

CHAPTER FIFTY-SEVEN

LEGAL PROCESS

Purpose..... 57:1

Discussion..... 57:1

Policy and Procedure..... 57:1

Access to Criminal Warrants 57:1

Legal Process Information Records.....57:1

Attempts at Service..... 57:1

Legal Process Shall Be Recorded 57:1

Legal Process Service Outside Monroe County.....57:2

Civil Process 57:2

 General..... 57:2

 Purpose..... 57:2

 Direction of Process.....57:2

 Responsible..... 57:2

 Service on Sunday..... 57:3

 Sheriff, a Party 57:3

 Powers of Sheriff..... 57:3

 Enforceable and Non-enforceable Writs.....57:3

 Process by Out-of-State Courts.....57:3

 Failure to Serve Process..... 57:4

 Process of Supreme Court..... 57:4

 Process of District Court of Appeal.....57:4

 Serving of Process..... 57:4

 Original Process..... 57:4

 Process by Office Members..... 57:4

 Where Served.....57:4

 When Served..... 57:5

 Minors..... 57:5

 Against Incompetents..... 57:5

 Public Agencies and Officers.....57:5

 State Prisoner.....57:5

 the State..... 57:5

 Partnerships..... 57:6

 Corporations..... 57:6

 Insurance Companies 57:6

 Non-Service of Process 57:6

 Return 57:6

 By Whom Made 57:7

 Contents..... 57:7

 Failure to Execute 57:7

 False Return 57:7

 Types of Process 57:7

 Non-Enforceable Writs 57:7

 Summons..... 57:7

 Notice of Hearing 57:8

Restraining Order	57:8
Injunction.....	57:8
Witness Subpoena.....	57:8
Subpoena Duces Tecum	57:9
Writ of Garnishment	57:9
Writ of Habeas Corpus.....	57:9
Eminent Domain Proceedings	57:10
Rule to Show Cause	57:10
Notice to Vacate.....	57:10
Landlord-Tenant Summons / "Five-day Notice"	57:10
Incompetency.....	57:10
Rule Nisi.....	57:11
Writ of Mandamus	57:11
Miscellaneous	57:11
Going-Out-of-Business Sales	57:11
Order to Show Cause in Replevin Action	57:11
Enforceable Writs.....	57:11
Writ of Ne Exeat	57:12
Distress Writ.....	57:12
Writ of Assistance	57:12
Writ of Possession	57:12
Writ of Replevin.....	57:13
Writ of Attachment.....	57:14
Enforceable Writs Continued - Levies and Sales	57:14
Writ of Execution	57:14
Defined.....	57:14
Execution Docket.....	57:15
Priority Between Executions	57:15
Endorsement and Return.....	57:15
Capias Ad Satisfaciendum	57:15
Custody of Property	57:15
Return Unsatisfied	57:15
Control of Writ	57:16
Property Subject to Execution.....	57:16
Property to Be Levied upon.....	57:16
Property Subject to Levy	57:16
Miscellaneous Writs	57:17
Release of Property after Levy.....	57:17
Bonds in Attachment	57:18
Third Party Claims.....	57:18
Retaking by Replevin	57:19
Distress	57:19
Stay of Illegal Writ	57:20
Lost or Destroyed Writ	57:20
Homestead and Other Exemptions.....	57:20
Persons Exempt from Service of Process	57:23
Execution Sales	57:23
Notice of Sale	57:23
Place of Sale.....	57:24
Sales Shall Take Place	57:24
To Whom Sold	57:24
Bill of Sale or Deed	57:24
Interest on Judgments	57:24
Payment of Taxes	57:25
Remittances	57:25
Distress Writ.....	57:26

Writ of Garnishment	57:27
Execution Orders Served by Certified Deputy Sheriffs	57:28
Receipt, Disbursement and Audit of Funds	57:28
Statutory Fees.....	57:28
Accounting Procedures	57:28
Yearly Civil Account Audit	57:28
Disposition of Property Acquired	57:28
Arrest Warrants.....	57:29
Criminal Process.....	57:30
Persons Wanted in Another State	57:30
Arrest on Warrant from Another County	57:32
Warrants and Summons	57:32
Direction and Execution of Warrant	57:32
How Summons Are Served	57:32
Effect of Not Answering Summons	57:32
When Arrest Without Warrant Is Lawful	57:32
Stop and Frisk Law	57:33
Method of Arrest by a Warrant	57:34
Method of Arrest Without Warrant	57:34
Officer May Summon Assistance.....	57:34
Right of Officer to Break into Building.....	57:34
Use of Force to Effect Release of Person	57:34
Search of Person Arrested	57:34
Strip Searches of Persons Arrested	57:35
Arrest After Escape or Rescue	57:36
Right of Person Arrested to Consult Attorney.....	57:36
Interpreter Services for Deaf Persons	57:36
Fresh Pursuit; Arrest Outside Jurisdiction.....	57:36
International Treaties Act.....	57:37
Notice to Appear for Misdemeanors / Municipal or County Ordinances	57:37
Authorization to Take Medical Facility	57:37
Failure to Obey Written Promise to Appear	57:37
Warrants Procedure	57:37
Monroe County Warrant With a Sheriff's Office Case Number.....	57:37
Monroe County Warrant Without a Sheriff's Office Case Number	57:38
FCIC Warrant - Out of County - In-State.....	57:39
NCIC Warrant - Out-of-State.....	57:40
Mechanics of Warrant Service	57:41
Warrant Obtained Directly from Court	57:41
Priorities for Serving Outstanding Warrants	57:41
Special Considerations - Arrests	57:43
Offenses Involving Foreign Diplomats / Consular Officials.....	57:43
Diplomatic Immunity.....	57:43
Diplomatic Officers	57:43
Consular Officers	57:43
Immunities	57:43
Identification	57:43
Honorary Consuls	57:43

Family Members of Consular Officers.....	57:44
Consular Premises Used for Work of Consular Post Cannot Be Entered	57:44
Consular Archives, Documents, Records and Correspondence Are Inviolable.....	57:44
Reporting Incidents to Office of the Governor.....	57:44
Arrest or Detention of Foreign Nationals	57:44
Physical Arrest of Military Personnel	57:44
United States Senators and Representatives	57:44
Domestic Violence Intervention	57:44
Definitions	57:44
Authority to Arrests Without Warrants.....	57:44
Cross Complaints	57:45
Victim Assistance 57:45	
Domestic Violence Reports.....	57:45
Arrest Procedures 57:46	
Domestic Violence - Entry into the Scene 57:46	
Domestic Cases Involving Law Enforcement/Corrections Officers 57:46	
Report Requirements 57:46	
Supervisor Notification 57:46	
Arrest Considerations 57:46	
Agency Notifications 57:47	
Domestic Violence Injunctions/Restraining Orders Against Law Enforcement Deputies 57:47	
Respondent Member's Responsibility 57:47	
Commander's Responsibility 57:47	
Restrictions on Respondent Members 57:48	
Injunctions/Orders Allowing Access to Service Weapon for Job Purposes; Restrictions 57:48	
Unresolved Injunctions/Orders 57:48	
Domestic Violence Injunctions/Restraining Orders Against Corrections Officers 57:49	
Respondent Member's Responsibility 57:49	
Commander's Responsibility 57:49	
Corrections Officers Required to be armed 57:50	

CHAPTER FIFTY-SEVEN

LEGAL PROCESS

I. PURPOSE

The purpose of this directive is to establish guidelines for proper legal process and arrest procedures.

II. DISCUSSION

This directive shall apply to all Sheriff's personnel. This directive covers both civil and criminal process, laws of arrest, and immunity from arrest. The civil process component, is directed by a Civil Process Supervisor, who is responsible to the General Counsel. The Criminal Process function shall be mainly executed by Operations.

III. POLICY AND PROCEDURE

A. There shall be twenty-four (24) hour access to all criminal warrants. Such access shall be available through Communications.

B. For all legal process, both civil and criminal, information shall be recorded for the following elements:

1. Date and time received.
2. Type of Legal Process (civil or criminal).
3. Nature of document.
4. Source of document.
5. Name of Plaintiff / Complainant or name of Defendant / Respondent.
6. Deputy assigned for service.
7. Date of assignment.
8. Court docket number.
9. Date service is due.

C. A record of all attempts at service of each legal process shall be documented and maintained.

D. On legal process that has been executed/attempted, the following shall be recorded:

1. Date and time executed/attempted.
2. Name of server executing/attempting service.
3. To whom process was served or on whom executed.
4. Method of service.

5. Location of executed/attempted service.
6. Explanation of non-service.

E. Service of Legal Process Outside of Monroe County

1. Civil - All legal civil process for service outside of Monroe County shall be forwarded to the Sheriff of the respective county where the person to be served resides. A request shall accompany the process asking that service be executed and a return forwarded.
2. Warrants - If the whereabouts of the defendant are known, the Sheriff or Chief of Police, of such jurisdiction, shall be contacted by personnel from this Office. Such personnel shall personally appear in that jurisdiction or send a copy of the arrest warrant to the Sheriff or Chief of Police requesting service.

F. Civil Process

1. The service and return of Civil Process - General:
 - a. The Sheriff is responsible for serving process originating in the Supreme Court, Circuit Court, County Courts, Board of County Commissioners, local government code enforcement boards, and other governmental agencies as may be provided by law. He is required to serve such other process as may be directed to him and come into his hands for execution in his county. Witness subpoenas may be served by any person who is not a party, and who is not less than eighteen (18) years of age. Proof of such service should be made by affidavit of the person making service if no served by an officer authorized by law to do so. Florida Statute 30.15, Florida Statute 92.151, FRCP 1.410 (c).
 - b. Purpose - The primary purpose of the service of process is to give a defendant notice that a legal proceeding has been instituted against it. The process advised the defendant of the nature of the action brought against him and also vests jurisdiction in the Court that issue 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.
 - c. 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.
 - d. 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. The Sheriff and Deputy 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. Neglect or refusal to execute and return any process may constitute a crime committed by the Sheriff.
 - 1) Deputies shall 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.
 - 2) The Deputy shall read each writ and become familiar with its contents, especially dates, times and requirements imposed by the writ on the person being served.
 - 3) After completing the service, the Deputy shall sign and complete the return of service. The writ is then ready to be returned to the Court of issue. This return should be returned to the Court together with the original process.

- 4) Each return shall be signed individually by the Deputy who made the service. This includes process with more than one defendant where more than one Deputy obtains service on the defendants. Each Deputy who makes service shall sign the return as to the defendants he has served.
- e. Service on Sunday - The Sheriff may not serve process on Sunday without special authorization. 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 magistrate of any incorporated town. Florida Statute 48.20.
- f. Sheriff, A Party - When the Sheriff himself is sued, he may accept service for himself and may serve his co-defendants.
- g. Powers of Sheriff when serving process issued by Florida Courts:
- 1) 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.
 - 2) 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.
 - 3) In an instance where the person to be served refuses to accept service, lay the copy of the writ on the table or floor in his presence after explaining to him the contents of said writ. This constitutes a legal service.
 - 4) It is not required that the defendant accept or sign for the service of process.
- h. There is a difference between serving enforceable and non-enforceable Writs.
- 1) In executing enforceable writs, the Sheriff is required to take some positive action against a person or thing.
 - 2) 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), identify himself and explain the contents of the writ to be served if possible.
- i. 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.
- j. Failure To Serve Process - If the Sheriff should fail to serve process in the manner provided by law, or if he should fail to make proper return, he may subject himself to an action for damages by any party injured thereby.
- k. 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 him through one of his Deputies. Such process may be executed throughout the State. The Court will take judicial notice of the fact that he, as Sheriff or his Deputy, is the Deputy of the Marshal of the Supreme Court.
- l. Process of District Court 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 him through one of his Deputies. Such process may be executed throughout the State. The Court will take judicial notice

of the fact that he, as Sheriff or his Deputy, is the Deputy of the Marshal(s) of the District Court(s) of Appeal.

2. Serving of Process - Specific: Chapter 48, Florida Statute provides the general laws on Service of Process.

- a.** Service of original process is made by delivering a true copy thereof, with the time and date of service and signature of Deputy 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 usual place of abode with any person residing therein who is fifteen (15) years of age or over and informing such person of the contents. If a person is served as stated herein, it is not necessary to show or read the original process to him.

Never leave the original process with person served, it must be returned to the Court from which it was issued with an account of the member's actions (called a "return of process").

After service is made, the original writ must have a return stating the manner of service and signed by the Deputy making such service. Where no service is made, the return should state the reason for such failure. An incomplete return invalidates the service.

- b.** Service of Process by Office Members - Process may be served by any sworn law enforcement member of the Office or by any other member designated by the Sheriff.

- c.** Where Served - Service of a writ may be had by serving the individual named anywhere he may be found. This is a personal service and 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 usual place of abode with any person residing therein who is fifteen (15) years of age or older and informing such person of the contents therein. This is called "Substitute Service". Substitute service may be made on the spouse of the person to be served at any place in the county, if the cause of action is not an adversary proceeding between the spouse and the person to be served, the spouse requests such service, and the spouse and person to be served are residing together in the same dwelling.

Substitute service may be made on an individual doing business as a sole proprietorship at his place of business, during regular business hours, by serving the manager of the business if one or more attempts to serve the owner have been made at the place of business.

- d.** When Served - Service should be made at the earliest practical moment and within a reasonable time after received by the Office, unless otherwise stated on the process. Generally, service should be effected between 7 a.m. and 11 p.m.

- e.** Service on Minors - Process against a minor who has never been married shall be served:

- 1)** By serving a parent or guardian of the minor.
- 2)** When there is a legal guardian appointed for the minor, by serving the guardian as provided for in Florida Statute 48.031.
- 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 to appear without service of process on him.

- f.** Process against incompetents 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 Florida Statute 48.031.
- 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.

g. Service on Public Agencies and Officers.

- 1) 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 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.
- 2) Process against any public agency, board, commission or department not a body corporate or having public officer being sued or the chief executive officer of the agency, board, commission or department.
- 3) 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 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.

h. Service on State Prisoner - Process against a state prisoner shall be served on the prisoner by delivery to the prisoner.

- i. 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 (2) copies of the process by registered or certified mail to the Attorney General.
- j. Service on Partnerships - Service against a partnership shall be served on any member thereof and is as valid as if served on each individual member. However, in order to bind the individual assets of the members of a partnership each member of such partnership must be served.

If a partner is not available during regular business hours to accept service, on behalf of the partnership, he 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.

k. Service on Corporations

- 1) A corporation service should be made on the highest officer of such corporation that may be found in the county, such as president, vice-president, director, secretary, treasurer, cashier, general manager, and as far down as business agent or resident agent. Should a lower officer be served, the return must state which officer of the corporation was served and his title and that he was served in the absence of higher ranking officers.
- 2) When process is to be served upon a corporation, it is summoned by its corporate name, and in the absence of all officers, 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 10:00 in the morning until noon of every day, except Saturdays and Sundays and legal holidays, so that service may be accomplished. However, if service cannot be made on a registered agent because of failure to comply with Section 48.091, service of process shall be permitted on any employee at the corporation's place of business.

3) If the corporation to be served has been dissolved, the service may be made personally upon any one or more of the directors of the dissolved corporation as trustees.

- I. Service on insurance companies - Service of process on insurance companies 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.**

3. Non-Service of Process:

a. A non-service is when the process is not served and they fall into two (2) 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.

2) When the plaintiff requests the process be returned unserved.

b. 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. A notation shall be made setting forth the time and date of each attempted service on a work slip and attached to the copy of the return that is filed in the Sheriff's Office.

4. Return of Process

a. The return of the Sheriff of process served by him is a report of his actions in the matter. The return of process is highly important, it is evidence of the act that service was had, 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 his obligation to make proper service.

b. All members to whom service is directed shall note on it 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. A failure to state the foregoing facts invalidates the service.

c. By Whom Made - If the service was made by Deputy, the return must be in the proper name of the Sheriff as Sheriff and signed by the Deputy making the service.

d. 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 copy of the process at the usual place of abode of the defendant with any person residing therein who is fifteen (15) years of age or over, the return should state that it was served at the usual place of abode of the named defendant by leaving a 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 fifteen (15) years of age or over and that the contents of the process were explained to the person. In some cases the statute requires that the return state, in addition to the items mentioned, the place at which service was had. The return may be prepared by the attorney for whom the process is served, but the Sheriff must see that it is so prepared, it states the actual facts as to the service.

5. Failure to Execute Process - Every Sheriff or Deputy failing to execute any writ or other process, civil or criminal, to him legally issued and directed within his county and made due return thereof, where such service shall be delivered to him in time for execution may subject the Sheriff to suit or to forfeit one hundred dollars (\$100.00) for each neglect, to be paid to the party aggrieved, by the Order of the Court, upon motion and proof of such delivery, unless such Sheriff or Deputy can show sufficient cause for such failure or neglect to the Court.

6. False Return - Every false return may subject the Sheriff to suit or to forfeit and pay five hundred dollars (\$500.00), one moiety thereof to the party aggrieved, and the other moiety to him who will sue for the same, to be recovered with costs by action of debt. No member of this Office shall issue or cause to be issued a false return.

7. Types of Process

a. Non-enforceable Writs

1) Summons

a) Suits in action at law are commenced by the plaintiff, and a summons is issued by the Clerk of the Court. A summons commands the Sheriff to serve a copy of the summons and the attached complaint or petition on the defendant(s). 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 an 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.)

b) 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 and signature on both the true copy and original summons. The original summons is ready for return of service and return to Court of issue.

c) 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.

2) 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 service and signature of the Deputy on both the copy and original. Then the original notice is ready to have a return of service made and the notice returned to the Court of issue.

3) 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.

4) Injunction - An injunction, whether temporary or permanent, is very similar to the Restraining Order. It must also be personally served.

5) Witness Subpoena

a) The usual mode of securing the attendance of a witness is by subpoena. Every subpoena must be issued under the seal of the Court and must state the name of the Court and title of the action or suit, and command each person to whom it is directed to attend and give testimony at the time and place therein specified.

b) A subpoena may be served by any person authorized to serve process. Subpoenas for witness in civil cases run throughout the State.

- c)** 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. No person 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.
- d)** 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 case that involves only a misdemeanor 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 even (7) days prior to the date of the witness' required appearance.
- e)** Section 48.031 (3) (a) Florida Statutes authorizes a designated supervisory or administrative employee of any law enforcement officer or federal, state, or municipal employee called to testify in an official capacity in a criminal case to accept such service if the agency head or highest ranking official at the witness' place of employment has designated such employee to accept such service. However, no such designated employee is required to accept service:
 - (1)** For a witness who is no longer employed by the agency at that place of employment;
 - (2)** If the witness is not scheduled to work prior to the date the witness is required to appear; or,
 - (3)** If the appearance date is less than five (5) days from the date of service.

The agency head or highest ranking official at the witness' place of employment may determine the days of the week and the hours that service may be made at the witness' place of employment.

The Director of the Civil Division (i.e. Court Process) shall be responsible for maintaining a directory of persons to be contacted in compliance with this subsection.

6) Subpoena Duces Tecum

- a)** A subpoena may command the person to whom it is directed to produce the books, paper, documents or tangible things designated therein. A subpoena duces tecum is a process by which the Court, at the instance of a party, commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy to produce it at trial.
- b)** A subpoena duces tecum is served in the same manner as a witness subpoena.

7) 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. 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.

8) Writ of Habeas Corpus

- a)** 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.

- b)** 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 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 him 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 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 three hundred dollars (\$300.00) the right to recover which does not cease by the death of either or both of the parties.
- c)** After the hearing on the writ, the Court must dispose of the petitioner as the law and evidence may require. He may be discharged, remanded, or admitted to bail.
- 9)** 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. A petition and declaration of taking is filed with the Clerk of the Circuit Court in the county here 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 twenty (20) days before the return date as stated in the notice of hearing.
- 10)** 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.
- 11)** Notice to Vacate - A notice to vacate is 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 a copy at the last place of abode. This notice is not issued by a Court and the Sheriff is not required to serve it.
- 12)** Landlord-Tenant Summons or "Five-Day Notice" - This is similar to an ordinary summons but is used in eviction proceedings. The answering period is five (5) days instead of twenty (20) days and the rules governing service differ. These summons should be served as follows:

 - a)** Personal service.
 - b)** Substitute service on person of family over fifteen (15) years of age at place of abode.
 - c)** Posted on premises involved in proceedings provided defendant cannot be found in county and there is no person of his family over fifteen (15) years of age at his usual place of abode. (NOTE: Requires two (2) attempts to serve in (1) or (2) herein before posting. The minimum time delay between the two (2) attempts to obtain service shall be six (6) hours.)
- 13)** 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 Florida Statute 48.041.
 - b) Detention Order - A Detention Order an order directing the Sheriff to take into custody the alleged incompetent and confine him 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.
 - c) Order to Summon a Committee - An Order to Summon a Committee an order summoning two (2) doctors and one layman 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.
- 14) 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 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.
- 15) 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 him 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 or 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.
- 16) Miscellaneous** - There are other writs such a writ of prohibition, writ of scire facias, unlawful detainer, supplementary proceedings and others that require service by the Sheriff.
- 17) 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 Sheriffs have the authority to issue such permit. The person requesting the permit shall make application to the Sheriff. At the time of this application he must surrender his current licenses, submit an inventory of what he is offering for sale and pay a fee of fifty dollars (\$50.00). The Sheriff then issues a permit, which is good for thirty (30) days and which is renewable one (1) time with the submission of a revised inventory and an additional fee of fifty dollars (\$50.00). 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. (Refer Florida Statutes Sections 559.20-559.26)
- 18) Order to show cause in replevin action** issue 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:
- a) Fixes the date and time of the hearing which shall be no sooner than five (5) days from the date of service of the order.
 - b) Directs the time within which service of the order shall be made on the defendant:
 - c) Fixed the manner in which service shall be made.
 - (1) Service as provided in Florida Statutes, Section 48.031.

- (2)** In the event service as provided in Florida Statutes, Section 48.031 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.

b. Enforceable Writs - 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.

- 1)** Writ of Ne Exeat - A writ of ne exeat is a writ forbidding a defendant to leave the jurisdiction of the Court. A copy of the writ must be served upon the defendant when he is taken into custody and request him to post a bond. The condition of the bond should be specified in said writ.
- 2)** Distress Writ - A distress writ (sometimes referred to as a distress warrant) is a combination of a summons based on a filed affidavit and a levy. The writ is obtained by the landlord for payment of rent. The writ must be served by the Sheriff at least five (5) days before the return date and property levied upon taken into possession until further order of the Court. No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bedclothes and wearing apparel. If the Court renders judgment against the defendant, and execution issued, the property taken into possession shall be advertised twice within a ten-day period prior to sale. It may be sold on the leased premises or at the Courthouse door. If the defendant, before sale, pays all costs and makes settlement with the plaintiff, the property shall be returned to him and there will be no sale. Service of this writ is had upon the defendant, and also by the officer taking the property into his 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 is required to deliver the writ to the Sheriff of another county, if the property subject to levy is in such other county.

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:

- a)** On agricultural products raised on the land lease or rented for the current year;
- b)** On all other property of the lessee, his sub-lessee or assigns, usually kept on the premises; and
- c)** On all other property of the defendant. 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. 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.

The sale of the property levied on pursuant to a distress writ is made under a writ of execution.

- 3)** Writ of Assistance - The writ of assistance 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 assistance is sometimes called a writ of possession, the objects of the two being substantially the same, that is, to put the person entitled to the property in possession.

The writ of assistance is executed by the Sheriff placing the party for whose benefit it has been granted in possession of the property.

- 4)** 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 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 judgement shall issue a writ to the Sheriff describing the premises and commanding him to put the plaintiff in possession.

This writ is used in landlord and tenant proceedings and usually follows a notice to vacate when the defendant has refused to get out after being served a notice to vacate and the Court has found that the plaintiff is entitled to possession (property or premises). The writ of possession is used where personal property is involved and, there being no storage period, possession immediately goes to the plaintiff.

5) Writ of Replevin

a) Writ of Replevin - A Court Order which summons the defendant to appear and it commands the Sheriff to take into custody specifically described property. Replevin is the statutory writ having as its foundation the common law, and is frequently referred to as a common law action.

b) Types, the law provides for several types of writs of replevin. They are

- (1)** Order issued by Judge authorizing writ to be issued.
- (2)** Pre-judgement writ of replevin and the property seized delivered forthwith to the petitioners.
- (3)** Writ of Replevin After Judgment

It is absolutely essential to read carefully the body of the writ to determine if the Deputy is 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.

c) 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.

d) Procedure

- (1)** Florida Statutes, in Chapter 78, completely control 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 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, he shall cause such building or enclosure to be broken open and make replevy according to the writ and, if necessary, he shall take to this assistance the power of the county. 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.
- (2)** 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. (NOTE: Writ of replevin must be amended to name third party in possession.)

- (3)** 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 one and one-fourth 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. 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 officer to whom the writ is directed, shall deliver it to the proper officer in the jurisdiction into which the property has been removed, and the latter officer shall execute the writ, and hold the property subject to the orders of the Court issuing the writ.

e) Certain property may not be taken; what may not be taken by replevin:

- (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.

6) Writ of Attachment

a) A writ of attachment is an Order from the Court to the Sheriff commanding him to take into possession and hold for further disposition of the Court, property of 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 retake the property by giving a bond with surety to the officer payable to the plaintiff in an amount, which shall exceed by one-fourth the value of the property, as determined by the Court, or which shall exceed by one-fourth 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.

b) A Writ of Attachment is the authority of the Sheriff to take property of the defendant into his 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 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 custody sufficient property to satisfy the sum demanded by the plaintiff and the costs.

7) 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.

8. Enforceable Writs Continued - Levies and Sales

a. Writ of Execution

- 1)** The word "execution" is broadly defined as the act of carrying into effect the final judgment or degree 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 to carry into effect the judgment of the Court. It is the duty of the Sheriff to serve executions, by levying upon property, and carry out orders directed to him 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.

- 2) Execution Docket - The Sheriff is required to keep an execution docket in which he shall list all executions, orders and decrees directed to him in relation to the collection of monies. The docket must contain a statement of all monies credited on such process, and is required to indicate when the money was paid, to whom it was paid, and by whom it was paid. The docket is subject to inspection by all interested parties. If the Sheriff should fail to keep the docket, or fail to allow inspection of the same, he shall be considered in contempt of Court, and subject to a fine not exceeding one hundred dollars (\$100.00) at the discretion of the Court. The Sheriff is required to index the docket alphabetically by plaintiffs and defendants.
- 3) 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 in the hands of the Sheriff against the same person or property take priority as of the date the judgment was entered in the records of the Court of the county where the property is located. If the writ is to be enforced against personal property, then priority is established as of the date the writ was originally delivered to the Sheriff. Where a number of executions against the same defendant are placed in the hands of the Sheriff, they should be satisfied in accordance with their order of priority.
- 4) 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. 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.
- 5) Capias Ad Satisfaciendum - The Sheriff has no authority to take the defendant, and him safely keep, for nonpayment of any execution, except for fines imposed by lawful authority.
- 6) 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, constitutes a contempt of the Court under whose authority the Sheriff has acted.
- 7) 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 he has no duty to make a return which certifies he has searched the county for property of the defendant. The Sheriff should make a return as "unsatisfied" if he receives in writing from the plaintiff or plaintiff's attorney such request. All unsatisfied executions in the hands of the Sheriff may be returned, to the court issuing the execution, twenty (20) years after the date of issuance of final judgment upon which the execution was 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 the unsatisfied execution.
- 8) Control of Writ - A judgment creditor is entitled to enforce his judgment by execution. The writ is issued for his benefit, and he has the right to control and direct what proceedings should or should not be taken thereunder. Hence, his wishes and instructions if lawful, when made known to the execution officer should ordinarily be respected and obeyed. If the Sheriff fails or refuses to execute a writ of execution, he may be compelled to do so by mandamus proceedings.

9) 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.

10) Property to be Levied Upon

- a) It is the duty of the Sheriff to levy upon any property specifically described in the writ delivered to him.
- b) 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 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.
- c) The Sheriff is not liable for damages, for making a wrongful levy, whenever he 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.
- d) 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.
- e) 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 may require the plaintiff to furnish him a bond as described.
- f) 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.
- g) If the property in question is real estate, the petition of the Sheriff shall be filed in the Circuit Court.
- h) 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.
- i) **If applicable, identification numbers will be recorded on the writ.**

11) Property Subject to Levy

(revised on 3-15-00)

- a) 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.
- b) The Sheriff may not levy upon public property owned by a county or municipality and used in the orderly administration of government, nor can he levy upon property already in the custody of the Court, such as property in the hands of a receiver.

- c) The Sheriff cannot levy on property, title to which is in the name of a person other than the defendant in execution.
- d) There is no authority for the Sheriff to make a levy upon a mortgage made to and owned by the defendant in execution.
- e) An estate by the entirety, that is, property owned jointly by husband and wife, may not be levied against one of them only.

12) Miscellaneous Writs

- a) 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.
- b) The Sheriff may be required to levy executions, in the form of tax warrants issued by the Florida Industrial Commission or by the Department of Revenue.
 - (1) The director of the Division of Alcoholic Beverages and Tobacco may issue a warrant to the Sheriff for the collection of taxes.
 - (2) The Department of Highway Safety and Motor Vehicles may issue tax warrants for various delinquent taxes.
- c) When receiving the various types of warrants the Sheriff should check the statutory authority for their issuance to determine if he has a duty other than proceeding with the levy.
- d) 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.
- e) Those warrants shall be handled in the same manner as other executions.

13) Release of Property After Levy

- a) If the defendant desires to retake 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.
- b) The value is to be fixed by the Sheriff, and the bond is to be approved by him.
- c) The bond must be payable to the plaintiff and conditioned upon the forthcoming of the property on the day of sale.
- d) 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 notice of sale as though the property had not been released.
- e) To stay the execution of a writ upon personal property, a forthcoming bond is required, but it is not required if the Sheriff has levied upon real estate.
- f) 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.

- g)** If a forthcoming bond is in default and the Sheriff proceeds to levy an execution on the judgment upon the forfeited bond, he may not take any further bond for the property seized on such execution.

14) Bonds in Attachment

- a)** In attachment proceedings, defendant may retake 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 one-fourth the value of the property, as determined by the Court, or which shall exceed one-fourth 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.
- b)** In attachment proceedings the property may also be restored to the defendant if he 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.
- c)** 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, he shall make an affidavit that he is the owner of the equity of redemption.

15) Third Party Claims

- a)** 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.
- b)** This affidavit, made by the third person, his agent or attorney, must state that the property belongs to such third person.
- c)** With the affidavit he shall give the Sheriff a bond payable to the plaintiff, with surety in double the value of the goods claimed.
- d)** The condition of the bond is that he will deliver the property upon demand, if the same shall be adjudged to be the property of the defendant, and to pay the plaintiff all damages which the jury may find in favor of the plaintiff.
- e)** The value of the property is to be fixed by the Sheriff, and the bond is to be approved by him.
- f)** 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 cannot take one affidavit and bond as to all the plaintiffs.
- g)** 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.
- h)** Property levied upon under attachment may be released to third persons upon the same conditions as property taken under an execution.
- i)** A third party claim to property levied upon in distress for rent proceedings may be made in the manner described.
- j)** 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.

- k)** 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.
 - l)** If the property is returned to the Sheriff, but the damages and costs are not paid, he may enforce the payment by levy of execution upon the property of the defendant or the surety.
 - m)** 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.
 - n)** All property returned shall be sold under the original execution against the original defendant.
- 16)** Retaking by Replevin - If property has been taken under a writ of attachment and it is not subject to attachment, the defendant may retake it from the Sheriff by replevin proceedings.
- 17)** Distress
- a)** If the Sheriff has levied upon property pursuant to a distress warrant, the property may be restored to the defendant upon his giving bond to the Sheriff, with surety in double the value of the property levied upon.
 - b)** The value of the property shall be determined by the Sheriff.
 - c)** The bond shall be payable to the plaintiff and approved by the Sheriff.
 - d)** The condition of the bond is that the property will be forthcoming to abide the final order of the Court.
 - e)** 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 amount to the plaintiff.
- 18)** Stay of Illegal Writ
- a)** If the defendant claims that the execution to be levied upon his property is illegal, he 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.
 - b)** With the affidavit he 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.
 - c)** Upon receipt of the affidavit and bond, the Sheriff shall return the bond and affidavit to the Court from which the execution issued.
- 19)** Lost or Destroyed Writ
- a)** Where both a writ and the judgment under which it was issued have been lost or destroyed, and both have been reinstated, the defendant may release any property levied upon under the new writ by filing with the Sheriff an affidavit sworn to by himself, his agent or attorney, that the lost or destroyed judgment has been satisfied in whole or in part.
 - b)** With the affidavit, the defendant must file a bond, with surety payable to the plaintiff in double the amount claimed to be due on the judgment.

- c) The condition of the bond is that the defendant will pay to the plaintiff the amount adjudged by the Court to be due.
- d) Upon receipt of the affidavit and bond the Sheriff shall return them to the Court issuing the execution.

20) Homestead and Other Exemptions

- a) 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.
- b) The homestead owned by a natural person residing in this state is exempt from forced sale under process of any Court.
- c) The purpose of the homestead is to shelter the family and provide it refuge from the stresses and strain of misfortune.
- d) The homestead consists of one hundred sixty (160) 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 the head of a family, one thousand dollars (\$1,000.00) worth of personal property.
- e) 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.
- f) Within the limits of a city, the homestead extends only to those buildings constituting the residence of the owner.
- g) The homestead exemption extends to the proceeds of a fire insurance policy due, or to be paid, for its destruction.
- h) The person entitled to a homestead may claim it on any dwelling house owned by him, even though he is not the owner of the land on which it is situated.
 - (1) A natural person. The party claiming the exemption must show that he is a natural person residing in this state.
 - (2) Residence.
 - (a) Daily residence is not essential to create or maintain a homestead.
 - (b) It is not disrupted by temporary absence with the intent to return.
 - (c) The homestead character is lost only when there is an intent permanently to abandon the place as a home.
 - (3) Furnishings
 - (a) The homestead does not include the personal property located therein.
 - (b) The limit of the exemption on such personal property is one thousand dollars (\$1,000.00) in value.
 - (4) Widow and Heirs - This exemption applies not only for the benefit of a natural person but also for the benefit of the widow and heirs of such head of a family.

- (5)** Designation Before Levy - A natural person residing in this state may designate his homestead before any levy is made, or threatened, by filing a statement in writing and recording it in the office of the Circuit Court.
- (6)** Designation After Levy
- (a)** It is not necessary that the homestead be designated prior to a levy.
 - (b)** A natural person claiming the homestead, or his agent or attorney, may notify the Sheriff in writing of his claim after the levy has been made. It has been held that a sale of homestead property is void, even though no objection has been made.
 - (c)** 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.
 - (d)** 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.
- (7)** Objection by Creditor
- (a)** 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.
 - (b)** 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 sixty (160) acres in the state. In this case, the expense of the survey must be paid by the creditor.
 - (c)** The Sheriff is entitled to a deposit for costs to be made by the person demanding the survey.
 - (d)** 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.
- (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)** A debtor desiring to exempt personal property after levy should file a petition or a motion seeking an order staying the Sheriff's Sale until the Court can determine if the property under levy is entitled to be exempt from forced sale.
 - (b)** The Sheriff has no statutory duty to accept, serve or take any action on a debtor's affidavit relative to personal property.
 - (c)** 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.
- (10)** Equity Jurisdiction
- (a)** Proceedings may be had to prevent the Sheriff from allowing an exemption or from refusing any exemption and selling the property.

(b) The jurisdiction of such proceedings is in the Circuit Court.

(11) Wages

- (a)** In addition to the homestead, any money or other things of value due to the head of a family residing in this state for personal labor or services, is exempt from process. Florida Statutes 222.08, 222.09.
- (b)** If it is levied upon, the person to whom such wages are due may make oath before the officer who issued the process that the money attached is due for his personal labor and services, and that he is the head of a family residing in this state.
- (c)** When such affidavit is made, notice of same shall forthwith be given to the party who sued out the process.
- (d)** If the facts set forth in the affidavit are not denied under oath within two days, the process shall be returned and all proceedings shall cease.
- (e)** If the facts are denied under oath within the time prescribed, the process, affidavit of claim, and denial under oath shall be delivered to the Court from which the process issued for further orders. Florida Statute 222.12.

(12) Life Insurance

- (a)** The cash surrender value or the proceeds of life insurance and proceeds of annuity contracts are exempt from process.
- (b)** The person insured is not required to be head of a family residing in this state.
- (c)** 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. Florida Statute 222.13, 222.14.
- (d)** Disability income benefits under an insurance policy are likewise exempt from process. Florida Statute 222.18.

(13) Estates

- (a)** The property of estates of decedents is exempt from levy under process.
- (b)** This does not apply to certain liens or claims to specific property. Florida Statute 733.706

(14) Workers benefits. Benefits under the worker's compensation law and unemployment compensation law are exempt from process. Florida Statute 440.22, 443.051

21) Persons Exempt From Service of Process

- a)** A person who has been brought into the state by, or waiver of, extradition based on criminal charge shall not be subject to service of person process in civil actions arising out of the same facts as the criminal proceedings involved.
- b)** This exemption does not apply if he has been convicted.

- c)** If he has been acquitted, he must be allowed a reasonable opportunity to return to the state from which he was extradited, before service of such civil process may be made upon him.
- d)** This exemption is mentioned for information only, for if such a process is issued, it must be served by the Sheriff.

b. Execution Sales

1) Generally, after the Sheriff has levied upon property for the purpose of satisfying a final judgment, he is required to sell such property. The execution is always under the control of the plaintiff, and his 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

- a)** The sale should be made strictly in accordance with the requirements of law. Section 56.22 Florida Statute
- b)** 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.
- c)** If the property to be sold is subject to decay and will not sell for its full value if held for a period of thirty (30) days, the time may be shortened by order of the Court upon affidavit to the effect.
- d)** 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.
- e)** When levying upon 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.

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.

4) All sales shall take place any day of the week except Saturday and Sunday and shall continue from day to day until all the property is sold.

5) To Whom Sold

- a)** The property should be sold to the highest and best bidder for cash.
- b)** If the plaintiff bids, he may credit the amount bid upon his execution and need not pay cash as long as the Sheriff's costs are paid. This is true only when the plaintiff is the first writ holder and his credit bid does not exceed the amount on his writ of execution.
- c)** The law does not require that an execution sale be approved by the Court.
- d)** 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

- a) 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. This must be delivered to the purchaser on receipt of the amount bid together with the costs of the deed or bill of sale.
- b) If the plaintiff is the successful bidder, he 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.
- c) The Sheriff's deed or bill of sale is subject to the documentary stamp tax and stamps should be placed on the instrument before its delivery.
- d) The Sheriff should recite, in his deed or bill of sale, both the judgment and the execution under which he acted inasmuch as this points out his authority to sell the property. The Sheriff does not warrant any title. He conveys only such title as the execution affords.

7) Interest on Judgments

- a) When the Sheriff enforces the collection of a judgment by levy of execution, he is required to collect not only the face of the judgment and costs but also interest on the amount of the judgment.
- b) The rate of interest on judgment is set by the legislature.
- c) The rate will vary so the date of the entry of the judgment should be checked with the law to determine the rate of interest on each judgment; unless the judgment or decree is rendered on a written contract or obligation providing for interest at a lesser rate in which case the judgment or decree bears interest at the rate specified in such written contract or obligations.
- d) Any process, writ, judgment or decree, which is directed to the Sheriffs of the state to be dealt with as executions, shall bear, on the face of the writ, judgment or decree, the rate of interest which it shall accrue from date of judgment until payment.

8) Payment of Taxes

- a) From the proceeds of the sale, the Sheriff must pay the costs and attorney fees if any are allowed.
- b) From the remainder he must pay all state, county and municipal taxes which may be assessed, due, and unpaid against the property, including all back taxes.
- c) If the proceeds of the, sale are insufficient to pay the taxes, the Sheriff must make his deed subject to the payment of all outstanding taxes.

9) Remittances

- a) Duty of Sheriff
 - (1) The Sheriff must pay to the proper person, all money collected by him.
 - (2) All money received under an execution, whether by sale or otherwise, must be paid to the party or his attorney, in whose favor the execution was issued.
 - (3) When the names of more than one attorney appear in the records of the court, the money shall be paid to the attorney who originally commenced the suit or to the attorney who made the original defense if the execution was issued in favor of the defendant. A receipt from the proper attorney fully discharges the Sheriff of his responsibility.

- (4)** When property sold under the execution brings more than the amount due, including costs, the surplus shall, without delay, be handed over to the defendant.
- (5)** If the Sheriff has, under an execution, obtained money for a party, he cannot withhold it for the purpose of applying it on a writ which he holds against the party for which the money was obtained. The property levied upon in a sale is bound by the sale.
- (6)** 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.
- (7)** The Sheriff is responsible for seeing that sales are made in accordance with the priority of writs in his hands.

b) Failure to Remit

- (1)** If the Sheriff fails or refuses to pay money collected under an execution within thirty (30) days after its receipt by him or within ten (10) days after demand of the plaintiff or his attorney of record, he is liable to the payment of the amount together with an additional twenty (20) percent as damages.
- (2)** If the Sheriff fails to pay over money, collected by virtue of executions within the time required, where the proceeds are due to a state officer, board, or agency, he will lose his commissions on such money.
- (3)** The time limit is the same as for payment to the fine and forfeiture fund.

10) 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. No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bed clothes and wearing apparel.

- a)** 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.
- b)** It may be sold on the leased premises or at the courthouse door.
- c)** If the defendant, before sale, pays all costs and makes settlement with the plaintiff, the property shall be returned to him and there will be no sale.
- d)** Service of this writ is had upon the defendant, and also by the officer taking the property into his possession.
- e)** If the defendant cannot be found the levy upon the property is sufficient service.
- f)** If the Sheriff cannot find property upon which to levy, he is required to deliver the writ to the Sheriff of another county, if the property subject to levy is in such other county.
- g)** 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:
 - (1)** On agricultural products raised on the land leased or rented for the current year;
 - (2)** On all other property of the lessee, his sub-lessee, or assigns, usually kept on the premises; and

(3) On all other property of the defendant.

h) 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.

11) Writ of Garnishment

a) Although the writ of garnishment does not command the Sheriff to take positive action it is included with the enforceable writs because of two important reasons;

(1) 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,

(2) 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.

b) 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.

c) Service of Writ

(1) Service of the writ of garnishment should be made in the same manner as a service of summons.

(2) 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.

d) Effect of Writ

(1) Service of the writ shall make the garnishee liable for all debts due by him to the defendant, and for any tangible or intangible personal property of defendant in his possession or control at the time of the service of the writ or at any time between the service and the time of his answer.

(2) The service of the writ is a levy and provides constructive custody in the Court for such property.

e) Answer of Garnishee

(1) The garnishee shall file an answer to the Court issuing the writ within the time limitation stated in the writ.

(2) The garnishee may surrender any goods, chattels or effects of defendant in his hands or possession to the Sheriff and may pay any money or debt into registry of Court.

(3) 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 an order discharging him from further liability under the writ.

f) Refusal of garnishee to surrender property. If the garnishee will not surrender the personal property belonging to the defendant, provided he has the power to do so, and which he has admitted is in his possession, the Court may order execution issued against garnishee for the unpaid amount of the plaintiff's judgment against defendant.

g) Failure of Garnishee to Answer

- (1)** If the garnishee fails to answer as required, a default shall be entered against him.
- (2)** A final judgment shall be entered against the garnishee for the amount of plaintiff's claim with interest and costs.
- (3)** 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.

G. All enforceable process, including without limitation any writ requiring the arrest, seizure of real property or personal property, shall be executed by certified deputy sheriffs.

G. Receipt, Disbursement and Audit of Funds Administered for the Legal Process Function

1. The statutory fees for service of the various writs shall be collected in advance. However, the County, Office of the State Attorney and Office of the Public Defender are not obliged to pay the statutory fees.

The Sheriff shall collect in advance a deposit sufficient to cover all reasonably anticipated costs incident to the levy. The following are minimum costs, which are provided as guidelines:

- a.** Subpoenas - **\$20.00**
- b.** Index and docket executions - **\$20.00**
- c.** Summons, notices, etc. - **\$20.00**
- d.** Levy deposits on boat - **\$1200.00**; on car - **\$1500.00**
- e.** Levy deposits on real property - **\$500.00**
- f.** Levy deposits on businesses - approximately **\$3,500 to \$5,000**

2. Accounting Procedures

- a.** As papers and monies are received the individual in-charge of civil process shall receipt the money and papers and place a return form on the paper to be served.
 - b.** As soon as possible the money shall be deposited into the Civil account.
 - c.** Once a month, all monies collected for Civil Process shall be submitted to the Monroe County Board of County Commissioners along with a report depicting the money received, the process served, and any money outstanding.
- 3.** On a yearly basis, the Civil account is audited by an independent accounting firm retained by the Monroe County Board of County Commissioners.

H. Methods Used in the Disposition of Property Acquired Through the Legal Process Function

Writs of execution command the Sheriff to levy on property belonging to a defendant. These writs are issued by the Clerk's Office of the County having jurisdiction ten days after the final judgment is awarded by the Court.

(revised on 5-1-02)

1. Once the complainant has the writ, it is given to the Sheriff of the county in which the defendant's property is located. The Sheriff, through his Civil Process Division, receives the Writ and enters it into a set of books called the Index and Docket books. These establish a priority or seniority for the Writs and are based on the date of receipt in the Sheriff's office and also on date of issuance.
2. The civil fee for indexing and docketing is \$10.00. If the plaintiff wishes to proceed further with the Writ, then he or she would have to submit an additional form called "Instructions for Levy" Florida Statute 30.30 requires the Sheriff to levy on the property specifically described on the instructions for levy insofar as the property is subject to levy. If the plaintiff is required to furnish the Sheriff with a cost deposit.
3. When the execution is determined to be ready, the Civil Division prepares notice of Sheriff's Levy which is used to seize the property.
4. Property is broken down into two types, personal property such as vehicles, boats, appliances, jewelry, etc. and real property which is land and improvements (real estate) .
 - a. Seizure (levy) is made on personal property by actual seizure of the property with the Notice of Levy posted on the property. The property is then stored in a secure place.
 - b. On real property, seizure is made by filing the Notice of Levy with the Clerk's Office along with the appropriate fee.
5. After seizure is effected, the following is done:
 - a. Notice of Sheriff's sale establishing date of sale,
 - b. Letter to the newspaper along with Notice of Sheriff's sale for advertisement for 4 consecutive weeks (once a week),
 - c. Letter (certified) to defendant and to defendant's attorney if known,
 - d. Letter to plaintiff or plaintiff's attorney.
6. On the date of sale, the Civil Division Director conducts the sale of personal property where it is stored, and if real property, on the front steps of the Courthouse.
7. The sale is a misnomer since it is actually an auction with the property going to the highest bidder for cash. At the onset of the auction, the auctioneer is to obtain the full name and verified address of each bidder with their first bids and the last name of each bidder with each successive bid. The last bid entered is to be announced three (3) times and if no other bids are received, then the auctioneer announces that the property is considered sold to the final bidder.
8. After the sale has been completed, a bill of sale for personal property, or a Sheriff's Deed for real property is prepared and given to the final bidder. Additionally, resume is prepared showing the various civil fees and miscellaneous expenses and the balance due to the plaintiff along with the monies generated from the sale. If the judgment has been satisfied, a letter of satisfaction is required from the plaintiff and this is returned to the Clerk's Office along with a return and the Writ of Execution.

I. Arrest Warrants Shall Be Served by Certified Law Enforcement Deputies Only

J. Criminal Process

1. Persons Wanted in Another State

- a. A Sheriff in this state has no authority to act under a warrant issued by a magistrate of another state.
- b. If the Sheriff received such a warrant, he may arrest the person charged to be held for extradition, but the arrest must be in compliance with the law.
 - 1) 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.
 - 2) Before making the arrest the Sheriff must have reasonable information that the person committed the crime.
 - 3) The warrant received from another state may be considered such reasonable information, but the Sheriff must be certain that the party he is arresting is the one who stands charged with the crime.
- c. The safest procedure is for the Sheriff to obtain a fugitive warrant from a magistrate in this state before making the arrest.
 - 1) Upon oath made before a magistrate that a person, while present in the demanding state, committed a crime and fled there from or was convicted in such state and escaped or violated his parole, a magistrate may issue a warrant for the accused.
 - 2) The act charged as a crime may have been committed in the demanding state, or elsewhere.
 - 3) If it constitutes a crime against the laws of the demanding state, extradition is proper.
- d. This warrant may be executed anywhere in the state by the officer to whom it is directed.
- e. The fugitive warrant must have attached to it a certified copy of the sworn charge or complaint and affidavit upon which it was issued.
- f. Procedure After Arrest
 - 1) 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.
 - 2) If the arrest is made without a warrant the accused must immediately be taken before a magistrate and complaint must be made against him as in the case of issuance of fugitive warrant before arrest.
- g. Commitment to Await Extradition
 - 1) If it appears to the magistrate that the person arrested is the one charged in the other state, he may, by warrant reciting the accusation, commit such person to the county jail, for a period not exceeding thirty (30) days, which period shall be specified in the warrant of commitment, in order that a warrant of extradition by the Governor may be issue.
 - 2) Bail may be taken and the accused released conditioned upon his appearance before the magistrate to surrender himself to arrest under the warrant of the Governor.
 - 3) If the Governor's warrant does not issue in the time prescribed, the prisoner may be are committed for a period not to exceed sixty (60) days, or the condition of his bail may be extended for a period not to exceed sixty (60) days.
 - 4) Bail may be denied in any case where the crime charged is punishable by death or imprisonment for life in the demanding state.

5) Procedure under Governor's Warrant.

- a) 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.
- b) No person shall be surrendered to an agent of the demanding state under such warrant until he shall first be taken before a Judge of a Court of Record.
- c) Such Judge is required to inform the accused of the demand made for his surrender and of the crime with which he is charged.
- d) The accused shall further be informed of his right to counsel and to a writ of habeas corpus to test the validity of the arrest.
- e) 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.
- f) 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.
- g) 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 misdemeanor.

h) Waiver of Extradition

- (1) Any person arrested as a fugitive may waive extradition procedure.
- (2) The waiver must be made before a Judge of a Court of Record and must be in writing.
- (3) The Judge shall advise the person of his right to extradition procedure and of his right to habeas corpus to test the validity of the arrest.
- (4) The waiver must be executed in triplicate.
- (5) 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.

Caution: The Sheriff, before delivering a person to an agent of a demanding state, either under a warrant of the Governor or after waiver, should be certain that the person to whom the accused is being delivered is a duly accredited agent of the demanding state and as such authorized to receive the prisoner.

2. Arrest on Warrant from Another County

- a. When the sheriff makes an arrest under a warrant issued in another county, he shall, if requested by the person arrested, take him 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.
- b. If the person arrested is not bailable or if bail is not given, the Sheriff is required to take the person before the magistrate who issued the warrant or the Sheriff may hold such person for delivery to the proper officer of the

county in which the warrant was issued, so long as the rights of the individual are not unnecessarily abridged.

- c. 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 rights to habeas corpus and bail may be explained to him.

3. Warrants and Summons

a. Direction and Execution of Warrant. Florida Statute 901.04

Warrants shall be directed to all Sheriffs of the State. A warrant shall be executed only by the Sheriff of the county in which the arrest is made unless the arrest is made in fresh pursuit, in which event it may be executed by any Sheriff who is advised of the existence of the warrant. An arrest may be made on any day and at any time of the day or night.

b. How Summons are Served. Florida Statute 901.10

A summons shall be served in the same manner as a summons in a civil action.

c. Effect of Not Answering Summons. Florida Statute 901.11

Failure to appear as commanded by a summons without good cause is an indirect criminal contempt of court and may be punished by a fine of not more than \$100. When a person fails to appear as commanded by a summons, the magistrate shall issue a warrant. If the magistrate acquires reason to believe that the person summoned will not appear as commanded after issuing a summons, he may issue a warrant.

d. When Arrest by Officer Without Warrant is Lawful. Florida Statute 901.15

A law enforcement officer may arrest a person without a warrant when:

- 1) The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the Officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.
- 2) A felony has been committed and he reasonably believes that the person committed it.
- 3) He reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- 4) A warrant for the arrest has been issued and is held by another peace officer for execution.
- 5) A violation of Chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit.
- 6) He has probable cause to believe that the person has knowingly committed an act of domestic violence in violation of a domestic violence injunction for protection entered pursuant to Florida Statute 741.30.

- 7) He has probable cause to believe that the person has committed a battery upon the person's spouse and:
- a) Finds evidence of bodily harm; or
 - b) Reasonably believes that there is danger of violence unless the person alleged to have committed the battery is arrested without delay.
 - c) A law enforcement officer who acts in good faith and exercises due care in making an arrest pursuant to this subsection is immune from civil liability that otherwise might result by reason of his action.
- 8) The officer has determined that he has probable cause to believe that a misdemeanor has been committed, based upon a signed affidavit provided to the officer by a law enforcement officer of the United States Government, recognized as such by United States statute, or a United States military law enforcement officer, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, when the misdemeanor was committed in the presence of the United States law enforcement officer or the United States military law enforcement officer on Federal military property over which the state has maintained exclusive jurisdiction for such a misdemeanor.

e. Search and Seizure Without a Warrant

- 1) **No search may be conducted unless authorized by a warrant issued upon probable cause, with some exceptions. The rule of thumb is, if time permits, obtain a warrant. There are, however, limited exceptions to the warrant requirement:**
- a) **Search by consent – The important thing to remember is that the consent must be freely and voluntarily given. There can be no promises, threats or coercion, expressed or implied. A third party consent may be given by a third party who shares control of the premises or items to be searched. A consent search may not exceed the terms (scope) of the consent; consent may be withdrawn. [CALEA 1.2.4 a]**
 - b) **Terry stop – Allowed by F.S. 901.151, Florida’s “Stop and Frisk” law. A stop is allowed when the officer reasonably believes, according to articulable circumstances, that a person either has committed a criminal offense, is doing so, or is about to do so. A search for weapons may be conducted during the stop, if the officer has a reasonable belief that the person is armed and dangerous. The search must be limited to a search for weapons and any weapon may be seized. Other contraband may be seized if it is “plainly felt” and identifiable as such, without further intrusion, i.e. manipulation of object beyond what is necessary to determine whether it is a weapon. No person shall be detained longer than is reasonably necessary to effect the purpose of this section. Such detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.**
(REVISED ON 8-28-00) [CALEA 1.2.4 b]
 - c) **Search of a vehicle under a movable vehicle exception – (Carrol Doctrine) the standard needed to search a vehicle based upon exigent circumstances is that police must have probable cause to believe that it contains seizable items. A vehicle search based on probable cause and exigent circumstances may encompass any container in which contraband might be located. [CALEA 1.2.4 c]**
(Revised 08/12/09)
 - d) **Search incident to lawful arrest – When a lawful arrest is made, the deputy may search the person and the immediate area in order to: [CALEA 1.2.4 d]**

- 1) **Protect the deputy from attack.**
- 2) **Prevent escape or discover the fruits of a crime; objects on or about the arrested person may be seized to protect the deputy, prevent escape or assure custody of the fruits of articles used in committing a crime. Items seized must be in plain view from where officer has a right to be.** [CALEA 1.2.4 d]

e) **Vehicle search incident to arrest – Before a deputy can search a vehicle incident to arrest, the deputy must have a lawful arrest, AND the search must take place at the time of the arrest, AND the arrestee must be able to access the vehicle (i.e. not cuffed or in the back of the patrol car), OR there is reason to believe evidence relevant to the crime of arrest might be found in the vehicle.**

(Arizona V. Gant, U.S.S.C., 2009)

(Revised 08/12/09)

f) **Exigent circumstances – A warrantless search is permitted when both probable cause and exigent circumstances exist. Examples of exigent circumstances include hot pursuit, a fleeing suspect, destruction of evidence, officer safety, public safety or other situations in which speed is essential.** [CALEA 1.2.4 d,e]

g) **Inventory searches of seized vehicles – Other property lawfully taken into police custody. All containers within the vehicle may be searched to insure that all valuables are properly inventoried. The inventory search may be conducted only to protect the owners property and protect the police against claims and damages. Must be done according to normal agency procedures and may not be undertaken as a pretext for an investigative search.** [CALEA 1.2.4 f]

f. **Method of Arrest by Officer by a Warrant.** Florida Statute 901.16 [CALEA 1.2.4 g]

A peace officer making an arrest by a warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued, except when the person flees or forcibly resists before the officer has an opportunity to inform him, or when giving the information will imperil the arrest. The officer need not have the warrant in his possession at the time of arrest but on request of the person arrested shall show it to him as soon as practicable.

g. **Method of Arrest by Officer Without Warrant.** Florida Statute 901.17 [CALEA 1.2.4 g]

A peace officer making an arrest without a warrant shall inform the person to be arrested of his authority and the cause of arrest except when the person flees or forcibly resists before the officer has an opportunity to inform him or when giving the information will imperil the arrest.

(REVISED ON 8-28-00)

h. **Officer May Summon Assistance.** Florida Statute 901.18 [CALEA 1.2.4 g]

A peace officer making a lawful arrest may command the aid of persons he deems necessary to make the arrest. A person commanded to aid shall render assistance as directed by the officer. A person commanded to aid a peace officer shall have the same authority to arrest as that peace officer and shall not be civilly liable for any reasonable conduct in rendering assistance to that officer.

i. **Right of Officer to Enter into Building.** Florida Statute 901.19 [CALEA 1.2.4 g]

1) A deputy may enter a dwelling to make an arrest under the following circumstances

a) There is a valid Arrest Warrant for a resident of the dwelling, or

b) With probable cause to arrest for a violent crime and there is a likelihood of escape or danger to the public, i.e. exigent circumstances, or

c) With probable cause and the consent of the resident(s), or

d) In “hot pursuit” of a fleeing felon (not a misdemeanor),

d) With a valid Search Warrant for the residence.

2) If the warrant is for an individual who does not reside in the residence, a deputy may enter the dwelling,

a) With probable cause and the consent of the resident (s), or

b) With probable cause to arrest for a violent crime and there is a likelihood of escape or danger to the public, i.e. exigent circumstances, or

c) With a valid arrest warrant or probable cause AND a valid Search Warrant for the residence.

3) FS 901.19, which authorizes entry into a building to make an arrest, has been ruled unconstitutional to the extent it appears to deviate from the above requirements.

(Effective 1-11-2007)

j. Use of force to effect release of person making arrest detained in building. Florida Statute 901.20 [CALEA 1.2.4 g]

A peace officer may use any reasonable force to liberate himself or another person from detention in a building entered for the purpose of making a lawful arrest.

k. Search of Person Arrested. Florida Statute 901.21 [CALEA 1.2.4 g]

1) When a lawful arrest is effected, a peace officer may search the person arrested and the area within the person's immediate presence for the purpose of:

a) Protecting the officer from attack;

b) Preventing the person from escaping; or

c) Discovering the fruits of a crime.

2) A peace officer making a lawful search without a warrant may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary for the purpose of:

a) Protecting the officer from attack;

b) Preventing the escape of the arrested person; or

c) Assuring subsequent lawful custody of the fruits of a crime or of the articles used in the commission of a crime.

l. Strip Body Cavity Searches of Persons Arrested; [CALEA 1.2.4 g]

1) Strip and/or body cavity searches will be conducted pursuant to F.S. 901.211. [CALEA 1.2.8 a]

2) Strip searches:

a) Strip search – means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.

b) The deputy requesting a strip search must be able to articulate to the on-duty supervisor the probable cause leading them to believing such a search is necessary.

c) All strip searches must be approved by the on-duty supervisor prior to the search being conducted. [CALEA 1.2.8 a]

d) Each strip search shall be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons not physically conducting or observing the search pursuant to this section. Any observer shall be of the same gender as the arrested person. [CALEA 1.2.8 b]

3) Body Cavity Searches

a) A visual, manual, and/or instrument inspection of an inmate's anal, oral, vaginal, ear, and/or nasal orifices.

b) Any body cavity search must be performed under sanitary conditions and will be conducted only by a PHYSICIAN. [CALEA 1.2.8 a]

c) Authorization to conduct a body cavity search must be obtained from the deputies Sector or Division Commander and a search warrant obtained. [CALEA 1.2.8 a]

d) The search will be conducted at and under the procedures of the Correctional Facility.

4) All strip and body cavity searches will be documented in the appropriate incident reports. The deputy is to articulate the circumstances involved in the request for and results of the search. [CALEA 1.2.4 g] [CALEA 1.2.8 c]

5) Nothing in this section shall be construed as limiting any statutory or common-law right of any person for purposes of any civil action or injunctive relief.

6) Search of a person arrested for identifying device indicating a medical disability as defined in Florida State Statute 901.215.

Every law enforcement officer, Sheriff, Deputy Sheriff, or other arresting officer shall, when arresting any person who appears to be inebriated, intoxicated, or not in control of his physical functions, examine such person to ascertain whether or not the person is wearing a medic-alert bracelet or necklace or has upon his person some other visible identifying
(revised on 12-4-01)

device which would specifically delineate a medical disability which would account for the actions of such person. Any arresting officer who does, in fact, discover such identifying device upon such person shall take immediate steps to aid the afflicted person in receiving medication or other treatment for his disability

m. Arrest After Escape or Rescue. Florida Statute 901.22 [CALEA 1.2.4 g]

If a person lawfully arrested escapes or is rescued, the person from whose custody he escapes or was rescued or any other officer may immediately pursue and retake the person arrested without a warrant at any time and in any place.

n. Right of Person Arrested to Consult Attorney. Florida Statute 901.24 [CALEA 1.2.4 g]

A person arrested shall be allowed to consult with any attorney entitled to practice in this state, alone and in private at the place of custody, as often and for such periods of time as is reasonable.

o. Interpreter Services for Deaf Persons. Florida Statute 901.245 [CALEA 1.2.4 g]

In the event that a person who is deaf is arrested and taken into custody for an alleged violation of a criminal law of this state, the services of a qualified interpreter shall be sought prior to interrogating such deaf person. If the services of a qualified interpreter cannot be obtained, the arresting officer may interrogate or take a statement from such person provided such interrogation and the answers thereto shall be in writing. The interrogation and the answers thereto shall be preserved and turned over to the Court in the event such person is tried for the alleged offense.

p. Fresh Pursuit; Arrest Outside Jurisdiction. Florida Statute 901.25 [CALEA 1.2.4 g]

- 1) The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. It shall also include the pursuit of a person who has violated a county or municipal ordinance or chapter 316 or has committed a misdemeanor.**
- 2) Any duly authorized state, county, or municipal arresting officer is authorized to arrest a person outside his jurisdiction when in fresh pursuit. Such officer shall have the same authority to arrest and hold such person in custody outside his jurisdiction, subject to the limitations hereafter set forth, as has any authorized arresting state, county, or municipal officer of this state to arrest and hold in custody a person not arrested in fresh pursuit.**
- 3) If an arrest is made in this state by an officer outside the county within which his jurisdiction lies, he shall immediately notify the officer in charge of the jurisdiction in which the arrest is made. Such officer in charge of the jurisdiction shall, along with the officer making the arrest, take the person so arrested before a County Court Judge or other committing magistrate of the county in which the arrest was made without unnecessary delay.**
- 4) The employing agency of the state, county, or municipal officer making an arrest on fresh pursuit shall be liable for all actions of said officer in the same fashion that it is liable for his acts made while making an arrest within his jurisdiction.**
- 5) The officer making an arrest on fresh pursuit shall be fully protected with respect to pension, retirement, workers' compensation, and other such benefits just as if he had made an arrest in his own jurisdiction.**

q. Recognition of international treaties act; identification certificate; notification upon arrest. Florida Statute 901.26 [CALEA 1.2.4 g]

- 1) The following shall be known as the "Recognition Of International Treaties Act."**

2) The Department of State may, upon application, issue identification certificates to those official representatives of sovereign nations that are on official business within the boundaries of Florida.

3) Wherever in the state a citizen of any sovereign nation to which the United States extends diplomatic recognition shall be arrested or detained for any reason whatsoever, the official who makes the arrest or detention shall immediately notify the nearest consul or other officer of the nation concerned or, if unknown, the Embassy in Washington, D.C., of the nation concerned or, if unknown, the nearest state judicial officer who shall in turn notify either of the above. Failure to give notice shall not be a defense in any criminal proceedings against any citizen of a sovereign nation and shall not be cause for his discharge from custody.

r. Notice to appear for misdemeanors or violations of municipal or county ordinances; effect on authority to conduct search. Florida Statute 901.28 [CALEA 1.2.4 g]

The issuance of a notice to appear shall not be construed to affect a law enforcement officer's authority to conduct an otherwise lawful search, as provided by law.

s. Authorization to take person to medical facility. Florida Statute 901.29 [CALEA 1.2.4 g]

Even though a notice to appear is issued, a law enforcement officer shall be authorized to take a person to a medical facility for such care as appropriate.

t. Failure to Obey Written Promise to Appear. Florida Statute 901.31 [CALEA 1.2.4 g]

Any person who willfully fails to appear before any Court or judicial officer as required by a written notice to appear shall be fined not more than the fine of the principal charge or imprisoned up to the maximum sentence of imprisonment of the principal charge, or both, regardless of the disposition of the charge upon which he was originally arrested. Nothing in this section shall interfere with or prevent the Court from exercising its power to punish for contempt.

u. Plain view [CALEA 1.2.4 g]

An officer may seize evidence of a crime or contraband without a warrant when;

- 1) an officer makes a lawful initial intrusion into an area and is lawfully in a position from which to view an object, and
- 2) the object's incriminating character is immediately apparent, that is the officer has probably cause to believe the object is evidence of a crime or contraband.

If the officer the officer is outside the protected area at a lawful vantage point, the observation and surrounding probably cause merely supply the officer with grounds to secure a warrant to enter and seize the object unless the entry can be justified under some other exception to the warrant requirement.

K. Warrants Procedure

1. Monroe County Warrant with a Sheriff's Office Case Number.

a. This is a warrant where this Office handled the case and the Warrant has our case number on it. A separate supplemental report will be prepared for each Warrant.

b. In District I - Field Deputies

1) Only an arrest / notice to appear affidavit will be completed when an arrest is made by a Deputy with a Warrant regardless of origin of Warrant. (NO OFFENSE / INCIDENT REPORT IS NEEDED)

2) When a person is found to be wanted in multiple jurisdictions, an Arrest Affidavit will be prepared for each jurisdiction.

3) The arresting Deputy shall serve the Warrant at the Jail.

c. In District I - Authorized Detention Deputies

1) Normally this occurs during the booking process when a records check reveals the subject has an outstanding Warrant.

2) A supplemental report will be prepared for each case number and Warrant utilizing the case number that appears on the Warrant. The report will include a complete description and the physical characteristics of the person arrested.

3) The Detention Deputy shall serve the warrant.

d. In District II and III - Field Deputies

1) A supplemental report will be prepared for each case number and Warrant utilizing the case number that appears on the Warrant. The report will include a complete description and the physical characteristics of the person arrested.

2) An arrest affidavit will be prepared for each case number and Warrant.

3) The arresting Deputy will be responsible for notifying the on-duty Communications Officer of the arrest.

4) The Communications Officer will send a teletype to the Warrants Division immediately advising the Warrant has been served. If the arrest is made after hours or on weekends, the teletype will be sent to District I Communications, ATTENTION WARRANTS.

5) A copy of the teletype will be attached to the report.

6) The District I, Communications Officer will place the teletype and warrant in a location designated for the Warrants Section.

7) It will be the responsibility of the Warrants Section to retrieve these messages and warrants each day.

2. Monroe County Warrant without a Sheriff's Office Case Number

a. This is a warrant that is from another agency and does not have a Sheriff's Office case number. A separate report is required for each Warrant.

b. In District I - Field Deputies

1) The arresting Deputy will obtain a Department case number and prepare and complete an Offense-Incident Report for each Warrant.

2) The arresting Deputy shall serve the Warrant at the Jail.

c. In District I - Authorized Detention Deputies

- 1) The Detention Deputies will obtain a Department case number and prepare and complete an Offense-Incident Report for each Warrant.
- 2) The authorized Detention Deputy will serve the Warrant.

d. In Districts II and III - Field Deputies

- 1) The arresting Deputy will obtain an Office case number and prepare and complete an Offense-Incident Report for each Warrant.
- 2) An Arrest Affidavit will be prepared for each Warrant.
- 3) The arresting Deputy will be responsible for notifying the on-duty Communications Officer of the arrest.
- 4) The Communications Officer will send a teletype to the Warrants Section immediately advising the Warrant has been served. If the arrest is made after hours or on weekends, the teletype will be sent to District I Communications, ATTENTION WARRANTS.
- 5) A copy of the teletype will be attached to the report.
- 6) The District I Communications Officer will place the teletype and warrant in a location designated for the Warrants Section.
- 7) It will be the responsibility of the Warrants Section to retrieve these message and warrant each day.

3. FCIC Warrant - Out of County - In-State

- a.** This is a Warrant that is in FCIC/NCIC from another county in Florida.

b. In District I - Field Deputies

- 1) The arresting Deputy will obtain a new case number and prepare an Offense-Incident Report and an Arrest Affidavit.
- 2) Only one (1) report is required, regardless of how many Warrants are outstanding if all of the charges are from the same County.
- 3) If the subject has Warrants from more than one (1) County, a separate case number, Offense-Incident Report and Arrest Affidavit must be completed for each County.
- 4) The arresting Officer shall be held responsible to ensure that the issuing County / State is notified and Warrants Section is advised of the notification for all out of County / State Warrants.

c. In District I - Detention Deputies

- 1) The authorized Corrections Officer will obtain a new case number and prepare an Offense-Incident Report and an Arrest Affidavit.
- 2) Only one (1) report is required, regardless of how many Warrants are outstanding if all of the charges are from the same County.
- 3) If the subject has Warrants from more than one (1) County, a separate case number and Offense-Incident Report must be completed for each County.

- 4) The Detention Deputy shall be held responsible to ensure that the issuing County / State is notified and Warrants Division is advised of the notification for all out of County / State Warrants.

d. In District II and III - Field Deputies

- 1) The arresting Deputy will obtain a new case number and prepare an Offense-Incident Report and an Arrest Affidavit.
- 2) Only one (1) report is required, regardless of how many Warrants are outstanding if all of the charges are from the same County.
- 3) If the subject has Warrants from more than one (1) County, a separate case number, Offense-Incident Report and Arrest Affidavit must be completed for each County.
- 4) The arresting Deputy shall be held responsible to ensure that the issuing County / State is notified and Warrants Section is advised of the notification for all out of County / State Warrants.

4. NCIC Warrant - Out-of-State

- a. This is a warrant in the NCIC System from another State.**

b. In District I - Field Deputies

- 1) The arresting Deputy will obtain a new case number and prepare an Offense-Incident Report and an Affidavit.
- 2) A copy of the teletype will be attached to the report.
- 3) In the event the subject has Warrants from more than one (1) State, a Case Number, Offense-Incident Report, and an Affidavit will be prepared for each State.
- 4) The arresting Deputy shall be held responsible to ensure that the issuing County / State is notified and Warrants Section is advised of the notification for all out of County / State Warrants.

c. In District I - Detention Deputies

- 1) The Detention Deputy will obtain a new case number and prepare an Offense-Incident Report and an Arrest Affidavit.
- 2) In the event the subject has Warrants from more than one (1) State, a Case Number, Offense-Incident Report, and an Affidavit will be prepared for each State.
- 3) If the subject has Warrants from more than one (1) State, a separate case number and Offense-Incident Report must be completed for each County.
- 4) The Detention Deputy shall be held responsible to ensure that the issuing County or State is notified and Warrants Division is advised of the notification for all out of County or State Warrants.

d. In District II and III - Field Deputies

- 1) The arresting Deputy will obtain a new case number and prepare an Offense-Incident Report and an Affidavit.

- 2) A copy of the teletype will be attached to the report.
 - 3) In the event the subject has Warrants from more than one (1) State, a Case Number, Offense-Incident Report, and an Affidavit will be prepared for each State.
 - 4) The arresting Deputy shall be held responsible to ensure that the issuing County or State is notified and Warrants Division is advised of the notification for all out of County or State Warrants.
5. The mechanics of warrant service are important for all members to understand.
- a. A Law Enforcement Officer does not have to have the Warrant in his or her physical possession in order to take the person into custody. One must have probable cause which in this circumstance is a good faith belief that a Warrant exists.
 - b. One must understand that a photocopy of an original Warrant is not a legal copy. There is only one (1) original Warrant issued by the Court. If one makes a machine copy of this Warrant and serves it on a citizen, such is not lawfully arresting the person.
 - c. NEVER make a photocopy of an Arrest Warrant for service. This is placing the member in the position of making a False Arrest.
6. If a warrant is obtained directly from the court, the member shall:
- a. Notify the Warrants Section immediately and advising them that a Warrant has been obtained. The Warrants Section will furnish a Warrant Control Number which the member shall place on the Warrant.
 - b. During regular business hours the warrant will be telefaxed to the Warrants Section so they may initiate a file.
 - c. Notify The Warrants Section Immediately by teletype when the Warrant is served. If after hours or weekends, the teletype will be sent to the Communications Division, District I, ATTENTION WARRANTS.
 - d. A warrant may be held a maximum of seventy-two (72) hours. If service cannot be affected, the Warrant shall be forwarded to the Warrants Section, Central Records.
 - e. When a warrant is obtained directly from the Court and the affidavit has not been filed with the Clerk's Office, such affidavit shall be attached to the warrant and given to the Booking Officer.

L. Priorities for Serving Outstanding Arrest Warrants

- 1. The highest priority for service of arrest warrants shall be to serve such warrants that would prevent injury or death to witness(es) and/or victim(s) if such warrant had not been served;
- 2. The second highest priority shall be for capital and life felonies and Grand Jury Indictments;
- 3. The third highest priority shall be for all other felony warrants;
- 4. The fourth highest priority shall be for misdemeanors;
- 5. Failure-To-Appear warrants shall be served according to the degree of seriousness of the original crime for which one failed to appear as indicated above. (i.e. a Failure-To-Appear warrant for the charge of Robbery will have a higher priority than a Failure-To-Appear warrant for Trespassing)

M. Special Considerations – Arrests - (See Special Order – Foreign Nationals / Diplomats Consular Notification)

N. Domestic Violence Intervention

1. Definitions

- a. “Domestic Violence” for the purpose of this General order means any assault, battery, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.
- b. “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 have a child in common regardless of whether they have been married or have resided together at any time.

2. Authority to Arrests Without Warrants

- a. When a law enforcement officer determines upon probable cause that an act of domestic violence as defined herein has been committed, and reasonably believes that there is danger of violence unless the person alleged to have committed the battery or child abuse is arrested without delay, the officer may arrest the person or persons suspected of its commission and charge such person(s) with the appropriate crime. the decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.
- b. No law enforcement officer shall be held liable, pursuant to Florida Statute 901.15(7)(b), for an arrest based on probable cause.

3. Cross complaints

When complaints are received from two or more parties, the officers shall evaluate each complaint separately to determine whether there is probable cause for arrest.

4. Victim Assistance

Any law enforcement officer who investigates an alleged incident of domestic violence shall assist the victim to obtain medical treatment if such is required as a result of the alleged incident to which the officer responds. Any law enforcement officer who investigates an alleged incident of domestic violence shall advise the victim of such violence, that is a domestic violence center from which the victim may receive services. 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 the Florida Department of Law Enforcement.

5. Domestic Violence Reports

When a law enforcement officer investigates an allegation that an incident of domestic violence, as defined in Florida Statute 741.30, has occurred, the officer shall handle the incident pursuant to the arrest policy provided in Florida Statute 901.15(7)(a), and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report of the alleged incident indicating as prescribed by the Florida Department of law Enforcement, that the alleged offense was an incident of domestic violence. Such report shall include a description of physical injuries observed, if any, and the reasons if no arrest was make, and shall indicate that a copy of the legal rights and remedies notice was given to the victim. Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged domestic violence. The officer shall submit the report to the supervisor or other person to whom the employer’s rules or policies

require reports of similar allegations of criminal activity to be made. **The Domestic Abuse Shelter shall obtain a copy of the initial police report from each of the substations. If the case is an active criminal investigation, the report will** exclude victim / witness statements or other materials deemed to be a part of an active criminal investigation as defined in Florida Statute 119.07(3)(d). Prior to releasing a copy of the report to a domestic violence center, the supervisor shall ensure that any reference in the report to a sexual crime or any information, which would identify a person as a victim of a sexual crime has been removed or obliterated.

- a) It is the policy of the Department to arrest suspects of domestic violence when the Deputy has probable cause to believe and does believe the offense has occurred.
- b) When probable cause exists than an act of domestic violence has occurred Deputies shall arrest the suspect(s). (See arrest procedures listed below.)
- c) The decision to arrest and charge does not require the consent of the victim.

6. Arrest Procedures

- a) If the offender is arrested, the following procedures shall apply.
- b) The arresting Deputy shall advise the offender of his/her suspected crime.
- c) In all cases the offender will be handcuffed immediately following arrest and shall be secured inside a caged department vehicle.
- d) The Deputy shall immediately notify Communications he has made an arrest, and he shall note the specific time of arrest. The time given by the dispatcher shall be of the official time of arrest.
- e) An appropriate disposition shall be made of the offender's vehicle, where applicable.
- f) The arresting Deputy shall be responsible for all citations, arrest reports and tow sheets.

7. Domestic Violence – Entry into the Scene

- a) If refused entry, the Deputies shall be persistent about seeing and speaking alone with the alleged victim. If access to this person is refused, the Deputies shall request that the dispatcher attempt contact with the alleged victim by phone.
- b) If access is still refused and the Deputies have reason to believe that someone is in imminent danger, Deputies shall gain access to and make contact with the person in imminent danger.
- c) The initial actions of the responding Deputies shall be to ensure the safety of all persons at the scene. This should include:
 - 1) Separating the involved parties physically, verbally and visually, if possible;
 - 2) Taking possession of all involved weapons and any other weapons which pose an immediate threat at the scene;
 - 3) Assessing the severity of any injuries and assisting injured parties in obtaining medical treatment;
 - 4) Locating and checking the welfare of any children and others at the residence. If children are present, then the Children and Family Services will be notified immediately.

(revised on 4-2-03)

8. Domestic Cases Involving Law Enforcement / Corrections Officers.

- a. **It is the policy of the Sheriff that there is no change in conducting an investigation of domestic violence when the suspect is a law enforcement or corrections officer of any agency as per the policy outlined above with the following exceptions:**

- 1) **Report Requirements** – A report is to be completed in all cases where the suspect is a law enforcement or correctional officer.
- 2) **Supervisor Notification** – An on-duty supervisor will be notified in all cases where the suspect is a law enforcement or corrections officer. The supervisor should respond to the scene in all cases; however, the supervisor will respond to the scene if an arrest is to be made.
- 3) **Arrest Considerations** - If probable cause exists that a crime has been committed, under the Preferred arrest policy, an arrest shall be made.

b. Agency Notification

- 1) If an arrest is not to be made at the scene the suspect officer's commander (Monroe County Sheriff's Office personnel) or agency (for all other agency personnel) will be notified within 24 hours by the on duty supervisor.
- 2) If an arrest is made at the scene the Supervisor will immediately notify the suspect officer's commander or agency.

9. Domestic Violence Injunctions/Restraining Orders Against Law Enforcement Deputies

- a. This policy also applies to other employees who are required to carry a firearm in the performance of their duties. Policy concerning Corrections Deputies is outlined in section 10 below.
- b. When a member of the Monroe County Sheriff's Office serves a Domestic Violence Injunction/Restraining Order on a law enforcement officer of another agency the serving member is required to notify the respondent's agency prior to or immediately following service.
- c. When a member of the Monroe County Sheriff's Office is to be served with a Domestic Violence Injunction/Restraining Order the serving deputy shall notify the respondent's commander of the pending service.
- d. Monroe County Sheriff's Office employees served with a Domestic Violence Injunction/ Restraining Order are required to immediately notify their commander directly and provide the commander a copy of the injunction/ restraining order ASAP.
- e. **Respondent Member's Responsibility:**
 - 1) The respondent member shall:
 - a) Ensure that all aspects of the injunction/order are adhered to;
 - b) Seek any modifications from the court to the injunction/order to allow the respondent member access to a service weapon for work purposes only;
 - c) Provide copies of the original, modified, or recalled/cancelled injunction/order to the member's commander
- f. **Commander's Responsibility:**
 - 1) The commander shall:

- a) Ensure that the order is complied with in respect to the member surrendering his or her Sheriff's Office issued and personally owned firearms;
 - b) Relieve the member of duty, unless or pending an order that allows the member access to the issued service weapon for work purposes;
 - c) Inform the Undersheriff and Internal Affairs of the injunction/order;
 - d) Initiate any appropriate disciplinary action.
- g. Restrictions on Respondent Members**
- 1) Respondent members are relieved of duty, unless the injunction/order allows the member access to a service weapon to perform essential job functions.
 - 2) While relieved of duty, Respondent members may not:
 - a) Work any extra or off-duty details in the capacity of a law enforcement/correctional officer;
 - b) Participate in the take-home car program. Assigned units shall be kept at the member's duty station;
 - c) Take any action as a law enforcement / correctional officer.
 - 3) The member may be reassigned to an open position as approved by the Undersheriff.
 - 4) While relieved of duty, the member must use any accumulated compensatory or vacation leave while addressing the court order.
- h. Injunctions/Orders Allowing Access To Service Weapon for Job Purposes; Restrictions on Respondent Members:**
- 1) The member may be reassigned to a new duty station at the discretion of the Undersheriff to ensure public safety and confidence.
 - 2) The member's supervisor will secure the member's service weapon at the duty station, issue the member the weapon at the beginning of the shift and collect it at the end of the member's shift, and again secure it at the duty station.
 - 3) The member is prohibited from carrying a firearm off-duty.
 - 4) The member's assigned unit will be kept at the member's duty station and picked up at the beginning of the shift and left at the end of the shift. If the member must respond to job related subpoenas, he or she shall drive their personal vehicle to court or depositions.
 - 5) The member shall not take any action as a law enforcement officer while off duty.
 - 6) The member may not work any extra or off duty details in the capacity of a law enforcement officer.
- i. Unresolved Injunctions/Orders**
- 1) The respondent member has 30 days to resolve the injunction/order to allow access to a service weapon to be able to perform essential job functions. Members prohibited from carrying their

service weapon for more than 30 days may be considered to have vacated their position and separated from the Sheriff's Office.

- 2) Members served with permanent injunctions will be considered to have vacated their position and separated from the Sheriff's Office.
 - 3) Any finding of violation of a domestic violence injunction reached by the court to include a plea of no contest, guilty, adjudication withheld or a conviction will result in the member losing his right to carry a firearm per federal law and as such the member will be considered to have vacated their position and separated from the Sheriff's Office.
- j. Disciplinary procedures set forth in the policy and any collective bargaining agreement shall be followed.

10. Domestic Violence Injunctions/Restraining Orders Against Corrections Officers

- a. When a member of the Monroe County Sheriff's Office serves a Domestic Violence injunction/Restraining Order on a law enforcement officer of another agency the serving member is required to notify the respondent's agency prior to or immediately following service.
- b. When a member of the Monroe County Sheriff's Office is to be served with a Domestic Violence Injunction/Restraining Order the serving deputy shall notify the respondent's commander of the pending service.
- c. Monroe County Sheriff's Office employees served with a Domestic Violence Injunction/ Restraining Order are required to immediately notify their commander directly and provide the commander a copy of the injunction/ restraining order ASAP.
- d. Respondent Member's Responsibility:
 - 1) The respondent member shall:
 - a) Ensure that all aspects of the injunction/order are adhered to;
 - b) Seek any modifications from the court to the injunction/order to allow the respondent member access to a service weapon for work purposes only;
 - c) Provide copies of the original, modified, or recalled/cancelled injunction/order to the member's commander
- e. Commander's Responsibility:
 - 1) The commander shall:
 - a) Ensure that the order is complied with in respect to the member surrendering his or her Sheriff's Office issued and personally owned firearms;
 - b) Relieve the member of duty, unless or pending an order that allows the member access to the issued service weapon for work purposes;
 - c) Inform the Undersheriff and Internal Affairs of the injunction/order;
 - d) Initiate any appropriate disciplinary action.

f. Corrections Officers Required to be armed.

- 1) If a Corrections deputy is in a position that requires the deputy to be armed, i.e. transportation, the deputy will immediately be reassigned to a non-armed position.**
 - 2) The Corrections deputy will not be allowed to work any off or extra duty detail, allowed access to a firearm or ammunition until the injunction/restraining order is resolved.**
 - 3) The Corrections deputy will not be returned to the deputy's previous position until the injunction is resolved, allowing the deputy access to a firearm to perform their regular job function.**
- g. Disciplinary procedures set forth in the policy and any collective bargaining agreement shall be followed.**

(Revised 1-4-2006)