁷

A person who willfully violates an injunction for protection against repeat violence, sexual violence, or dating violence, issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315 by:

- o Refusing to vacate the dwelling that the parties share;

¹⁷³ Fla. Stat. § 784.046(8)(a)1.

¹⁷⁴ Fla. Stat. § 784.046(8)(c)1.

¹⁷⁵ Fla. Stat. § 784.046(8)(c)2.

¹⁷⁶ Fla. Stat. § 784.046(8)(c)3.

¹⁷⁷ Fla. Stat. § 784.046(8)(c)4.

- 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;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner’s motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner’s personal property, including the petitioner’s motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court, commits a misdemeanor of the first degree.

A person who has two or more prior convictions for violation of an injunction or foreign protection order, and who subsequently commits a violation of any injunction or foreign protection order against the same victim, commits a third-degree felony. The term “conviction” means a determination of guilt which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

3. Stalking and Cyberstalking

“Stalking” is a term which is not itself defined in Florida State Statutes, but is rather the aggregate of several other terms which are specifically defined. For the purposes of injunctions for protection against stalking under this section, the offense of stalking shall include the offense of cyberstalking.¹⁷⁸

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.¹⁷⁹

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.¹⁸⁰

“Credible threat” means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove

¹⁷⁸ Fla. Stat. §§ 784.048(1) and 784.0485(1).

¹⁷⁹ Fla. Stat. § 784.048(1)(a).

¹⁸⁰ Fla. Stat. § 784.048(1)(b).

that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section.¹⁸¹

“Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.¹⁸²

The clerk of the court shall electronically transmit a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night.

When requested by the sheriff, the clerk of the court must electronically transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this electronic copy may be served in the same manner as a certified copy. Upon receiving an electronic copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy.

The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent’s physical description and location as is required by the department to comply with the verification procedures set forth in this section.

Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge’s jurisdiction to affect this type of service and to receive a portion of the service fee. No person shall be authorized or permitted to serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.¹⁸³

Within 24 hours after the court issues an injunction for protection against stalking or changes or vacates an injunction for protection against stalking, the clerk of the court must electronically transmit a certified copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.¹⁸⁴

Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.¹⁸⁵

¹⁸¹ Fla. Stat. § 784.048(1)(c).

¹⁸² Fla. Stat. § 784.048(1)(d).

¹⁸³ Fla. Stat. § 784.0485(8)(a)1.

¹⁸⁴ Fla. Stat. § 784.0485(8)(b)1.

¹⁸⁵ Fla. Stat. § 784.0485(8)(b)2.

Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.¹⁸⁶

Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.¹⁸⁷

A person who willfully violates an injunction for protection against stalking or cyberstalking issued pursuant to Section 784.0485, Florida Statutes or a foreign protection order accorded full faith and credit pursuant to Section 741.315, Florida Statutes by:

- 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 members or individuals closely associated with the petitioner;
- Committing an act of stalking against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court, commits a first-degree misdemeanor.
- A person who has two or more prior convictions for violation of an injunction or foreign protection order, and who subsequently commits a violation of any injunction or foreign protection order against the same victim, commits a third-degree felony. The term "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

It is important to note the language in the warrantless arrest statute (Section 901.15(6), Florida Statutes) does not include the warrantless arrest authority suggested in the stalking and cyberstalking statute (Section 784.0485, Florida Statutes). While the language in all injunctions for protection state that "THIS INJUNCTION IS ENFORCEABLE IN ALL COUNTIES OF FLORIDA AND LAW ENFORCEMENT OFFICERS MAY EFFECT ARRESTS PURSUANT TO SECTION 901.15(6), FLORIDA STATUTES," the statute itself (901.15(6)) actually states a law enforcement officer may arrest a person without a warrant when:

¹⁸⁶ Fla. Stat. § 784.0485(8)(b)3.

¹⁸⁷ Fla. Stat. § 784.0485(8)(b)4.

There is probable cause to believe that the person has committed a criminal act according to Section 790.233, Florida Statutes or according to Section 741.31, Florida Statutes or Section 784.047, Florida Statutes which violates an injunction for protection entered pursuant to Section 741.30, Florida Statutes or Section 784.046, Florida Statutes or a foreign protection order accorded full faith and credit pursuant to Section 741.315, Florida Statutes over the objection of the petitioner, if necessary.

In addition to the discrepancy mentioned above, Section 784.0487, Florida Statutes makes no reference to the criminal violation set forth in a change to Section 790.233, Florida Statutes which states a “person may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence, as issued under Section [741.30](#), Florida Statutes or from committing acts of stalking or cyberstalking, as issued under Section [784.0485](#), Florida Statutes.”

4. Exploitation of a Vulnerable Adult

“Vulnerable adult” is defined as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.¹⁸⁸ Whereas “exploitation of an elderly person or disabled adult” is defined in statute in detail.¹⁸⁹

The requirements for service of the petition, notice of hearing, and temporary injunction are the following:

- The respondent shall be personally served, pursuant to chapter 48, with a copy of the petition, notice of hearing, and temporary injunction, if any, before the final hearing.
- If the petitioner is acting in a representative capacity, the vulnerable adult shall also be served with a copy of the petition, notice of hearing, and temporary injunction, if any, before the final hearing.
- If any assets or lines of credit are ordered to be frozen, the depository or financial institution must be served as provided in s. 655.0201.¹⁹⁰

These requirements for personal service and service on a party who is being represented by another are consistent with other injunction statutes. However, take note of the possibility of serving a financial institution as a part of this injunction, a requirement never previously made on law enforcement in relation to injunctions for protection.

Also note, that while the forms for this type of injunction have not yet been published by the Florida Supreme court, the language in the statute clearly state there will be standbys to transfer possession of property, for the vulnerable party. When an injunction for protection against exploitation of a vulnerable adult is issued, if the petitioner requests that a law enforcement

¹⁸⁸ Fla. Stat. § 415.102(28).

¹⁸⁹ Fla. Stat. § 825.103(1).

¹⁹⁰ Fla. Stat. § 825.1035(7).

agency assist the vulnerable adult, the court may order that an officer from the appropriate law enforcement agency accompany the vulnerable adult and assist in the service or execution of the injunction, including returning possession of a dwelling or residence to the vulnerable adult.¹⁹¹ If the respondent has been previously served with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for an injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.¹⁹²

However, as mentioned above, it should be noted that until new procedures are published by the Florida Supreme Court, it is reasonable to assume that Florida Family Law Rules of Procedure, 12.610 will continue to apply, requiring personal service of this type of paper.

A person who willfully violates an injunction for protection against exploitation of a vulnerable adult commits a misdemeanor of the first degree. A person may violate such injunction by:

- Refusing to vacate the dwelling shared with the vulnerable adult;
- Going to or being within 500 feet of the vulnerable adult's residence;
- Exploiting or unduly influencing the vulnerable adult;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the vulnerable adult;
- Telephoning, contacting, or otherwise communicating with the vulnerable adult directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the vulnerable adult's motor vehicle, regardless of whether that vehicle is occupied; or
- Defacing or destroying the vulnerable adult's personal property.

A person who has two or more prior convictions for violation of an injunction or foreign protection order against the same victim, and who subsequently commits a violation of any injunction or foreign protection order against the same victim, commits a felony of the third degree.¹⁹³

Note the violations of this injunction match those of repeat, dating and sexual violence injunctions, with the exception that no reference to firearms is made, whatsoever.

Also note that a law enforcement officer may arrest a person without a warrant.¹⁹⁴

5. Risk Protection Order

Risk protection orders (RPO) are "intended to temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement officers to obtain a court order when there is demonstrated evidence that a person

¹⁹¹ Fla. Stat. § 825.1035 (10)(a)(3).

¹⁹² Fla. Stat. § 825.1035 (10)(a)(5).

¹⁹³ Fla. Stat. § 825.1036(4).

¹⁹⁴ Fla. Stat. § 901.15.

poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.”¹⁹⁵

The purpose and intent of RPOs is to reduce deaths and injuries as a result of certain individuals’ use of firearms while respecting constitutional rights by providing a judicial procedure for law enforcement officers to obtain a court order temporarily restricting a person’s access to firearms and ammunition. The process established is intended to apply only to situations in which the person poses a significant danger of harming himself or herself or others by possessing a firearm or ammunition and to include standards and safeguards to protect the rights of respondents and due process of law.

Risk protection orders are for the protection against the significant danger of the use of firearms or ammunition. Mere threats, therefore, may not rise to the level required to get an order issued. Also, this order does not allow for the removal of any instrument of significant danger, only firearms or ammunition (i.e., it does not allow for the removal of swords and knives from a person threatening to stab fellow classmates in school).

“Respondent” is defined as the individual who is identified as the respondent in a petition filed under this section. “Petitioner” is defined as a law enforcement officer or a law enforcement agency that petitions a court for a risk protection order under this section.”

The petition must state the following:

- Allege that the respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition, and must be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;
- Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent’s current ownership, possession, custody, or control; and
- Identify whether there is a known existing protection order governing the respondent under s. 741.30, s. 784.046, or s. 784.0485 or under any other applicable statute.¹⁹⁶

This means that the law enforcement officer, or agency must allege the danger, related to the custody, control, purchase, possession, or receipt of firearms or ammunition; and must provide in their affidavit, specific statements, actions, or facts that create the reasonable fear of significant danger; identify quantities, types and locations of firearms believed to be in the respondents control, etc.; and research the background of the respondent reference known existing protection orders; and, perhaps most significantly, in order to make an application for a temporary ex parte order, the petition must contain “detailed allegations based on personal knowledge.”

¹⁹⁵ Fla. Stat. § 790.401.

¹⁹⁶ Fla. Stat. § 790.401(2)(e).

Personal knowledge could also come from a history, known to law enforcement, on the part of the respondent. In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

- A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm.
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others.
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues.
- A violation by the respondent of a risk protection order or a no contact order issued.
- A previous or existing risk protection order issued against the respondent.
- A violation of a previous or existing risk protection order issued against the respondent.
- Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence.
- Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons.
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent.
- The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.
- Whether the respondent, in this state or any other state, has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence.
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.
- Evidence of recent acquisition of firearms or ammunition by the respondent.
- Any relevant information from family and household members concerning the respondent.
- Witness testimony, taken while the witness is under oath, relating to the matter before the court.¹⁹⁷

The clerk of the court shall furnish a copy of the notice of hearing, petition, and temporary ex parte risk protection order or risk protection order, as applicable, to the sheriff of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of a temporary ex parte risk protection order or a risk protection order that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. The clerk of the court shall be responsible for furnishing to the sheriff information on the respondent's physical description and location. Notwithstanding any other provision of law to the contrary,

¹⁹⁷ Fla. Stat. § 790.401(3)(c).

the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency effecting service pursuant to this section shall use service and verification procedures consistent with those of the sheriff. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.¹⁹⁸

All orders issued, changed, continued, extended, or vacated after the original service of documents specified in paragraph (a) must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.¹⁹⁹

Upon issuance of a risk protection order under this section, including a temporary ex parte risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, held by the respondent.²⁰⁰ Please see the statute for greater detail regarding the surrender, transfer, storage, and return of firearms, ammunition, and licenses related to RPOs.

Upon the issuance of a risk protection order, the court shall order a new hearing date and require the respondent to appear no later than 3 business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition owned by the respondent in the respondent's custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.²⁰¹

A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by an order issued under this section commits a felony of the third degree.²⁰²

This is only a brief overview of the law and the few issues that have been spotted since its passage. New challenges arise every day, with new questions to be answered. Please check the Florida Sheriffs Association's website for additional workbooks, webinars, and information related to risk protection orders.

¹⁹⁸ Fla. Stat. § 790.401(5)

¹⁹⁹ Fla. Stat. § 790.401(5)

²⁰⁰ Fla. Stat. § 790.401(7)

²⁰¹ Fla. Stat. § 790.401(7)

²⁰² Fla. Stat. § 790.401(11)

III. Levies and Sales

A. Writ of Execution

The word “execution” is broadly defined as the act of carrying into effect the final judgment or decree of the Court, or as the remedy available by law for the enforcement of a judgment. It is not a separate action but is rather “process” in an action and is more accurately defined as a writ issued to an officer which directs and authorizes him/her to carry into effect the judgment of the Court. It is the duty of the Sheriff to execute executions, by levying upon property, and carry out orders directed to him/her for the satisfaction of judgments of courts. The execution is required to be served by the Executive Officer of the Court from which it is issued. Executions of a court of record are in full force throughout the state.²⁰³

B. Priority Between Executions

The writ of execution is for the enforcement of the judgment of the Court. It is effective for the life, or effective period, of the judgment upon which it was issued. If the writ is to be enforced against real property, several writs are in the hands of the Sheriff against the same person or property, priority is as of the date the judgment was entered in the records of the court of the county where the property is located. However, Section 55.10, Florida Statutes, was amended and shortens the time that a judgment is a lien and provides for the re-recording of said judgment.²⁰⁴ If the writ is to be enforced against personal property, then priority is established as of the date judgment lien certificate is filed in accordance with Section 55.203, Florida Statutes, with the Department of State after the judgment has become final and if no stay of the judgment or its enforcement is then in effect. Except as provided in Section 55.208, Florida Statutes, the effective date of a judgment lien is the date, including the time of day, of filing. A Notice of Levy is recorded with the Clerk of Courts in the county where the property is levied upon just as with Notice of Levy when levy is made against real property.

C. Endorsement and Return

If the full amount of the execution is not collected at one time, the Sheriff shall endorse on the execution a return of his actions and list all monies he has received in payment. Partial payment would only result from proceeds from sale, not from any money collected by the Sheriff. When the execution is fully paid, it must bear a “fully satisfied” return on the back and be filed in the court issuing it. The return should be made in the name of the Sheriff by the deputy executing the writ.²⁰⁵

All unsatisfied executions in the hands of the Sheriff may be returned, to the court issuing the execution, 20 years after the date of issuance of final judgment upon which the execution was

²⁰³ Fla. Stat. §§ 56.031 and 56.041.

²⁰⁴ Fla. Stat. § 55.10.

²⁰⁵ Fla. Stat. § 56.041(1).

issued. Upon such return, the Clerk of the Court of issuance shall provide a receipt, to the Sheriff submitting the return, acknowledging the return of unsatisfied execution.²⁰⁶

D. Capias Ad Satisfaciendum

The Sheriff has no authority to take the defendant, and safely keep, for non-payment of any execution, except for fines imposed by lawful authority.²⁰⁷

E. Custody of Property

Property which has been seized by the Sheriff under a proper writ is considered to be in the custody of the court, unless released by the Sheriff under a property authorization. Any interference with the possession or custody of the Sheriff, of property seized by him/her, constitutes a contempt of the Court under whose authority the Sheriff has acted, or violation of Sections 843.01 and 843.02, Florida Statutes.

If the Sheriff is unable to keep the property under levy in his/her possession, the court may order the use of constructive possession.

F. Return Unsatisfied

If no property is found, upon which levy may be made, the Sheriff shall, at the request of the plaintiff in writing return the writ unsatisfied. However, the Sheriff has no responsibility to search for property of the defendant in order to make a levy under any “writ” or to make a return of “nulla bona” on any writ and return it to the Court of issuance. Since the Sheriff has no statutory duty to search for property of the defendant the Sheriff has no duty to make a return which certifies he/she has searched the county for property of the defendant. The Sheriff can and should make a return as “unsatisfied” if he/she receives in writing from the plaintiff or plaintiff’s attorney such request.

G. Control of Writ

A judgment creditor is entitled to enforce his/her judgment by execution. The writ is issued for his/her benefit, and he/she has the right to control and direct what proceedings should or should not be taken thereunder. Hence, his/her wishes and instructions, if lawful, when made known to the execution officer should ordinarily be respected and obeyed. Upon failure to execute a writ of execution, the Sheriff may be compelled to do so by mandamus proceedings.²⁰⁸

²⁰⁶ Fla. Stat. § 56.041(2).

²⁰⁷ Fla. Stat. § 56.011.

²⁰⁸ Fla. Stat. § 56.26.

H. Property Subject to Execution

Lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations, shall be subject to levy and sale under execution. As well as the interest in personal property in possession of vendee under a retained title contract or conditional sale contract shall be subject to levy and sale under execution to satisfy a judgment against the vendee.²⁰⁹

I. Property Subject to Be Levied Upon

It is the duty of the Sheriff to levy upon any property specifically described in the writ delivered to him/her. If no property is specifically described in the writ, then the Sheriff shall levy upon any property in the possession of the defendant which is described in instructions for levy; and upon any property assessed against the defendant on the current tax rolls of the county or registered in his/her name under any law of the United States or of the State, upon the request of the plaintiff or plaintiff's attorney listing such property in an instructions for levy. The Sheriff is not liable for damages, for making a wrongful levy, whenever he/she levies upon property described in the writ, instructions for levy or upon property assessed against or registered in the name of the defendant when such property is listed in an instruction for levy.²¹⁰ If the writ describes specific property, and it is found in the possession of some other person who claims ownership or right of possession, the plaintiff may be required to furnish a bond with good and sufficient sureties for the protection of the Sheriff. This bond must amount to the reasonable value of the property, as determined by the Sheriff.²¹¹ If the Sheriff is directed to execute a writ upon property not described in the writ, or upon property neither assessed nor registered in the name of the defendant, he/she may require the plaintiff to furnish a bond as described.²¹² If a person demands that the Sheriff levy on specific property which is claimed by someone else, the Sheriff may file a petition, in the court which issued the writ, and procure a rule adjudicating the rights of the parties. If the property in question is real estate, the petition of the Sheriff shall be filed in the Circuit Court. The Sheriff is not liable for making a wrongful levy, if it is made pursuant to the specific order of a court of competent jurisdiction.²¹³

J. Property Subject to Levy

The Sheriff may levy upon lands and tenements, goods and chattels, equities of redemption in real and personal property, stock in corporations, interest in personal property in possession of a vendee under a retained title contract or conditional sale contract and on current money of a defendant corporation in order to satisfy executions delivered to him/her.²¹⁴ The Sheriff may not levy upon public property owned by a county or municipality and used in the orderly

²⁰⁹ Fla. Stat. § 56.061.

²¹⁰ Fla. Stat. § 30.30(1),(2).

²¹¹ Fla. Stat. § 30.30(3).

²¹² Fla. Stat. § 30.30(4).

²¹³ Fla. Stat. § 30.30(5),(6).

²¹⁴ Fla. Stat. §§ 56.061 and 56.09.

administration of government,²¹⁵ nor can he/she levy upon property already in the custody of the Court, such as property in the hands of a receiver unless another writ is issued directing the Sheriff to release the property to another person.²¹⁶ The Sheriff cannot levy on property, title to which is in the name of a person other than the defendant in execution. An estate by the entirety, that is, property owned jointly by husband and wife, may not be levied upon by the Sheriff to satisfy an execution issued against one of them only.

K. Miscellaneous Writs

In addition to executions issued out of the several courts, the Sheriff may be required to make a levy, under the authority of a Department of Revenue warrant.²¹⁷ The Sheriff may be required to levy executions, in the form of tax warrants issued by the Reemployment Assistance Appeals Commission²¹⁸ or by the Department of Revenue.²¹⁹ The Department of Highway Safety and Motor Vehicles may issue tax warrants for various delinquent taxes.²²⁰ When receiving the various types of warrants the Sheriff should check the statutory authority for their issuance to determine if he/she has a duty other than proceeding with the levy. In executing these warrants, the Sheriff should follow the instructions on the face of the warrants or those made separately in writing by the issuing authority. These warrants are handled in the same manner as other executions, and the Sheriff is entitled to the same fees for services rendered.

L. Release of Property After Levy

A Release of Levy shall be recorded with the Clerk of Courts in the county where the levy was made when the property levied upon (real or personal) has been released by payment, settlement, or sale of property. The property may also be released upon the making of bond as hereinafter described.

M. Forthcoming Bond

If the defendant desires to re-take the property levied upon, the Sheriff may release it upon receipt of a bond, with surety in double the value of the property released. This bond is referred to as a forthcoming bond.²²¹ The value is to be fixed by the Sheriff, and the bond is to be approved by him/her. The bond must be payable to the plaintiff and conditioned upon the forthcoming of the property on the day of sale. The date of the sale and description of the property must be designated in the bond. The date of the sale is the date upon which the property can be lawfully sold under the process, and the Sheriff must ascertain the date and proceed with his/her notice of sale as though the property had not been released. To stay the execution of a writ upon personal

²¹⁵ Op. Att’y Gen. Fla. 1931, Page 472.

²¹⁶ Op. Att’y Gen. Fla. 1933, Page 124.

²¹⁷ Fla. Stat. §§ 199.262 and 210.14.

²¹⁸ Fla. Stat. § 443.141(3).

²¹⁹ Fla. Stat. § 206.075.

²²⁰ Fla. Stat. § 320.19.

²²¹ Fla. Stat. § 56.12.

property, a forthcoming bond is required, but it is not required if the Sheriff has levied upon real estate. If the execution remains unpaid, and the parties to the bond fail to produce the property on the date specified for the sale, the Sheriff shall return the bond to the Court from which the execution was issued. The Sheriff may then proceed to levy the original execution against the defendant, and also any execution which may be issued against the sureties for allowing the bond to default.²²²

If a forthcoming bond is in default and the Sheriff proceeds to levy an execution on the judgment upon the forfeited bond, he/she may not take any further bond for the property seized on such execution.²²³

N. Bonds in Attachment

In attachment proceedings, defendant may re-take the property by giving a bond with surety to the officer levying the attachment to be approved by the officer payable to the plaintiff in an amount which shall exceed by 1/4 the value of the property, as determined by the Court, or which shall exceed 1/4 the amount of the claim, whichever is less. One bond is to be conditioned for the forthcoming of the property restored to abide by the final order of the court.²²⁴ In attachment proceedings the property may also be restored to the defendant if he/she enters into a bond with surety to pay the debt or demand and all costs of the suit when the same shall be adjudicated to be payable to the plaintiff. This bond is to be made payable to the plaintiff and approved by the Sheriff.²²⁵ The bond to pay debt may be made by any owner of the equity of redemption of personal property which has been levied upon in foreclosure proceedings. When such person seeks the release of property to him/her, he/she shall make an affidavit that he/she is the owner of the equity of redemption.

O. Replevin

The defendant in replevin, as previously stated, may re-take the property by giving bond. If such bond is forfeited, an execution upon the property may not be stayed by the furnishing of an additional bond.

P. Third Party Claims

If a third person claims the property which has been levied upon, the Sheriff may release the property to the third party upon the filing of the proper affidavit. This affidavit, made by the third person, his/her agent or attorney, must state that the property belongs to such third person. With the affidavit he shall give the Sheriff a bond payable to the plaintiff, with surety in double the value of the goods claimed. The condition of the bond is that he/she will deliver the property upon demand, if the same shall be adjudged to be the property of the defendant, and to pay the

²²² Fla. Stat. § 56.13.

²²³ Fla. Stat. § 56.14.

²²⁴ Fla. Stat. § 76.18.

²²⁵ Fla. Stat. § 76.19.

plaintiff all damages which the jury may find in favor of the plaintiff. The value of the property is to be fixed by the Sheriff, and the bond is to be approved by him/her.²²⁶ If the Sheriff levies several executions, issued on judgments of different persons, on the same property which is claimed by a third person, the Sheriff must take an affidavit and bond separately as to each plaintiff. He/she cannot take one affidavit and bond as to all the plaintiffs. Upon receipt of the affidavit and bond, the Sheriff shall deliver the property levied upon the person claiming the same, and may not take any further proceedings as to that particular property. If he is not required by the plaintiff to dismiss that levy and levy upon other property of the defendant, the Sheriff shall return the execution to the court from which it is issued together with such affidavit and bond.²²⁷

Property levied upon under attachment may be released to third persons upon the same conditions as property taken under an execution.²²⁸ A third party claim to property levied upon in distress for rent proceedings may be made in the manner described.²²⁹ If, in the proceedings to try the right to property claimed by a third person, judgment should be rendered for the plaintiff, it is satisfied in the usual manner. The judgment may also be satisfied if the property released is delivered to the Sheriff and the damages and costs awarded to the plaintiff are paid. If the property is returned to the Sheriff, but the damages and costs are not paid, the Sheriff may enforce the payment by levy of execution upon the property of the defendant or the surety. If only part of the property is returned to the Sheriff, the execution shall be enforced for the value of the property not returned, as determined by the Sheriff. All property returned shall be sold under the original execution against the original defendant.²³⁰

Q. Retaking by Replevin

If property has been taken under a writ of attachment and it is not subject to attachment, the defendant may re-take it from the Sheriff by replevin proceedings.²³¹

R. Distress

If the Sheriff has levied upon property pursuant to a distress warrant, the property may be restored to the defendant upon his/her giving bond to the Sheriff, with surety in double the value of the property levied upon. The value of the property shall be determined by the Sheriff. The bond shall be payable to the plaintiff and approved by the Sheriff. The condition of the bond is that the property will be forthcoming to abide the final order of the Court. Property may also be released from levy of a distress warrant, if the defendant gives the Sheriff a bond, with surety in the amount or value of the rental or advances which may be adjudicated to be payable to the plaintiff. This bond is to be approved by the Sheriff and conditioned for the payment of such

²²⁶ Fla. Stat. §§ 56.16, 56.17, 76.21, and 83.15.

²²⁷ Fla. Stat. § 56.17.

²²⁸ Fla. Stat. § 76.21.

²²⁹ Fla. Stat. § 83.15.

²³⁰ Fla. Stat. § 56.20.

²³¹ Fla. Stat. § 76.20.

amount to the plaintiff. In either case, the Sheriff should fix the value of the property released and the bond should recite such value.²³²

S. Stay of Illegal Writ

If the defendant claims that the execution to be levied upon his/her property is illegal, he/she may stay further proceedings by delivering to the Sheriff an affidavit stating the illegality of the execution and whether any part of the execution be due. With the affidavit he/she must give the Sheriff a bond with surety payable to the plaintiff, in double the amount of the execution, or the part of such execution which is sought to be stayed. Upon receipt of the affidavit and bond, the Sheriff shall return the bond and affidavit to the court from which the execution issued.²³³

T. Lost or Destroyed Writ

When issued an execution is valid and effective during the life of the judgment or decree on which it is issued. When fully paid, the officer executing it shall make his/her return and file it in the court which issued the execution. If the execution is lost or destroyed, the party entitled thereto may have an alias, pluries, or other copies on making proof of such loss or destruction by affidavit and filing it in the court issuing the execution.²³⁴

U. Homestead and Other Exemptions

1. In General

Certain property, as well as the property of certain persons, is exempt from levy of process, or forced sale, which exemption the Sheriff may not ignore. The homestead owned by a natural person residing in this State is exempt from forced sale under process of any court. The purpose of the homestead is to shelter the family and provide it refuge from the stresses and strain of misfortune. The homestead consists of one 160 contiguous acres of land outside of any city or town limits, or half an acre of land within any such limits. With this there is exempt, to a natural person, \$1,000.00 worth of personal property (\$4,000.00 if the homestead exemption is not used). The area of the homestead, which has subsequently been included within the limits of an incorporated city or town, may not be reduced without the consent of the owner. Within the limits of a city, the homestead extends only to those buildings constituting the residence of the owner. The homestead exemption extends to the proceeds of a fire insurance policy due, or to be paid, for its destruction. The person entitled to a homestead may claim it on any dwelling house owned by him/her, even though he/she is not the owner of the land on which it is situated.²³⁵

²³² Fla. Stat. § 83.14.

²³³ Fla. Stat. § 56.15.

²³⁴ Fla. Stat. § 56.021.

²³⁵ Article X, Section 4, Constitution of the State of Florida (Revised 1968), and Fla. Stat. § 222.05.

2. A Natural Person

The party claiming the exemption must show that he is a natural person residing in this State.

3. Residence

Daily residence is not essential to create or maintain a homestead. It is not disrupted by temporary absence with the intent to return. The homestead character is lost only when there is an intent permanently to abandon the place as a home.

4. Furnishings

The homestead does not include the personal property located therein. The limit of the exemption on such personal property is \$1,000.00 in value.

5. Designation Before Levy

A natural person residing in this State may designate his/her homestead before any levy is made, or threatened, by filing a statement in writing and recording it in the office of the Circuit Court.²³⁶

6. Designation After Levy

It is not necessary that the homestead be designated prior to a levy. A natural person claiming the homestead, or his/her agent or attorney, may notify the Sheriff in writing of his/her claim after the levy has been made. The notice should be made under oath before some office authorized to administer an oath and may be made at any time before the day of sale. The notice must designate what part of the property levied upon is claimed as exempt, and any property not claimed exempt is subject to sale under the levy.²³⁷

7. Objection by Creditor

If the creditor in execution is dissatisfied with the amount of land selected and set apart, he may notify the Sheriff and cause a survey to be made. The expense of the survey is chargeable on the execution as costs, unless the person claiming the exemption does not own more than one hundred 160 acres in the State. In this case, the expense of the survey must be paid by the creditor. In any event, the Sheriff is entitled to a deposit for costs to be made by the person demanding the survey. After the survey has been made, the Sheriff may sell the property levied upon which is not included in the property set off as the homestead of the debtor.²³⁸

²³⁶ Fla. Stat. § 222.01.

²³⁷ Fla. Stat. § 222.02.

²³⁸ Fla. Stat. §§ 222.03 and 222.04.

8. Method of Exempting Personal Property Prior to Levy

There are no statutory provisions where a debtor may exempt personal property prior to levy.

9. Method of Exempting Personal Property After Levy

A debtor desiring to exempt personal property after levy must follow the procedure set forth in Section 222.061, Florida Statutes.²³⁹ The Sheriff has no statutory duty to accept, serve, or take any action on a debtor's affidavit relative to personal property. Such debtor should be advised that the personal property under levy will be advertised and sold at a Sheriff's Sale unless he receives an "Order" directing him to do otherwise, or the claim of exemption has been timely filed.

In addition, other individual property exempt from legal process is a debtor's interest, not to exceed \$1,000.00 in value, in a single motor vehicle as defined in Section 320.01, Florida Statutes.²⁴⁰

10. Equity Jurisdiction

Proceedings may be had to prevent the Sheriff from allowing an exemption or from refusing any exemption and selling the property. The jurisdiction of such proceedings is in the Circuit Court.²⁴¹

11. Wages

In addition to the homestead, all of the disposable earnings of the head of a family over \$750.00 may not be attached or garnished unless such person has agreed in writing; all disposable earnings under \$750.00 or other things of value due to the head of a family residing in this State for personal labor or services, are exempt from process.²⁴²

12. Life Insurance

The cash surrender value or the proceeds of life insurance and proceeds of annuity contracts are exempt from process. The person insured is not required to be head of a family residing in this State. The exemption of the cash surrender value insures to citizens or residents of the State, and the exemption of life insurance proceeds applies with reference to any person dying in this State.²⁴³ Disability income benefits under an insurance policy are likewise exempt from process.²⁴⁴

²³⁹ Fla. Stat. § 222.061.

²⁴⁰ Fla. Stat. § 222.25(2).

²⁴¹ Fla. Stat. §§ 222.08 and 222.10.

²⁴² Fla. Stat. § 222.11.

²⁴³ Fla. Stat. §§ 222.13 and 222.14.

²⁴⁴ Fla. Stat. § 222.18.

13. Estates

The property of estates of decedents is exempt from levy under process. Except an order approving execution or other process to be levied against property of the estate may be entered in the estate administration proceeding. This does not apply to certain liens or claims to specific property.²⁴⁵

14. Workers' Benefits

Benefits under the Worker's Compensation Law and Unemployment Compensation Law are exempt from process.²⁴⁶

15. Retiree Health Insurance Subsidy

Subsidy payments shall not be subject to assignment, execution, or attachment or to any legal process whatsoever.²⁴⁷

V. Execution Sales

1. Generally

After levying upon property for the purpose of satisfying a final judgment, the Sheriff is required to sell such property. The execution is always under the control of the plaintiff, and his/her wishes in matters concerning the execution should be respected as long as the Sheriff is not required to violate a duty prescribed by statute.

2. Notice of Sale

The sale should be made strictly in accordance with the requirements of law. The property should be advertised for sale by a notice of sale published once each week, for four successive weeks, in a newspaper published in the county. If the property to be sold is subject to decay and will not sell for its full value, the time may be shortened by Order of the Court upon affidavit to the effect. There is a requirement that on or before the date of the first publication a copy of the notice of sale be furnished to the attorney of record of the judgment debtor or to judgment debtor. You should be familiar with Section 56.21 Florida Statutes, and follow the requirements as to who is to receive a copy of notice of sale and how it is to be furnished.²⁴⁸ When levying upon personal or real property, notice of such levy and execution sale shall be made to the property owner of record in the same manner as notice is made to any attorney of record of the judgment debtor or to the judgment debtor by certified mail prior to the first date of publication by the levying judgment creditor.

²⁴⁵ Fla. Stat. § 733.706.

²⁴⁶ Fla. Stat. §§ 440.22 and 443.051.

²⁴⁷ Fla. Stat. § 175.401(11).

²⁴⁸ Fla. Stat. § 56.21.

3. Place of Sale

All real and personal property levied upon under execution shall be sold where advertised in the notice of the Sheriff's sale.²⁴⁹

4. Time of Sale

All sales of property under legal process shall take place at the time, date, and place advanced in the notice of the Sheriff's sale on any day of the week except Saturday and Sunday and shall continue from day to day until such property is disposed of.²⁵⁰ The time of sale is based upon United States standard time for the zone within which the sale is to be made.

5. To Whom Sold

The property should be sold to the highest and best bidder for cash. If the plaintiff bids, he/she may credit the amount bid upon his/her execution and need not pay cash as long as the Sheriff's costs are paid. This is true only when the plaintiff is the judgment lien holder with priority and his/her credit bid does not exceed the amount on his/her writ of execution. The law does not require that an execution sale be approved by the Court. However, the sale may be set aside if there is a gross inadequacy in price which would shock the conscience or raise the presumption of fraud, unfairness, or mistake.

6. Bill of Sale or Deed

After the sale is made under an execution, the Sheriff shall execute a deed of conveyance for real estate or a bill of sale for personal property.²⁵¹ This must be delivered to the purchaser on receipt of the amount bid together with the costs of the deed or bill of sale. If the plaintiff is the successful bidder, he/she need advance only the costs of the deed or bill of sale and other unpaid costs in the matter, in addition to any taxes which may be due, unless the amount of the bid is in excess of the face of the execution and the costs together with taxes due. The Sheriff's deed or bill of sale is subject to the documentary stamp tax and stamps should be placed on the instrument by the purchaser at the time of recordation in the Office of the Clerk of Circuit Court.²⁵² The Sheriff should recite, in the deed or bill of sale, both the judgment and the execution under which he/she acted inasmuch as this indicates the Sheriff's authority to sell the property. The Sheriff does not warrant any title but conveys only such title as the execution affords.

7. Interest on Judgments

The Chief Financial Officer to set the rate of interest payable on judgments and decrees on December 1, March 1, June 1, and September 1 of each year for the following applicable quarter.²⁵³

²⁴⁹ Fla. Stat. § 56.22.

²⁵⁰ *Id.*

²⁵¹ Fla. Stat. § 56.25.

²⁵² Fla. Stat. § 201.02.

²⁵³ Fla. Stat. § 55.03(1).

For more information, contact the Bureau of Accounting at 850-413-5511 or visit the Florida Department of Financial Services website at: <http://www.myfloridacfo.com/about-dfs>.

Any judgment for money damages or order for a judicial sale and any process or writ directed to a sheriff for execution shall bear, on its face, the rate of interest that is payable on the judgment. The rate of interest stated on judgments dated prior to October 1, 2011 accrues on the judgment as stated until it is paid.

The interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid.

A Sheriff shall not be required to collect on any process, writ, judgment, or decree, and entered after the effective date of this act, unless such process, writ, judgment, or decree indicates the rate of interest. If the process, writ, judgment, or decree refers to the statutory rate of interest, such reference shall be deemed to indicate the rate of interest.²⁵⁴

8. Payment of Taxes

From the proceeds of the sale, the Sheriff must pay the costs and attorney fees if any are allowed. From the remainder he/she must pay all state, county, and municipal taxes which may be assessed, due, and unpaid against the property, including all back taxes. If the proceeds of the sale are insufficient to pay the taxes, the Sheriff must make his/her deed subject to the payment of all outstanding taxes.

W. Remittances

1. Duty of Sheriff

Pursuant to Section 56.27(1)(2), Florida Statutes, all money received under executions shall be paid, in the order prescribed, to the following: the Sheriff, for costs; the levying creditor in the amount of \$500.00 as liquidated expenses; and the priority lien holder under Section 55.202, Section 55.204(3), or Section 55.208(2), Florida Statutes as set forth in an affidavit required by subsection (4), or his or her attorney, in satisfaction of the judgment lien, provided that the judgment lien has not lapsed at the time of the levy. The receipt of the attorney shall be a release of the officer paying the money to him or her. When the name of more than one attorney appears in the court file, the money shall be paid to the attorney who originally commenced the action or who made the original defense unless the file shows that another attorney has been substituted. When property sold under execution brings more than the amount needed to satisfy the provisions of subsection (1) the surplus shall be paid in the order of priority to any judgment lien holders whose judgment liens have not lapsed. Priority shall be based on the effective date of the judgment lien acquired under Section 55.502, Section 55.204(3), or Section 55.208(2), Florida Statutes, as set forth in an affidavit required under subsection (4). If there is a surplus after all valid judgment

²⁵⁴ *Id.*

liens and execution liens have been satisfied, the surplus must be paid to the defendant. The property levied upon in a sale is bound by the sale. If the Sheriff should discover that he failed to levy a prior writ, he cannot deliver the proceeds of the sale of the plaintiff in execution under the prior writ. He must deliver the proceeds to the plaintiff in the writ under which the sale was made.

2. Failure to Remit

If any officer collecting money under execution fails or refuses to pay it over within 30 days after it has been received by him or her, or within 10 days after demand by the plaintiff or his or her attorney of record made in writing and delivered during regular business hours to the civil process bureau, the officer is liable to pay the same and 20 percent damages, to be recovered by motion in court.

X. Distress Writ

A distress writ enjoins the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the Sheriff levies on the property, the writ is violated or the court otherwise orders.²⁵⁵ No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bedclothes, and wearing apparel.²⁵⁶ If the Court renders judgment issues the defendant and execution issued, the property taken into possession shall be advertised twice within a ten-day period prior to sale. All property levied upon shall be sold at the location advertised in the notice of Sheriff's sale. If the defendant, before sale, pays all costs and makes settlement with the plaintiff, the property shall be returned to him/her and there will be no sale.²⁵⁷ Service of this writ is had upon the defendant, and also by the officer taking the property into his/her possession. If the defendant cannot be found the levy upon the property is sufficient service. In such cases, if the Sheriff cannot find property upon which to levy, he/she is required to deliver the writ to the Sheriff of another county, if the property subject to levy is in such other county.²⁵⁸

The statutory lien of a landlord for rent attaches to the property found on or off the premises leased or rented, and in possession of any person as follows:

- o On agricultural products raised on the land leased or rented for the current year;
- o On all other property of the lessee, his/her sublessee, or assigns, usually kept on the premises; and
- o On all other property of the defendant.

²⁵⁵ Fla. Stat. § 83.12.

²⁵⁶ Fla. Stat. § 83.13.

²⁵⁷ Fla. Stat. § 83.19(3).

²⁵⁸ Fla. Stat. § 83.13.

As used in the controlling statute, the words “property usually kept” refers to chattels regularly and habitually, if not continuously, kept on the premises and removed only at occasional intervals.²⁵⁹

The Sheriff is not authorized under the writ to change locks on the property without the defendant’s permission. The alternative here, if the defendant refuses to allow the locks to be changed, is to remove the property and place it in a bonded warehouse.²⁶⁰

The sale of the property levied on pursuant to a distress writ is made under a writ of execution. The procedure to be followed once the writ of execution is issued is covered as set forth in this manual. Provided, however, it is advertised twice within a ten-day period.

NOTE: “Read a Distress writ carefully” it may require only service and not a “Levy” until ordered by the court. (Sections 83.12, 13, and 135, Florida Statutes)

Y. Distress Writ, Residential Property

The Law does not provide for the issuance of a “Distress Writ” in residential tenancies under Sections 83.40 through 83.63, Florida Statutes.²⁶¹

Z. Writ of Possession (Mortgage Foreclosure)

The writ of possession is a form of process issued by a court to transfer the possession of land or personal property, the title or right of possession of which it has previously adjudicated, as a means of enforcing the decree.²⁶²

The writ of assistance has been repealed. Therefore, since the writ of assistance and writ of possession serve the same purpose, the writ of possession is now the writ being utilized.

AA. Writ of Possession

A writ of possession is an order requiring the Sheriff to remove the defendant from premises described in said writ and to place the plaintiff or his/her agent in full possession thereof. In proceedings for the removal of a tenant, if the issues are for the plaintiff and judgment is entered that the plaintiff recover possession of the premises, the Clerk of the Court receiving such judgment shall issue a writ describing the premises and commanding the Sheriff to put the plaintiff in possession.²⁶³

This writ is used in landlord and tenant proceedings and usually follows a notice to vacate. When the defendant has refused to vacate after being served a notice to vacate, an eviction summons and the Court has found that the plaintiff is entitled to possession (property or premises) a final

²⁵⁹ Fla. Stat. § 83.08.

²⁶⁰ Op. Att’y Gen. Fla. 59-16 (1959).

²⁶¹ Fla. Stat. § 83.001.

²⁶² Fla. R. Civ. P. Form 1.915.

²⁶³ Fla. Stat. §§ 83.241, 83.62, and 713.691(1).

judgement is issued. The writ of possession is subsequently issue by the Clerk of the Court and the plaintiff or his agent is put in possession of the property after the writ has been posted for over 24 hours. Where personal property is involved and, there being no storage period, possession immediately goes to the plaintiff, pending further action.

BB. Writ of Replevin

1. Defined

A writ of replevin is a court order which summons the defendant to appear and it commands the Sheriff to transfer the custody of specifically described property to the plaintiff in the case. Replevin is a statutory writ having as its foundation the common law, and is frequently referred to as a common law action.

2. Types

The law provides for several types of writs of replevin. They are:

- a. Order issued by judge authorizing writ to be issued.²⁶⁴
- b. Pre-judgment writ of replevin and the property seized delivered forthwith to the petitioners.²⁶⁵
- c. Writ of replevin after judgment.²⁶⁶

It is absolutely essential to read carefully the body of the writ to determine if you are to hold the seized property, deliver property forthwith to petitioners or take property from one party and deliver it to another party.

3. Issuance

A writ of replevin is issued by the Clerk of the Court:

- a. After final judgment in a suit for replevin or;
- b. Upon the filing of a court order authorizing the Clerk to issue the writ.

4. Procedure

Chapter 78, Florida Statutes controls the procedure to be taken by all parties involved. The action shall be brought in the county as provided for in Section 78.032, Florida Statutes. Service is made

²⁶⁴ Fla. Stat. § 78.045.

²⁶⁵ Fla. Stat. § 78.068.

²⁶⁶ Fla. Stat. §§ 78.19, 78.21.

upon the defendant, by delivering to him/her a true copy of the writ, together with a copy of the complaint or initial pleading, as furnished by the plaintiff and by taking possession of the property or any part is concealed in a building or enclosure, the officer shall publicly demand delivery thereof, and if same is not delivered by the defendant, or some other person to the officer, he/she shall cause such building or enclosure to be broken open and make replevy according to the writ, and, if necessary, he/she shall take to his/her assistance the power of the county.²⁶⁷ Such breaking of the building or enclosure should take place only where the officer has personal knowledge that the particular article to be replevied is, in fact, concealed in the building or enclosure.

Where the defendant cannot be found, the property can be taken by the officer, if the property can be found. When property to be replevied was in the possession of the defendant at the time of the issuance of the writ, but is now in the possession of a third person, the officer shall serve a copy upon the defendant, and also serve a copy upon the third person, and take the property in the same manner.²⁶⁸

The officer executing the writ by levying on the property described shall deliver the property forthwith to plaintiff unless the writ directs otherwise. The defendant may obtain release of the property seized within five (5) days after the seizure by posting with the desk of the Court who issued the writ the amount of one and one-fourths (1 1/4) times, the amount due and owing conditioned to have the property forth-coming to abide the result of the action; or on the agreement for the satisfaction of the judgment which may be rendered against him/her.²⁶⁹ Where property was within the jurisdiction of the Court at the time of the issuance of the writ, but has been removed from that jurisdiction before having been levied upon, the party having had the writ issued shall deliver it to the Sheriff of the county where the property is located and to whom the writ is directed, and the Sheriff shall execute the writ and shall, unless the writ directs otherwise deliver the property to the plaintiff.²⁷⁰

5. Certain Property May not be Taken.

What may not be taken by replevin:²⁷¹

- a. Property taken for taxes.
- b. Property taken under execution of writ of attachment (by defendant).
- c. Property already replevied (by defendant).
- d. Property to which the plaintiff has no right of possession.

²⁶⁷ Fla. Stat. § 78.10.

²⁶⁸ Fla. Stat. § 78.11.

²⁶⁹ Fla. Stat. § 78.13.

²⁷⁰ Fla. Stat. § 78.12.

²⁷¹ Fla. Stat. § 78.02.

CC. Writ of Attachment

A writ of attachment is an order from the Court to the Sheriff commanding the Sheriff to take into possession and hold for further disposition of the Court, property of a debtor for a creditor. If the property to be attached is of a perishable nature or if the costs of keeping the property taken is out of proportion to its value, an order may be obtained from the Court to dispose of the property. Defendant may re-take the property by giving a bond with surety to the officer payable to the plaintiff in an amount which shall exceed by one-fourth (1/4) the value of the property, as determined by the Court, or which shall exceed by one-fourth (1/4) the amount of the claim, whichever is less. One bond to be conditioned for the forthcoming of the property restored to abide by the final order of the Court.²⁷² A writ of attachment is the authority of the Sheriff to take property of the defendant into his/her possession. Under such a writ, the Sheriff may not dispossess the tenant of any lands or tenements belonging to the defendant. In levying the writ, the Sheriff is required to take personal property into his/her control or custody by an action which, without the writ, would amount to trespass. Under a writ of attachment, the Sheriff may levy upon personal property or lands. The Sheriff must take into his/her custody property named in the writ or specifically described in an "instructions for Levy", pursuant to Section 30.30, Florida Statutes.

DD. Writ of Garnishment

1. In General

Although the writ of garnishment does not command the Sheriff to take positive action it is included with the enforceable writs because of two (2) important reasons; first, it is served on a third party, called a garnishee (individual company or corporation) that is foreign to the original suit and it is difficult for them (garnishee) to understand why they are involved, and second, it requires the garnishee to do something other than be served with the writ. The garnishee is required to answer the writ and comply with the requirements as stated in the writ.

The writ of garnishment is issued in a proceeding to obtain money or property due to the defendant from a third party, in order to satisfy the claim of the party bringing the action.

2. Service of Writ

Service of the writ of garnishment should be made in the same manner as a service of summons. As a practical matter, the deputy serving the writ should not effect said service on the defendant as an officer of the company or corporation being served as garnishee.

Provision is made for the issuance of a writ of garnishment both before²⁷³ and after²⁷⁴ the recovery of a judgment against the defendant. If, however, the action is one sounding in tort, the writ may

²⁷² Fla. Stat. § 76.18.

²⁷³ Fla. Stat. § 77.031.

²⁷⁴ Fla. Stat. § 77.03.

not issue until judgment against the principal defendant has been obtained²⁷⁵ and has become final. If a motion for a new trial is presented in such action after judgment, garnishment is unavailable until the motion is disposed of. In any event, the garnishment writ, when served, operates to make the garnishee answerable for all indebtedness owed by him/her to the defendant, and for any tangible or intangible personal property²⁷⁶ of the defendant in his/her possession or control, either at the time of the service of the writ or at any time between such service and the time of his/her answer.²⁷⁷

3. Effect of Writ

Service of the writ shall make the garnishee liable for all debts due by him/her to the defendant, and for any tangible or intangible personal property of defendant in his/her possession or control at the time of the service of the writ or at any time between the service and the time of his/her answer. The service of the writ is a levy and provides constructive custody in the court for such property.²⁷⁸

4. Answer of Garnishee

The garnishee shall file an answer to the Court issuing the writ within the time limitation stated in the writ. The garnishee may surrender any goods, chattels, or effects of defendant in his/her hands or possession to the Sheriff and may pay any money or debt into registry of court.²⁷⁹ If the plaintiff does not file a reply to the garnishee's answer, within the time limitations, the answer of garnishee shall be taken as true and after disposing of the assets, if any were disclosed in the garnishee's answer, the garnishee is entitled to order discharging him/her from further liability under the writ.²⁸⁰

5. Refusal of Garnishee to Surrender Property

If the garnishee will not surrender the personal property belonging to defendant, provided he/she has the power to do so, and which he/she has admitted is in his/her possession, the court may order execution issued against garnishee for the unpaid amount of the plaintiff's judgment against defendant.²⁸¹

²⁷⁵ Fla. Stat. § 77.02.

²⁷⁶ Fla. Stat. § 77.06.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ Fla. Stat. § 77.082.

²⁸⁰ Fla. Stat. §§ 77.061 and 77.082.

²⁸¹ Fla. Stat. § 77.13.

6. Failure of Garnishee to Answer

If the garnishee fails to answer as required, a default shall be entered against him/her.²⁸² A final judgment shall be entered against the garnishee for the amount of plaintiff's claim with interest and costs. However, the final judgment shall not be entered before the entry of, or in excess of, the final judgment against the original defendant with interest and costs.²⁸³

²⁸² Fla. Stat. § 77.081(1).

²⁸³ Fla. Stat. § 77.081(2).

IV. Criminal Process

A. In General

The Sheriffs of the State are expressly declared by statute to be conservators of the peace in their counties.²⁸⁴ As such, they are authorized to make arrests. This declaration, of course, is merely a re-statement of the rule at common law. In their role as conservators of the peace, Sheriffs are required to suppress all tumults, riots, and unlawful assemblies in their counties, with force whenever this is necessary.²⁸⁵ Moreover, they must serve and execute all criminal processes of the courts,²⁸⁶ and they may also apprehend, without a warrant, any person disturbing the peace, and carry him/her before the proper judicial officer, so that further proceedings may be had against him/her according to law.²⁸⁷

As a rule of general law, a Sheriff may summon any person to his/her assistance whenever he/she deems this necessary to make an arrest. The Sheriffs are expressly empowered by the statute with authority to raise the power of the county and to command any person to assist them, whenever necessary, in the execution of the duties of their office.²⁸⁸

Every judgment of guilty or not guilty of a felony shall be in writing, signed by the Judge, and recorded by the Clerk of the Court. The Judge shall cause to be affixed to every written judgment of guilty of a felony, in open court the fingerprints of the defendant.²⁸⁹ The Sheriff is also allowed to fingerprint juveniles.²⁹⁰

B. Duties As To Prisoners

The Sheriff is required when a prisoner sentenced to confinement has been committed to his/her custody by the Court together with a certified copy of the sentence, thereupon, within a reasonable time, to transfer the defendant, together with a copy of the sentence, to the custody of the official who is to execute the sentence.²⁹¹

No duty revolves upon the Sheriff in this connection until the prisoner is finally delivered to him/her for transfer to the state prison. It then becomes his/her duty to affect the transfer without unreasonable delay.

²⁸⁴ Fla. Stat. § 30.15(1)(e).

²⁸⁵ Fla. Stat. § 30.15(1)(f).

²⁸⁶ Fla. Stat. § 30.15(1)(a),(b).

²⁸⁷ Fla. Stat. § 30.15(1)(g).

²⁸⁸ Fla. Stat. § 30.15(h).

²⁸⁹ Fla. Stat. § 921.241.

²⁹⁰ Fla. Stat. § 985.11.

²⁹¹ Fla. R. Crim. P.3.810.

At the expiration of his/her term of office, each Sheriff is required to deliver to his/her successor in office the bodies of all persons held by him in confinement under legal process, together with the precepts, warrants, or causes of confinement.²⁹²

C. Extradition

If an information is filed, an indictment found, or a Probable Cause complaint made to a judge against a defendant who is a fugitive from justice and the State of Florida desires his/her return to face such charges, the bailiff or State Attorney shall present to the Governor his/her written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him/her, the approximate time, place, and circumstances of its commission, the State in which he/she is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.²⁹³

If the person sought to be returned has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole and probation commission, or the warden of the institution or Sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated, the name of the person, the crime of which he/she was convicted, the circumstances of his/her escape from confinement or of the breach of the terms of his/her bail, probation or parole, and the state in which he/she is believed to be, including the location of the person therein at the time application is made.²⁹⁴

The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole and probation commission, warden or Sheriff may also attach such further affidavits and other documents in duplicate as he/she shall deem proper to be submitted with such application. One (1) copy of the application, with the action of the Governor indicated thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the Office of the Department of State, to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.²⁹⁵

²⁹² Fla. Stat. § 30.14(1)(b).

²⁹³ Fla. Stat. § 941.23(1).

²⁹⁴ Fla. Stat. § 941.23(2).

²⁹⁵ Fla. Stat. § 941.23(3).

1. Extradition from Florida

A Sheriff in this State has no authority to act under a warrant issued by a magistrate of another state. If the Sheriff received such a warrant, he/she may arrest the person charged to be held for extradition, but the arrest must be in compliance with the law. If the crime charged is one punishable by death or imprisonment for more than one year, the Sheriff may make the arrest without a warrant. Before making the arrest the Sheriff must have reasonable information that the person committed the crime.²⁹⁶ The warrant received from another state may be considered such reasonable information, but the Sheriff must be certain that the party he/she is arresting is the one who stands charged with the crime. The safest procedure is for the Sheriff to obtain a fugitive warrant from a magistrate in this State before making the arrest. Upon oath made before a magistrate that a person, while present in the demanding state, committed a crime and fled therefrom or was convicted in such state and escaped or violated his/her parole, a magistrate may issue a warrant for the accused. The act charged as a crime may have been committed in the demanding state, or elsewhere. If it constitutes a crime against the laws of the demanding state, extradition is proper.²⁹⁷ This warrant may be executed anywhere in the state by the officer to whom it is directed. The fugitive warrant must have attached to it a certified copy of the sworn charge or complaint and affidavit upon which it was issued.²⁹⁸

2. Procedure After Arrest

A fugitive warrant directs the officer to whom it is issued to bring the accused before the magistrate issuing the warrant or before any magistrate or court which may be available in or convenient of access to the place where the arrest is made.²⁹⁹ If the arrest is made without a warrant the accused must immediately be taken before a judge and complaint must be made against him as in the case of issuance of fugitive warrant before arrest.³⁰⁰

3. Commitment to Await Extradition

If it appears to the magistrate that the person arrested is the one charged in the other state, he/she may, by warrant reciting the accusation, commit such person to the county jail, for a period not exceeding 30 days, which period shall be specified in the warrant of commitment, in order that a warrant of extradition by the Governor may issue.³⁰¹ Bail may be taken and the accused released conditioned upon his/her appearance before the magistrate to surrender himself or herself to arrest under the warrant of the Governor.³⁰² If the Governor's warrant does not issue in the time prescribed, the prisoner may be re-committed for a period not to exceed 60 days, or

²⁹⁶ Fla. Stat. § 941.14.

²⁹⁷ Fla. Stat. § 941.03.

²⁹⁸ Fla. Stat. § 941.13.

²⁹⁹ *Id.*

³⁰⁰ Fla. Stat. § 941.14.

³⁰¹ Fla. Stat. § 941.15.

³⁰² Fla. Stat. § 941.16.

the condition of his/her bail may be extended for a period not to exceed 60 days.³⁰³ Bail shall be denied in any case where the crime charged is punishable by death or imprisonment for life in the demanding state.³⁰⁴

4. Procedure Under Governor's Warrant

When a warrant of extradition issues out of the Governor's office against a person who is in custody, out on bail, or has not yet been apprehended, it may be executed by the officer to whom directed anywhere in the state. No person shall be surrendered to an agent of the demanding state under such warrant until he/she shall first be taken before a judge of a court of record. Such judge is required to inform the accused of the demand made for his/her surrender and of the crime with which he/she is charged. The accused shall further be informed of his/her right to counsel and to a writ of habeas corpus to test the validity of the arrest. If it is indicated that a writ of habeas corpus will be applied for, the judge shall fix a reasonable time for the making of such application. Notice of the application shall be given to the State Attorney and County Solicitor, if there be one, of the county where the arrest was made, and of the county where the accused is in custody, and to the agent of the demanding state.³⁰⁵ If the Sheriff delivers the accused to the agent of the demanding state before following the prescribed procedure, he is subject to punishment for the commission of a second degree misdemeanor.³⁰⁶

5. Waiver of Extradition

Any person arrested as a fugitive may waive extradition procedure. The waiver must be made before a judge of a court of record and must be in writing. The Judge shall advise the person of his right to extradition procedure and of his/her right to habeas corpus to test the validity of the arrest. The waiver must be executed in triplicate. A copy must be sent to the Governor's Office, a copy to the agent of the demanding state, and the Sheriff should retain a copy in his records.³⁰⁷

D. Arrest on Warrant From Another County; Procedure

When the Sheriff makes an arrest under a warrant issued in another county, the Sheriff shall, if requested by the person arrested, take him/her before a magistrate of the county in which the arrest is made for the purpose of making bail, unless the amount of the bail is endorsed on the warrant.³⁰⁸ If the person arrested is not bail able or if bail is not given, the Sheriff is required to take the person before the magistrate who issued the warrant.³⁰⁹ It is generally the practice of Sheriffs to hold such persons for delivery to the proper officer of the county in which the warrant was issued. This is permissible so long as the rights of the individual are not unnecessarily

³⁰³ Fla. Stat. § 941.17.

³⁰⁴ Fla. Stat. § 941.16.

³⁰⁵ Fla. Stat. § 941.10.

³⁰⁶ Fla. Stat. § 941.11.

³⁰⁷ Fla. Stat. § 941.26.

³⁰⁸ Fla. Stat. § 901.07(1).

³⁰⁹ Fla. Stat. § 901.07(2).

abridged.³¹⁰ When an arrest is made pursuant to a warrant of extradition, the person arrested should immediately be taken before a judge of a court of record so that his/her rights to habeas corpus and bail may be explained to him.

E. Arrest in Another County; Procedure

If a person is arrested in another county based on an out-of-county warrant, the arresting officer shall inform him/her of his/her right to bail and, on request, shall take him/her before a magistrate or other official having authority to admit to bail in the county in which the arrest is made. The official shall admit him/her to bail for his/her appearance before the magistrate designated in the warrant. If the person arrested does not have a right to bail or, when informed of his right to bail, does not furnish bail immediately, he/she shall be taken before the magistrate designated in the warrant.³¹¹

It is generally the practice of Sheriffs to hold such persons for delivering to the proper officer of the county in which the warrant was issued.

F. Other Duties

The Sheriff is responsible for carrying out the orders issued by the courts dealing with insane and other incompetent persons,³¹² and juveniles,³¹³ together with their protection, custody and transportation to their places of commitment.

G. Failure to Serve Criminal Process

Except as may be otherwise provided by law, any Sheriff or other officer who willfully refuses and omits to perform a duty required of him/her under the Criminal Procedure Law, or who willfully violates a provision of that law, is guilty of a second degree misdemeanor and is punishable in the manner prescribed.³¹⁴ And if any authorized officer willfully and corruptly refuses to execute a lawful process directed to him/her and requiring him/her to apprehend and confine a person convicted of or charged with an offense, or if any such officer willfully and corruptly omits or delays in executing such process, with the attendant result that the person it is intended to apprehend escapes and goes at large, that officer is to be punished as prescribed by law.³¹⁵ Moreover, a Sheriff who fails to execute a criminal process legally issued to him/her and directed within his/her county, and who fails to make a due return of such process where it has been delivered to him/her in time for execution, forfeits the sum provided by law for each such neglect, unless he/she can show sufficient cause for the neglect to the Court.³¹⁶

³¹⁰ Fla. Stat. §§ 941.10 and 941.16.

³¹¹ Fla. Stat. § 901.08.

³¹² Fla. Stat. § 394.463.

³¹³ Chapter 39, Fla. Stat.

³¹⁴ Fla. Stat. § 839.24.

³¹⁵ Fla. Stat. § 839.20.

³¹⁶ Fla. Stat. § 839.19.

It is a criminal offense for any officer to permit a prisoner to escape, whether voluntarily or through negligence.³¹⁷

H. Electronic Warrants

Law enforcement may request, and judges may sign search or arrest warrants electronically. The level of scrutiny and review of an electronic warrant does not change nor would the manner of service of that warrant.³¹⁸

³¹⁷ Fla. Stat. §§ 843.09 and 843.10.

³¹⁸ Fla. Stat. §§ 901.02(4) and 933.07(4).

Sunshine Law/ Public Records Review

Frequently Asked Questions

1. Are command staff meetings open to the public and the media under the Sunshine Law?
No.
2. Is a complainant entitled to attend predisciplinary board to provide input to the board for recommendation to the Sheriff of final discipline?
Not unless Sheriff has delegated decision-making authority to the board.
3. Is the hearing of a career service appeals board open to the public?
Yes.
4. Are a Sheriff's text messages public records if sent from the Sheriff's agency cell phone?
Yes, if they are related to the official business of the agency and they are not transitory in nature (i.e. meet me for lunch).
5. Are minutes of staff meeting public records?
Yes but confidential and exempt information may be redacted.
6. Is an internal investigation a public record once it is completed and a copy is given to deputy to prepare for predisciplinary conference?
No. Nothing should be disclosed until the predisciplinary conference has been conducted.
7. Is the audio recording of an inmate phone call a public record?
No.
8. Can documents relating to active criminal investigation be withheld from disclosure?
The time, date, nature, and location of the reported crime is not exempt, nor is the name, sex, age, and address of the suspect or victim (unless otherwise exempt). Everything else may be redacted from the records.
9. Can a Sheriff's Office can require a deposit before records are redacted and copied?
Yes.
10. Can a Sheriff's Office demand identification, including a driver's license, from member of the public who requests copies of personnel files?
No.

11. Are salary records exempt from disclosure?
No. Any confidential or exempt information, such as social security numbers, may be redacted from agency records.
12. Should medical information referenced in deputy's arrest report, such as prescription medications that were stolen during a burglary and the underlying medical condition of the victim, be redacted?
No.
13. Should the names of juveniles be redacted from agency reports?
Not unless they meet an exemption such as victims of child or sex abuse or non-felony criminal activity.
14. A public records request asked for all arrests of minorities involving excessive use of force. Is there a duty to create a summary if it does not exist?
No.
15. Does the Sheriff have the discretion to publish the booking photo of juvenile charged with felony?
Yes.
16. If a sheriff's office provides to the state attorney's office all reports relating to a specific crime that is to be prosecuted, who is the custodian of the records for the purposes of the Public Records Law?
The Sheriff's Office.
17. Are text messages required to be retained?
Yes if they are public records.
18. Is an officer's booking photo subject to disclosure if officer made a written request not to disclose?
Sheriff's Office should balance competing interests of safety of officer and family against public's right of inspection.
19. May a surveillance video identifying undercover officers be redacted to protect the identity of the officers if the video has been turned over to the defense in discovery?
Yes.
20. Is a deputy is entitled to review the promotional exam that he took to be promoted for sergeant?
Yes, but he cannot take a copy of the exam.

FLORIDA SHERIFFS MANUAL



Part C CORRECTIONS



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I. Chief Correctional Officer

The Chief Correctional Officer (“CCO”) is responsible for providing leadership, guidance, direction and overall management of the county jail and corrections personnel. The CCO ensures discipline, safety, and security to the jail while conforming to state and federal regulations. The CCO develops long and short term planning for programming and facilities, coordinates staff activities, and develops and monitors the annual budget. The Board of County Commissioners has the authority to appoint an individual or the Sheriff as the CCO.

The CCO is responsible for the overall management of the correctional facilities and programs by ensuring compliance with all laws, policies, procedures, rules and regulations. The CCO directs and oversees the activities of management throughout the corrections department, including responding to use of force reports, disciplinary reports, and all budgetary requests and expenditures.

The CCO plans correctional programming and facilities to support future needs, including capital improvements and staffing. The CCO establishes guidelines for the most effective, efficient management of inmates, ensures appropriate training and staff developments are provided to management staff, advocates for support and cooperation for corrections within the local criminal justice system and political community, and directs the strategic planning process.

II. Introduction to the Florida Model Jail Standards

The Florida Model Jail Standards (“FMJS”) are minimum standards which Florida jails must meet to ensure officer and inmate safety and the constitutional rights of those incarcerated. Prior to 1996, the Florida Department of Corrections was responsible for the standards and inspection process for local county jails. Each facility was required to be inspected annually.

Legislation passed in 1996 gave oversight of Florida Model Jail Standards Program to a committee of appointees at the local level to ensure inspections are completed annually. This change required the Florida Sheriffs Association and Florida Association of Counties to appoint individuals to serve on a committee that would govern standards with which local jails must comply. The seven (7) member working group consists of three (3) currently elected sheriffs, a physician licensed in Florida, one (1) currently elected county commissioner, and a psychiatrist licensed in Florida.

While the FMJS Committee is a separate entity, the Florida Sheriffs Association provides staff support and technical assistance to the Florida Model Jail Standards Committee. Members serve two (2) year terms and elect a chair. The goal of the FMJS Committee shall develop and review minimum standards for jails including, but not limited to operations, construction, medical care, maintenance, food services, housing and space requirements, sanitation, cleanliness, disciplinary actions, and furnishings, and shall, at a minimum, conduct biannual reviews of all existing standards.

A. Structure

There are four (4) subcommittees each having distinct missions and objectives in order to ensure jail administrators and detention deputies are properly trained and that the jail inspection process works appropriately. Each subcommittee has a distinct mission and objectives.

1. *Standards Review Subcommittee:* The mission of the Standards Subcommittee is to maintain a professional manual of jail standards consistent with the most current practices in the corrections industry for adult and youth detention facilities.
2. *Medical Subcommittee:* The mission of the Medical Subcommittee is to foster the effectiveness of the medical care given to incarcerated individuals in county detention facilities. This mission is accomplished through oversight and development of the medical and pharmaceutical standards which meet current acceptable standards of medical care.
3. *Compliance Review Subcommittee:* The mission of the Compliance Review Subcommittee is to objectively conduct reviews of facility inspection results and to identify any corrective action needed after an inspection. This subcommittee reviews facility grievances and presents its findings to the full FMJS Committee. The subcommittee also hears facility inspection appeals.
4. *Training Subcommittee:* The mission of the Training Subcommittee is to establish a training curriculum for the Jail Inspectors and Jail Medical Inspectors certification

program. The Training Subcommittee members consist of the instructors, trainers and evaluators for the Jail and Jail Medical Inspection courses.

Policy and procedure directives for the employees and inmates concerning the operation of each detention facility will be developed and maintained by each facility. The CCO shall ensure that at least one formal review of his/her agency's policies and procedures is conducted on an annual basis. Additionally, employees should certify that they have read and understand all such applicable policy and procedures on an annual basis.

B. Required Jail Inspections

The CCO shall contract or arrange for a FMJS Certified Inspector(s) for the purpose of inspecting all county and municipal detention facilities. The FMJS Inspector(s) shall inspect for compliance with all applicable Florida Model Jail Standards. At a minimum, two FMJS Facility Inspections shall be conducted annually. The first FMJS Facility Inspection process shall consist of two separate components: Correctional Operations and Medical Compliance. The second FMJS Facility Inspection process will be unannounced and for serious violation only and must be conducted at least 120 days after the first inspection is complete.

Facilities shall not be self-inspected, nor shall their medical units be self-inspected.

The FMJS Inspector(s) shall report directly to the CCO or the CCO's designee. The FMJS Inspector(s) may confer privately with any employee or inmate. They shall also have access to all facility records and areas. Within 14 days of completing an inspection of a facility, the FMJS Inspector shall forward a complete official report to the CCO, Officer in Charge or designee, Sheriff (if they operate the jail), FMJS Standards Chairman, and the Florida Sheriffs Association.

The CCO or designee shall have 30 days after receipt of the report in which to respond. A copy of the inspection report and the CCO response will then be forwarded to the County Commission and the FMJS Chairperson within 14 days of completion. Inspection reports, responses, and all other reports or documents prepared by the FMJS Inspector(s) or the CCO are public records, subject to review under Chapter 119, Florida Statutes.

1. Serious Violations

Serious violations are any violations to these standards or other conditions, or practices that appear to pose a substantial and immediate danger to the life, health or safety of one or more inmates or employees. When a facility inspector observes a serious violation, he/she shall immediately notify the CCO or designee of the violation and the duty to correct the violation. The inspector(s) shall also, within 24 hours of the time he/she first observes any such serious violation, prepare and provide the CCO with a special written report describing the violation, the notification given and any corrective action required.

The CCO or designee shall ensure that corrective action regarding any such serious violation is taken within 24 hours and shall submit a written report in response to the serious violation. The

report shall be sent to the Jail Inspector within 24 hours of when the notice was given to the COO. These reports and responses shall be public records and subject to disclosure under Chapter 119, Florida Statutes.

The inspector(s) shall re-inspect within 48 hours of the time he/she first observed any serious violation to determine whether it has been corrected and shall prepare a written report to the COO of the re-inspection. This report will also be sent to the COO, the Chair of the FMJS Committee, and the Compliance Review Subcommittee.

2. Notable Violations

Notable violations shall include any discrepancy to these standards, which is not included under “Serious Violations.” When an inspector’s report indicates one or more violations, the CCO or designee shall formulate a “corrective action” plan. The corrective action plan shall specify, with respect to each violation, the corrective action to be taken, the timetable for such corrective action, and the resources to be used. The corrective action plan shall provide for correction of all violations as soon as practicable and shall require that substantial progress toward corrections of discrepancies be demonstrated within a reasonable time.

3. Fire Safety Inspections

The managing body of the county or municipal detention facility shall contract for the fire safety inspections of such facilities. The inspections must be performed by personnel certified by the State Fire Marshal’s office as fire safety inspectors and must be performed at least once annually.

III. Accreditation

While jails must adhere to the FMJS, jails may also seek accreditation by a state or national level accrediting agency. Accreditation is the certification by an independent reviewing authority that an entity has met specific requirements and prescribed standards. The accreditation process is rigorous; however, it offers Sheriffs’ Offices “best practices,” allows them to maintain the highest standards of professionalism and reduce liabilities within jails.

There are currently three types of accreditation available to county detention facilities in Florida:

1. The Florida Corrections Accreditation Commission (FCAC) has developed a set of standards which address correctional operations, programs and services. Admission, classification, housing, sanitation, food service, personal issues, fiscal activities, security, training and medical are all included in the evaluation with the goal for improvement in overall quality of the institution. <http://www.flaccreditation.org/>
2. The American Correctional Association (ACA) maintains the goal of training staff in policies and procedures, providing a safer environment for those in the institution, and reducing liabilities. <https://www.aca.org/standards/>

3. The National Commission on Correction Health Care (NCCHC) has developed a set of standards to address the quality of medical, health and mental care within jails, prisons and juvenile detention centers. <http://www.ncchc.org/>

Facilities which comply with these accreditation standards reduce liabilities, improve the delivery of health services and, through helping inmates, improve the communities to which they return.