



OFFICE OF THE STATE ATTORNEY

Pursuant to Article V, Section 17, of the Constitution of the State of Florida, the State Attorney is charged with being the chief prosecuting officer of all criminal trial courts in his/her respective circuit and shall perform all other duties as prescribed by general law. The State Attorney, with the aid of appointed assistants and staff shall appear in the Circuit and County Courts within his/her judicial circuit and prosecute or defend on behalf of the State, all suits, applications, or motions, civil or criminal, in which the state is a party. Florida Statutes Chapter 27 and 29 and the Florida Rules of Criminal Procedure further elaborate upon the duties of the State Attorney.

Consistent with and necessary to the performance of these duties is the requirement that the State Attorney provide personnel and procedures for the orderly, efficient and effective investigation, intake and processing of ALL felony, misdemeanor, criminal traffic and juvenile delinquency cases in addition to statutorily enumerated civil cases that occur within their jurisdiction.

There is a State Attorney elected for each of the twenty judicial circuits. These circuits vary greatly from a population of less than 100,000, to populations of over 2,000,000. The geographic area covered by each circuit may encompass one county or as much as seven counties.

CONSTITUTIONAL, STATUTORY AND RULES OF COURT OBLIGATIONS OF THE STATE ATTORNEY

I. CONSTITUTIONAL OBLIGATIONS

The State Attorney is constitutionally charged with the duty to see that the laws of Florida are faithfully executed. Article V, s.17, Florida Constitution (1971), provides that the State Attorney shall be the prosecuting officer for ALL trial courts in his/her judicial circuit and shall perform such other duties as may be prescribed by general law.

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Duties Before the Court

F.S. 27.02 provides that the State Attorney shall appear in the circuit and county courts and prosecute or defend on behalf of the state all suits, applications, or motions, civil or criminal, in which the state is a party, except as provided in chapters 39, 984, and 985. The State Attorney shall appear in the circuit or county courts within his or her judicial circuits for the purpose of prosecuting violations of special laws and county or municipal ordinances punishable by incarceration if the prosecution is ancillary to a state prosecution or if the state attorney has contracted with the county or municipality for reimbursement for services.

State Attorney - Obligations and Responsibilities

F.S. 27.04. The State Attorney shall have summoned all witnesses required on behalf of the state; and is authorized to subpoena witnesses from throughout the state to appear before them to testify as to any violation of law. The State Attorney is empowered to administer oaths to all witnesses summoned to testify or who may voluntarily appear before them to testify as to any violations of law.

F.S. 27.05 requires the State Attorney to assist the Attorney General in the preparation and presentation of all appeals to the Supreme Court, from the Circuit Court of their respective circuit, of all cases, civil or criminal, in which the State is a party.

F.S. 27.06 provides that the State Attorney shall represent the State in all cases of habeas corpus arising in their circuit, and shall also represent the State in cases of preliminary trials of persons charged with capital offenses.

F.S. 27.11. The State Attorney shall make a report to the Chief Financial Officer on the first Monday in January and July in each and every year of the condition of all claims placed in his hands or which the State Attorney may have been required to prosecute and collect.

F.S. 27.12 and 27.13. The State Attorney may, with the approval of the Department of Financial Services, compromise and settle all judgments, claims, and demands in favor of the state in his or her circuit against defaulting collectors of revenue, sheriffs and other officers, and the sureties on their bonds, on such terms as the State Attorney may deem equitable and proper. The State Attorney shall, on agreeing to any compromise or settlement, report the same to the Department of Financial Services for its approval.

F.S. 27.14 – Assigning State Attorneys to other Circuits

(1) State Attorney Executive Assignments - If any State Attorney is disqualified to represent the state in any investigation, case, or matter pending in the courts of his or her circuit or if, for any other good and sufficient reason, the Governor determines that the ends of justice would be best served, the Governor may, by executive order filed with the Department of State, either order an exchange of circuits or of courts between such State Attorney and any other State Attorney or order an assignment of any State Attorney to discharge the duties of the State Attorney with respect to one or more specified investigations, cases, or matters, specified in general in the executive order of the Governor.

(2) Statewide Prosecutor Assignments - If the Statewide Prosecutor in charge of the Office of Statewide Prosecution determines that he or she is not qualified to represent the state in any investigation, case, or matter pending in the courts of the State or if a court of competent jurisdiction disqualifies him or her from representing the state, the Governor may, by executive order filed with the Department of State, order an assignment of any State Attorney to discharge the duties of such prosecutor with respect to one or more specified investigations, cases, or matters, generally described in the order.

(3) Whenever a state attorney is exchanged or assigned, he or she may designate one or more of his or her assistant state attorneys and state attorney investigators to perform the duties assigned under the executive order.

F.S. 27.15 State Attorneys to assist in other circuits.

(1) The Governor of the state may for good and sufficient reasons require any state attorney in the state to proceed to any place in the state and assist the state attorney holding office in the circuit where such

State Attorney - Obligations and Responsibilities

place is located in the discharge of any of the duties of such state attorney. Any state attorney in this state who shall be so directed by the Governor to go and assist any other state attorney in the discharge of his or her duties shall immediately proceed to the place designated and assist the state attorney of the circuit in which such place is located in the performance of duties

(2) When any state attorney is required to go beyond the limits of the circuit in which he or she holds office to comply with this section or on other official business performed at the direction of the Governor, the expenses that would otherwise not have been incurred but for the executive assignment shall be borne by the state and shall be paid from the appropriation provided by the state for the state attorney who is being assisted in the discharge of his or her duties. Other costs attendant to the prosecution of such cases shall be paid by the entity obligated to pay the expense in the absence of an executive assignment.

F.S. 27.181 Each assistant state attorney appointed by a state attorney shall serve at the pleasure of the state attorney appointing him or her. Each assistant state attorney shall have all of the powers and discharge all of the duties of the State Attorney appointing him or her under the direction of that State Attorney.

F.S. 27.25 The State Attorney is authorized to employ and establish, in such number as authorized by the General Appropriations Act, assistant state attorneys and other staff pursuant to s. 29.005. All payments for the salary of the State Attorney and the necessary expenses of office, including salaries of deputies, assistants, and staff, shall be considered as being for a valid public purpose.

F.S. 27.255 Each investigator employed on a full-time basis by a state attorney and each special investigator appointed by the state attorney pursuant to 27.251 is hereby declared to be a law enforcement officer of the state and a conservator of the peace under the direction and control of the state attorney who employs him or her, with full powers of arrest, in accordance with the laws of the state.

F.S. 27.34 A county or municipality may contract with, or appropriate or contribute funds to the operation of, the various state attorneys pursuant to this subsection. A state attorney prosecuting violation of special laws or county or municipal ordinances punishable by incarceration and not ancillary to a state charge shall contract with counties and municipalities to recover the full cost of services.

F.S. 27.341 The state attorney shall electronically file court documents with the clerk of the court and receive court documents from the clerk of the court. It is the expectation of the Legislature that the electronic filing and receipt of court documents will reduce costs for the office of the state attorney, the clerk of the court, and the judiciary; will increase timeliness in the processing of cases; and will provide the judiciary and the clerk of the court with case-related information to allow for improved judicial case management. As used in this section, the term "court documents" includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts. It is further the expectation of the Legislature that each office of the state attorney consult with the office of the public defender for the same circuit served by the office of the state attorney, the clerks of court for the circuit, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

PROSECUTION OF CRIMINAL ACTS

Felony, Misdemeanor and Criminal Traffic Cases

The State Attorney is required to represent the State in the prosecution of all criminal cases arising out of their respective circuits (F.S. 27.02). A criminal case may be generated by several different events.

1. **Arrest of an offender** - The State Attorney must review every arrest for violations of state law that occur in their respective circuits. This review process can be very extensive especially when body cam evidence as video footage is presented. There may be several officers at a scene equipped with body cams and each video must be reviewed by the intake prosecutor. This may include multiple hours of footage. Law enforcement prepares criminal investigations, arrest reports, victim affidavits and witness statements in addition to securing the evidence needed to prove each and every element of the offense charged by the arrest. Law Enforcement presents their completed investigation, statements and evidence to the State Attorney for review. Once the State Attorney has completed the pre-filing review and the evidence presented, a decision is made to either file an Information charging document, file an amended charge, decline or no-info the charges or defer the case back to the arresting agency for further investigation.

When an Information or Indictment is filed by the State Attorney with the Clerk of the Court, the case then proceeds to arraignment, discovery preparation, depositions, motion responses, pretrial hearings, trial or plea, and sentencing. If there is a conviction then the appellate process may begin. If the appeal is from county court to circuit court the State Attorney must respond. The State Attorney may respond if the appeal is from circuit court to the District Court of Appeals or the Florida Supreme Court.

2. **Non-Arrest Cases Submitted by Law Enforcement** - The State Attorney receives from law enforcement complaints and reports of criminal activity that require investigation and evaluation prior to arrest. Each one of these complaints must be investigated thoroughly by law enforcement and/or the State Attorney to determine whether a crime has been committed and who has committed the crime. The investigation may include sworn witness statements, evidence collection, search warrants, subpoenas duces tecums, and more.

When the State Attorney has completed its review of the investigation, a decision is made to either file with the Clerk of Court an Information or decline to file any charges. If charges are filed an arrest warrant or issue summons must be prepared to bring the accused into custody. Once the accused is arrested the case proceeds to arraignment, discovery preparation, motion response, pretrial hearings, trial and sentencing. The appellate process then begins as outlined above.

3. **Complaints submitted by non-Law Enforcement and Citizens** - The State Attorney receives from non-law enforcement and citizens' complaints of alleged criminal activity. These complaints must be thoroughly investigated to determine whether a crime has occurred and who has committed the crime. The investigation may include sworn witness statements, search warrants, evidence collection, subpoena duces tecums and more. When the State Attorney has completed its investigation the same procedure as outlined above for non-arrest law enforcement cases is followed.

4. **State Attorney Initiated Investigations** - The State Attorney may initiate an investigation if they have reason to believe a crime has occurred and an investigation is warranted.

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5. **Executive Assignments** - The State Attorney receives assignments to investigate and prosecute cases outside their circuit when directed to pursuant to an Executive Order of the Governor. State Attorneys may also receive assignments to prosecute cases from the Statewide Prosecutor's Office when ordered to do so by the Governor.

6. **Grand Jury Investigations** – One of the functions of the Grand Jury is to investigate certain criminal allegations to determine whether there is sufficient evidence to justify an indictment against an accused. They must ascertain whether there is probable cause a crime has been committed by the person so accused. If they determine that the evidence is sufficient to constitute probable cause they issue a true bill, which then becomes the indictment on which the accused will be put on trial.

The Florida Constitution guarantees "no person shall be tried for a capital crime without presentment or indictment by a grand jury", Art I, Section 15(a). Therefore, capital homicide cases must be presented to the Grand Jury. Otherwise, the State Attorney has concurrent powers to file charges.

In addition, the Grand Jury may also investigate and report on community matters of great public importance and the State Attorney must assist the Grand Jury with the investigation. The Grand Jury may release a report of their investigation along with any relevant recommendations.

Prosecution and Diversion of Juvenile Delinquency

The Circuit Court has exclusive jurisdiction of proceedings in which a child is alleged to have committed a delinquent act. The state attorney is responsible for prosecuting the delinquent acts of juveniles. Florida Statutes Chapter 985 establishes the procedures relating to juvenile delinquency. The purpose and intent is to increase public safety by reducing juvenile delinquency through effective prevention, intervention and treatment services that strengthen and reform the lives of children.

F.S. 985.15 identifies the filing decisions that may be utilized by the state attorney; a referral to a civil citation program, a referral to a diversionary program or pre-trial intervention program, a petition for delinquency, a direct filed information as an adult or a referral to the Grand Jury in a capital case.

F.S. 985.12 requires each State Attorney to operate and/or oversee a civil citation program or similar pre-arrest diversion program in each Judicial Circuit. At the successful completion of the program the charges may be dismissed or expunged. If the juvenile does not successfully complete the program the charges may be referred back to the state attorney for a filing decision.

PROBLEM SOLVING DIVERSION COURT PROGRAMS

Pretrial Intervention Programs

Florida Statute 948.08 outlines Pretrial Intervention Programs. These programs are supervised by the Department of Corrections. The State Attorney's duties are to approve and/or consent to the eligibility of any person who has applied for the program. This may occur before or after an Information (charging document) has been filed with the Clerk.

The state attorney must review all the facts and circumstances of the crime and seriousness of charges, the state attorney must complete a thorough analysis of the offender's criminal history, the state attorney must contact the victim and witnesses to obtain their agreement and the state attorney must contact the arresting law enforcement officer or agency to determine their position for diversion. The pretrial intervention program shall provide appropriate counseling, education, supervision and medical and psychological treatment as available and when appropriate for the persons released to such programs. The offender must voluntarily agree to enter the program and knowingly and intelligently waive his right to speedy trial for the period of diversion. The criminal charges are then continued until the offender completes the program. Resumption of the pending charges shall be undertaken if the program administrator or State Attorney determines that the offender is not fulfilling their obligations.

At the end of the intervention period and after reviewing the recommendation of the administrator the State Attorney shall make the final determination as to whether the prosecution shall continue.

Treatment Based Drug Court Programs

Effective October 1, 1993, F.S. 948.08(6) was amended to add a new subsection concerning the use of pretrial intervention for drug offenses. This amendment expanded the program to allow offenders charged with second- or third-degree felonies for the purchase or possession of a controlled substance under Chapter 893 and who have not previously been convicted of a felony, nor been admitted to a pretrial intervention program, to be eligible for admission into a pretrial substance abuse education and treatment intervention program.

If the State Attorney believes that the facts and circumstances of the case suggest the defendant was involved in the dealing and selling of controlled substances the court shall hold a pre-admission hearing. If the State Attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the dealing or selling of controlled substances, the court shall deny the defendant's admission into a pretrial intervention program. If a defendant was previously admitted to a pretrial substance abuse education and treatment intervention program at any time prior to trial and the defendant rejected that offer on the record, the Court or the State Attorney may deny the defendant's admission to such program.

At the end of the pretrial intervention period, the court shall consider the recommendation of the administrator and the State Attorney as to disposition of the pending charges. The court shall determine, by a written finding, whether the defendant has successfully completed the pretrial intervention program. If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or order that the charges revert to normal channels for prosecution.

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The court shall dismiss the charges upon a finding that the defendant has successfully completed the pretrial intervention program.

Post-Adjudicatory Drug Court Treatment Programs

The Post-Adjudicatory Drug Court Treatment Program was created in 2009 to allow non-violent felony offenders whose crime may be caused by drug use but who have not been charged with a drug offense, the opportunity to be sentenced to drug treatment in lieu of a state prison sanction.

A post-adjudicatory treatment-based drug court program as a condition of probation or community control must be based on the sentencing courts assessment of the defendant's:

Criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program. This sentencing option is only effective for offenses committed on or after July 1, 2009.

The Criminal Punishment Code was amended to add an additional mitigating factor for a departure from the lowest permissible sentence for the post-adjudicatory drug court program.

Veteran's Court Diversion Programs

The Chief Judge of each judicial circuit may establish a Military Veterans and Servicemembers Court program under which Veterans and other specifically defined servicemembers who are charged with a criminal offense and who suffer from a military related mental illness or other related military service injuries and disorders may be sentenced in a manner that appropriately addresses the severity of their military disability. The state attorney must do a thorough review of the facts of the case, criminal background of the offender and victim contact.

The sentencing Court must consider several factors including the recommendation of the state attorney and the victim, if any, and the offender's agreement to enter the program.

Mental Health Court Programs

The Chief Judge and County may establish a Mental Health Court Program in their judicial Circuit. Mental Health court programs may include pre-trial intervention and post-adjudicatory options based on a review status of the defendant's criminal history, mental health screening, amenability to the services, total sentence points, the recommendation of the state attorney and victim, if any, and the defendant's agreement.

The state attorney is responsible for the criminal background checks, a case factual analysis and review of whether the defendant is a risk to the public safety. Even after disposition of the case, or diversion to a program the cases must come up for review and must be reinvestigated by the state attorney for future court hearings.

Community Court Programs

Each Judicial Circuit may establish a community court program for defendant's charged with certain misdemeanor offenses. The Court is to adopt a non-adversarial approach to the disposition of these criminal offenses. The state attorney is required to be present to represent the state, investigate the criminal background of the offender and make a recommendation to the court. These community courts may be established in any municipality of the jurisdiction of the judicial circuit.

Victim Obligations and Marsy's Law Constitutional Amendment

Pursuant to F.S. 960.001, the State Attorney must provide the following services to victims and witnesses of crimes and may employ victim advocates to assist in these matters:

- Inform victims of availability of Crimes Compensation Fund, community-based victim treatment programs, and the role of the victim in the criminal justice process.
- Notify victims of the availability of protection.
- Notify victim and witnesses of scheduling changes.
- Notify witnesses and relatives of homicide victims of judicial and post-judicial proceedings.
- Consult with victims of felonies involving physical or emotional injury or trauma on the case.
- Return victim's property held for evidentiary purposes. Notify victims'/witnesses' employers or creditors of the need for the victim's or witness's cooperation, if requested.
- Assist victim in receiving restitution.
- Send out and receive victim impact statements.
- Provide separate waiting areas, transportation and translators for victim and witnesses, when practical.
- Notify victims, material witnesses, and sheriff's officials of the county where the criminal charge or petition for delinquency arose of offenders who have escaped.
- Victim Assistance, Education and Training shall be offered to State Attorneys and assistant state attorneys so that victims may be promptly, properly and completely assisted.
- F.S. 914.25 provides protective services for victims and witnesses of serious felony offenses. These services may include the temporary relocation of the witness if the need is certified by the State Attorney.
- F.S. 960.001 established the Guidelines for Fair Treatment of Victims to provide that the victim of a crime and the State Attorney, with the consent of the victim, have standing to assert the rights of a crime victim which are provided by law or the State Constitution.

In 2018, Art. I, Section 16 of the Florida Constitution was amended to create 'Marsy's Law' which further expanded on the duties and responsibilities of the state attorneys in regards to the notification and protection of victims. Locations, addresses, names and other identifying factors were exempted from the public record to protect victims. This imposed a substantial research and location of victims to determine their applicability of these new Constitutional Rights.

Witness Coordination Obligations

F.S. 27.0065 requires each state attorney and public defender be responsible for:

- (1) Coordinating court appearances, including pretrial conferences and depositions, for all witnesses who are subpoenaed in criminal cases, including law enforcement personnel.
- (2) Contacting witnesses and securing information necessary to place a witness on an on-call status with regard to his or her court appearance.

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(3) Contacting witnesses to advise them not to report to court in the event the case for which they have been subpoenaed has been continued or has had a plea entered, or in the event there is any other reason why their attendance is not required on the dates they have been ordered to report.

(4) Contacting the employer of a witness, when necessary, to confirm that the employee has been subpoenaed to appear in court as a witness.

Domestic Violence Obligations

Pursuant to the Domestic Violence Act of 1991 each State Attorney shall:

- Develop special units or assign prosecutors to specialize in the prosecution of domestic violence cases, but such specialization need not be an exclusive area of duty assignment.
- Provide specialized training for prosecutors and staff who handle domestic violence cases.
- Treat domestic violence as an illegal act and not just a private matter.
- Adopt a pro-prosecution policy.
- Have the specialized prosecutors determine the filing or non-filing of criminal charges over the objection of the victim, if necessary.
- Perform a thorough investigation of defendant's history prior to first appearance, including but not limited to -
 - Prior arrests for domestic violence charges
 - Prior arrests for non-domestic violence charges
 - Prior injunctions for protection against domestic violence and repeat violence
 - Prior walk-in complaints against defendant.
- Present this information to the judge at the first appearance, bond hearing and sentencing.

F.S. 741.2901 requires State Attorneys to establish an intake policy for violations of injunctions for protection against domestic violence. This intake policy is to be coordinated with the Clerk of the Court and should follow the procedures outlined in F.S. 741.31.

When there has been a violation of an injunction and no arrest, the victim proceeds first to the Clerk's office for assistance in preparing an affidavit of violation. The affidavit is then immediately sent to the State Attorney and the court who issued the injunction (or a court determined by the Chief Judge). If the affidavit alleges a crime it is also sent to the appropriate law enforcement agency. Within 20 days this law enforcement agency must complete their investigation and forward it to the State Attorney. The State Attorney shall determine within 30 working days whether its office will proceed to file criminal charges or prepare a motion for an order to show cause as to why the respondent should not be held in criminal contempt; or prepare both as alternative findings; or file notice that the case remains under investigation or is pending subject to some other action.

The State Attorney may be appointed by the court to assist in an indirect criminal contempt proceeding regarding the violation of an injunction.

All state agencies involved with the enforcement, monitoring, or prosecution of domestic violence cases shall: Collect and maintain records of each domestic violence incident for access by investigators preparing for bond hearings and prosecutions for acts of domestic violence. This information shall be provided to the court at first appearance hearings and all subsequent hearings.

Career Criminal Obligations

F.S. 775.0841 establishes legislative intent to support increased efforts by state and local law enforcement agencies and State Attorney's to investigate, apprehend, and prosecute career criminals, and to incarcerate them for extended terms.

Each State Attorney, Sheriff and the Police Chief of each municipality shall provide for, or participate in a Career criminal prosecution program to coordinate the efforts as outlined in the career criminal statutes. These efforts shall include but are not limited to:

- The assignment of highly qualified investigators and prosecutors to career criminal cases;
- Significant reduction of caseloads for investigators and prosecutors assigned to career criminal cases;
- Coordination with federal, state and local criminal justice agencies to facilitate the collection and dissemination of criminal investigative and intelligence information relating to those persons meeting the criteria of a career criminal.

Each state attorney's office shall establish a Career Criminal Prosecution Unit, which may adopt and implement certain policies enumerated by F.S. 775.0843(2), including:

- Limited pre-trial release;
- Seeking a plea of guilty or conviction on each offense;
- Reducing the time between arrest and disposition;
- Persuading the court to impose the most severe sanction authorized.

In 1997, the '**Prison Releasee Reoffender Punishment Act**' was created, F.S. 775.082(8). This act created mandatory sentences for a specific list of enumerated felonies if committed within 3 years of being released from state prison. The offender must serve one hundred percent of the statutory maximums for each felony offense.

In 1999, the '**Three-Time Violent Felony Offender Act**' was created, F.S. 775.084 (1) c. This act created mandatory sentencing for a defendant who has been previously convicted as an adult two or more times of a felony, or an attempt to commit a felony, and two or more of such convictions were for committing, or attempting to commit certain enumerated violent offenses. The offense for which the defendant is to be sentenced must also be one of the enumerated felonies.

In 1999, the '**10-20-Life Law**' was created. F.S. 775.087 (2) and (3) were amended to increase the minimum mandatory sentences for certain enumerated felonies if during the commission of the felony the offender actually, possessed or discharged a firearm or destructive device. Possession of the firearm or destructive device may result in a 10-year mandatory minimum sentence, discharge of the firearm or destructive device may result in a 20-year mandatory sentence and if, as a result of the discharge, death or great bodily harm is inflicted on another person a life sentence may be imposed. For every case in which the offender meets the criteria in this act and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place in the case file.

Discovery Obligations

Florida Rule of Criminal Procedure 3.220 outlines the duties of the State Attorney regarding discovery. After the filing of the charging document and within 15 days after service of the defendant's notice of election to participate in discovery, the State Attorney shall disclose to defense counsel and permit counsel to inspect, copy, test and photograph information and material as outlined in Florida Rule of Criminal Procedure 3.220(b)

Sentencings Obligations

Florida Rules of Criminal Procedure 3.701, 3.702, 3.703 and 3.704, along with F.S. Chapter 921, outline the duties of the State Attorney concerning the sentencing of an offender in circuit court

Sentencing Guidelines

Prior to October 1, 1998, offenders were sentenced pursuant to statutorily defined sentencing guidelines. Sentencing guideline score sheets are generally prepared by the State Attorney for the court. The sentencing guideline score sheet in effect on the date of offense must be utilized. There are the 1983-93 sentencing guidelines, 1994 to 1995 sentencing guidelines, and 1995 to 1998 sentencing guidelines. This may result in multiple sentencing guideline score sheets for offenders who committed crimes over several time periods.

Criminal Punishment Code

Effective October 1, 1998, Florida's sentencing guidelines were repealed and the Florida Criminal Punishment Code became the new mechanism for sentencing felony offenders.

The Punishment Code is similar to the guidelines, in that it requires a calculation of points for the primary offense additional offenses, victim injury, prior record and various other factors. The State Attorney's Office must have available for each offender a complete criminal history with dispositions of all arrests and criminal allegations. This will require NCIC and FCIC computer access, DHSMV driving records, domestic violence and injunction records and more. If the offender has convictions from out-of-state certified, copies must be obtained. In many instances' fingerprints must be compared to match an offender to a conviction.

Once the criminal background has been retrieved and verified the State Attorney must begin a mathematical calculation and analysis concerning the current charges, any additional charges, victim injury, and prior record of the offender to complete a sentencing scoresheet. This must be presented to defense counsel and then to the judge who shall approve the scoresheet and impose the sentence. Under the criminal punishment code these calculations are only required to determine what the lowest permissible sentence will be. All offenses are subject to statutory maximums as the highest permissible sentence.

The State Attorney is also required to upload and utilize the digital scoresheet data base created by the Department of Corrections for statewide case data access.

Sexual Predator and Civil Commitment Obligations

Florida Statutes 775.21, 775.22, 775.225 and 775.23 establish the identification and registration of sexual predators. These statutes set out the specific criteria for the court to consider in identifying a sexual predator and issuing a court order as such. Based on the date of offense certain additional restrictions are placed on the predator after release from incarceration that may include registration, public notification or specialized supervision, or more.

If the Department of Corrections or any other law enforcement agency obtains information which indicates that an offender meets the sexual predator criteria but the court did not make a written finding that the offender is a sexual predator the Department of Corrections or the law enforcement agency shall notify the State Attorney who prosecuted the offense or the State Attorney of the county where the offender temporarily or permanently resides upon first entering the state. The State Attorney shall bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria.

In 1999, the '**Jimmy Ryce Act**' established a Civil Commitment Procedure in Civil Court by which sexually violent predators may be committed to the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the offender is safe to be released into the community. Upon being served notice by DCF, the State Attorney is charged with the duty to file a petition in Civil Court alleging that such person is a sexually violent predator, and is then responsible for presenting the case to a Jury or Judge from the probable cause hearing through trial. The State Attorney must also represent the state when a committed sexually violent predator petitions for release on an annual basis.

In 2014, the Civil Commitment Procedure was expanded to authorize and require a state attorney to refer certain persons for civil commitment who are serving a sentence in county jail as opposed to state prison under certain circumstances; requiring the agency with jurisdiction over a person who has been convicted of a sexually violent offense to give written notice to the multidisciplinary team as soon as practicable after receipt into custody of such person in a county or municipal jail facility; providing for the State Attorney to file a petition for civil commitment regardless of recommendation of the multidisciplinary team. This means that civil commitment procedures now include offenders who are sentenced to county or city jail. In addition, the duties of the State Attorney were expanded to review each determination by DCF whether or not an offender meets the qualifications for civil commitment. The State Attorney may file a petition for Civil Commitment regardless of a 'no' recommendation by DCF. Both expansions have substantially increased the duties and responsibilities of the State Attorney in regards to the sexually violent predator civil commitment procedures.

Baker Act Obligations

F.S. 394.467(6) establishes the duties of State Attorney's in Baker Act Proceedings. Upon being served notice that the Administrator of a receiving Mental Health facility has filed a petition with the Circuit Court that they are seeking to provide involuntary treatment to the patient who has been Baker Acted, the state attorney must review all records, contact and call all witnesses at the hearing. The State Attorney shall represent the state as the real party in interest and represent the interests of the State of Florida. These hearing require the State Attorney to travel out to these facilities multiple times a week to attend these hearings.

Mental Health and Firearm Disability Restoration Obligations

FDLE maintains a database of persons who are prohibited from purchasing a firearm based on court records of mental defectiveness or commitments to mental institutions. In 2010, F.S. 790.065 was amended to create a new subsection that allows a person who has been so adjudicated to petition the Court for relief from the firearm disability. A copy of the petition must be served on the State Attorney. The State Attorney may object to and present evidence relevant to the relief sought by the petition. The hearing may be open or closed and the petitioner may cross examine state witnesses and present their own evidence.

Public Record Response Obligations

Pursuant to F. S. 119.07, every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records. State Attorney public records (other than those exempted by statute) must be made available under this provision. This responsibility has resulted in a substantial utilization of staff time (both professional and clerical) to respond to these demands and review the records and redact confidential investigations, victim information and other appropriate exemptions listed in F.S. 119.071. Public record demands have increased substantially not only from the media for their reports but from other state agencies and incarcerated defendants. State Attorney's must comply within the reasonable amount of time and this has resulted in the need for increased attorney and clerical staffing within each office.

- **Body Cam Evidence**
The State Attorney must review all Body Cam footage as part of evidence in criminal cases. The body cam footage must be redacted pursuant to public records exceptions to protection victims and innocent by-standers.

Emergency Medical Intervention Obligations

In re Matter of Patricia Dubreuil, 629 So.2d 819 (Fla. 1993), a health care provider must comply with the wishes of a patient to refuse medical treatment unless ordered to do otherwise by a court of competent jurisdiction. The state has a duty to assure that a person's wishes regarding medical treatment are respected. That obligation serves to protect the rights of the individual from intrusion by the

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state unless the state has a compelling interest great enough to override this constitutional right. A health care provider cannot act on behalf of the State to assert the state's interest. Therefore, the State Attorney must be contacted when a health care provider wishes to override a patient's decision to refuse medical treatment to represent the interests of the state at any time of day or night. The State Attorney will determine whether to seek judicial intervention if appropriate.

Post-Conviction Obligations

Pursuant to Florida Rules of Criminal Procedure 3.850 and 3.851 the State Attorney must respond, if ordered by the court, to a motion for post-conviction relief. These orders to respond have increased dramatically over the last several years. Most offices must dedicate two or three attorneys along with support staff to research and respond to post conviction motions.

Legislatively Mandated Administrative Reports

The State Attorney must comply with the following reporting requirements:

- Revolving Fund Reports - quarterly, F.S. 17.58(4).
- Report Upon Claims Committed to The State Attorney - semi-annual, F.S. 27.11.
- Statement of Understanding Prompt Payment Law F.S. 215.422(9).
- Savings Sharing Program; Lump sum Bonus Plan F.S. 110.1245(2).
- Statement of Financial Interests, F.S. 112.3145(2)(b).
- Statement of Contribution-Gift, F.S. 112.3148(6)(d)
- Certified Forward Report, F.S. 216.102.
- Legislative Budget Request, F.S. 216.023(4) and
- Long-Range Program Plan with Performance Measures (Annual)
- FDLE Data Collection Responses (new)
- Financial Statement Report, F.S. 216.102.
- Affirmative Action Report - annual or update, F.S. 110.112(3).
- RICO Forfeiture Report, F.S. 27.345.
- Annual Review of Compensation Policies, F.S. 27.182.
- Agencies Guidelines for Fair Treatment of Victims and Witnesses, F.S. 960.001(3)(a).

Obligations Regarding the Grand Jury

F. S. 27.03 states that whenever required by the Grand Jury, the State Attorney shall attend them for the purpose of examining witnesses in their presence, or of giving legal advice in any matter before them; and he or she shall prepare bills of indictment.

Chapter 905 further prescribes the State Attorney's duties with the Grand Jury. Those duties include:

- Issuing process when requested (F.S. 905.185).
- Attending sessions of the Grand Jury to examine witnesses, give legal advice and draft indictments. (F.S. 905.19, F.S. 27.03).
- Swearing witnesses, administering oath or affirmation (F.S. 905.22).

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- Endorsement of Indictment (FRCP 3.140(f)).

Obligations Concerning Medical Examiners and Autopsies

- F.S. 925.09 provides the State Attorney authority to order autopsies.
- Medical Examiner, F.S. 406.15, provides that in the absence of an official medical examiner a competent physician may be appointed by the State Attorney to act in his stead.
- Medical Examiner's Commission, F.S. 406.02(1) (a) 3 provides that a State Attorney shall be a member of the Medical Examiner's Commission.

Extradition Obligations

F.S. 941.04 provides that the State Attorney shall investigate or assist in investigating all extradition cases when called upon by the Governor to do so. This may involve substantial case documentation and translation if the offender is located in a foreign country.

Worthless Check Diversion Programs

Pursuant to F.S. 832.08 the State Attorney may establish a bad check diversion program, either within their office or through an independent contractor for the purpose of diverting from prosecution certain persons accused of a violation of F.S. 832.04, 832.041, 832.05, or 832.06.

Upon receipt of a complaint alleging any such violation, the State Attorney shall determine if the case is appropriate for referral to the bad check diversion program by considering statutorily defined criteria.

If the State Attorney approves the defendant to enter into a diversion program, the State Attorney shall enter into a written agreement with the defendant. The agreement shall include all of the following conditions, which must be accepted by the defendant:

- Attendance at a program designed to assist and educate persons who have written bad checks, full restitution to the victim, and the complete payment of fees due.
- Any individual who does not fulfill the agreements for diversion could then be prosecuted under the appropriate section.
- A knowing and intelligent waiver of the right to a speedy trial for the period of diversion.

To fund the diversion program, the State Attorney may collect a fee on each check that is collected.

Citizen Dispute Programs

The Citizen Dispute Program is designed to formulate and implement a plan for creating an informal forum for the mediation and settlement of disputes. Disputes are referred to the center with the hopes

of resolving the disagreements of the parties without affecting the criminal justice system. No adjudication, sanction, or penalty may be made or imposed by the mediator or the center. If the dispute fails at mediation or a settlement is breached, the case is reported back to the referring agency.

Pursuant to Florida Statute 44.201, the Chief Judge of each Judicial Circuit may establish a Citizen Dispute Program which shall be administered by a council composed of at least seven members. The Chief Judge serves as the chairman and appoints the other members. Membership shall include a representative of the State Attorney, Sheriff, County Court Judge, Board of County Commissioners and two members of the general public.

The council establishes qualifications for and appoints a director of the center. The director shall administer the operations of the center. In several circuits in Florida the director has been appointed from the State Attorney's Office and therefore the programs are administered through these offices.

STATE ATTORNEY IS AGENT UPON WHOM PROCESS IS SERVED IN VARIOUS ACTIONS

- Unclaimed Funds, F.S. 43.19(3), provides that written notice must be given to the State Attorney by anyone claiming funds that have been paid into court and have remained so deposited and unclaimed for a period of five years, or longer.
- Suits against the State, F.S. 48.121, provides that when the State has consented to be sued, process on the State shall be served on the State Attorney or an Assistant State Attorney.
- Bond Validations, F.S. 75.05, provides that in bond validation suits the State Attorney shall appear on behalf of the State and show cause, if any, why the bonds or certificates should not be validated. A copy of the complaint and order to show cause are to be served on the State Attorney. If, upon examination, he determines that it is defective, insufficient, and untrue or, in his opinion, not duly-authorized, the State Attorney is to defend against the complaint.
- Local Charters and Ordinances, F.S. 86.091, provides that in any proceeding concerning the alleged unconstitutionality of a county or municipal charter, ordinance or franchise, the State Attorney General or the State Attorney shall be served with a copy of the complaint and be entitled to be heard.

MISCELLANEOUS DUTIES AND AUTHORIZATIONS

- Justice Administrative Commission, F.S. 43.16. Two members of the Justice Administrative Commission shall be State Attorneys who are to be appointed by the President of the Florida Prosecuting Attorneys Association.
- Abatement of Nuisances - The State Attorney may sue in the name of the State to enjoin a nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists (F.S. 60.05).
- Failure to Pay Gas Taxes, restraining and enjoining violations, F.S. 206.22, provides that the

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State Attorney may bring suit to enjoin and restrain any person who has failed to pay gas taxes from selling or consuming any motor fuel taxable under the laws of the State.

- Suits to Recover Losses on Gambling Contracts, F.S. 849.32, provides that the State Attorney's duty shall be to protect the interests of the State and, if the plaintiff in such a suit fails to diligently prosecute the suit, to bring such failure to the attention of the court. If the plaintiff fails to effectively prosecute any such suit without collusion or deceit and without unnecessary delay, the court shall direct the State Attorney to proceed with the action.
- F.S. 215.08 provides that the Department of Revenue shall report delinquent tax collectors to the State Attorney, who shall institute such proper proceedings, both civil and criminal, as are authorized by law, and that the State Attorney shall, in case the said defaulting tax collector shall either attempt to collect taxes or perform any other act prohibited by law, apply to the circuit court for an order prohibiting and enjoining such defaulting collector from collecting or attempting to collect taxes.
- F.S. Chapter 161.071 provides that the State Attorney must assist the Department of Natural Resources in enforcing the laws concerning construction, reconstruction and other physical activity of beach and shore preservation.
- F.S. 468.3115 provides that the State Attorney may bring an action for injunctive relief to restrain the practice of radiologic technology that is declared a nuisance inimical to the public health, safety and welfare in this state.
- F.S. 500.178 Duty of state attorney. Each state attorney to whom the department or its designated agent reports any violation of this chapter (Florida Food Safety Act) shall cause an appropriate proceeding to be instituted in the proper court without delay and to be prosecuted in the manner required by law.
- F.S. 501.052 Home solicitation sale - The State Attorney may institute proceedings to enjoin any person found to be violating the provisions of ss. 501.021-501.055.
- F.S. 559.921 Repair of Motor Vehicles - The department or the state attorney, if a violation of this part occurs in his or her judicial circuit, shall be the enforcing authority for purposes of this part and may bring a civil action in circuit court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty, restitution and damages for injured customers, court costs, and reasonable attorney's fees.
- F.S. 585.004 The Department of Agriculture and Consumer Services may require the State Attorney to institute suits, civil or criminal, for the purpose of carrying out the terms of F.S. 585 dealing with the animal industry and preventing violation thereof.
- F.S. 817.505 Patient Brokering – In addition to criminal actions and penalties under this statute, the state attorney of the judicial circuit in which any part of the offense occurred may maintain an action for injunctive or other process to enforce the provisions of this section.

- F.S. 828.058(5) provides that the State Attorney, in addition to criminal actions, may bring an action to enjoin any violation of the procedure established for euthanasia of dogs and cats or euthanasia of animals offered for sale by pet shops.
- Pursuant to Florida Bar Rule 3-7.8(a) whenever it shall be made known to any of the judges of the district courts of appeal or any judge of a circuit court or a county court in this state that a member of The Florida Bar practicing in any of the courts of the district or judicial circuit or county has been found guilty of any unprofessional act as defined by the Rules of Professional Conduct, such judge may direct the State Attorney for the circuit in which the alleged offense occurred to make, in writing, a motion in the name of the State of Florida to discipline such attorney, setting forth in the motion the particular act or acts of conduct for which the attorney is sought to be disciplined. At the trial the state shall offer the evidence to be heard by the Judge (3-7.8(c)). Upon the conclusion of the hearing, the judge shall enter such judgment of dismissal, reprimand, probation, suspension, or disbarment as shall be appropriate to the circumstances.

III. **ADDITIONAL OBLIGATIONS AND THE RULES OF COURT**

MAGISTRATE AND/OR FIRST APPEARANCE HEARINGS

Pursuant to Florida Rule of Criminal Procedure 3.130 every arrested person shall be taken before a judicial officer/magistrate within 24 hours of arrest. The State Attorney (or designee) must be present.

The magistrate holds a non-adversarial hearing to determine whether probable cause for the arrest exists. If probable cause is found, the defendant shall be held to answer the charges. If probable cause is not found the state may request a reasonable period of time to perfect the affidavit (Florida Rule of Criminal Procedure 3.133). The State Attorney must then contact the arresting agency for further investigation.

CRIMINAL CONTEMPT OBLIGATIONS

Pursuant to Florida Rules of Criminal Procedure 3.840(d) a judge may appoint the State Attorney to assist the court in the prosecution of indirect criminal contempt.

Compiled by:
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