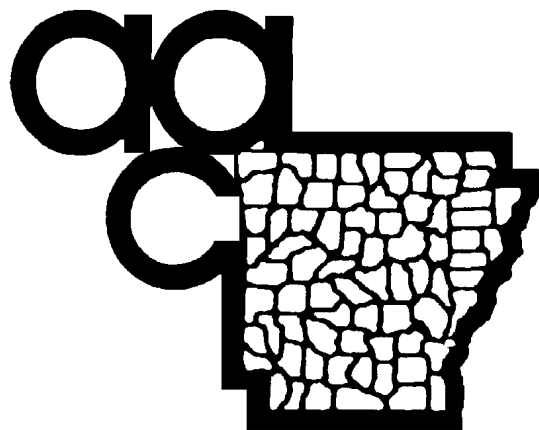


# ARKANSAS COUNTY SHERIFFS

## PROCEDURE MANUAL



Compiled, Written and Edited by the

### **ASSOCIATION OF ARKANSAS COUNTIES**

1415 W. Third Street  
Little Rock, Arkansas 72201  
[www.arcounties.org](http://www.arcounties.org)  
(501) 372-7550  
FAX (501) 372-0611

August, 2012

## FOREWORD

This County Sheriff's procedures manual was compiled by the Association of Arkansas Counties staff and reviewed by AAC staff. It reflects the current law through the 2011 legislative session and includes a description of the duties, responsibilities, and procedures of the Sheriff's office. It is not to be construed as legal advice. It presents the law for your information and guidance but specific legal questions should be directed to your county attorney.

We hope this procedures manual will be of help to you as you do the day-to-day business of your county.

A handwritten signature in black ink that reads "Chris Villines". The signature is written in a cursive, flowing style.

Chris Villines  
Executive Director

**ASSOCIATION OF ARKANSAS COUNTIES  
BOARD OF DIRECTORS  
2012**

**PRESIDENT**

Mike Jacobs, County Judge .....Johnson County

**VICE PRESIDENT**

Roger Haney, County Treasurer ..... Washington County

**SECRETARY/TREASURER**

Danny Hickman, County Sheriff .....Boone County

Sherry Bell, County Clerk .....Columbia County  
Jimmy Hart, County Judge ..... Conway County  
Rita Chandler, County Collector..... Pope County  
Jim Crawford, County Assessor..... Saline County  
Marty Moss, County Sheriff ..... Cleburne County  
Johnny Rye, County Assessor.....Poinsett County  
Faron Ledbetter, County Clerk.....Madison County  
Debbie Wise, County Circuit Clerk ..... Randolph County  
Rhonda Wharton, County Circuit Clerk..... Faulkner County  
Gene Raible, Justice of the Peace .....Johnson County  
Debra Buckner, County Collector .....Pulaski County  
Judy Beth Hutcherson, County Treasurer.....Clark County  
Leonard Krout, County Coroner.....Pope County

**AAC STAFF**

Chris Villines, Executive Director

Becky Comet	Brenda Emerson
Wes Fowler	Jeanne Hunt
Scott Perkins	Cindy Posey
Jeff Sikes	Elizabeth Sullivan
Mark Whitmore	

**AAC RISK MANAGEMENT SERVICES**

Debbie Norman, Risk Manager

Barry Burkett	Cindy Calvert
Denise Glenn	Amber Krum
Debbie Lakey	Kim Nash
Cathy Perry	

## TABLE OF CONTENTS

	<u>Page</u>
Foreword.....	i
Board of Directors and Staff .....	ii
Table of Contents.....	iii
CHAPTER 1	
Introduction to County Government .....	1
CHAPTER 2	
Duties of the Office .....	5
CHAPTER 3	
Duties of a Sheriff as a Law Enforcement Officer.....	9
CHAPTER 4	
Arkansas Rules on Criminal Procedure .....	22
CHAPTER 5	
Duties of a Sheriff as an Officer of the Court.....	36
CHAPTER 6	
Adult and Juvenile Jail Standards Management Summary.....	47
CHAPTER 7	
Contract Law Enforcement.....	64
CHAPTER 8	
Fees Charged by the Sheriff .....	70
CHAPTER 9	
Glossary of Terms .....	77

## Chapter One - INTRODUCTION TO COUNTY GOVERNMENT

County government is a political subdivision of the state. County government provides services to all of the citizens of the county, and every resident of Arkansas lives in a county. The services that every county must provide include: (1) the administration of justice through the courts; (2) law enforcement protection and the operation of the jail (3) real and personal property tax administration, including assessments, collection, and custody of tax proceeds; (4) court and public records management; and (5) the required services prescribed by state law provided through the various elected county officers or departments of county government such as providing and managing a county road system, elections and financial management just to name a few things. Counties may provide for the establishment of any service or performance of any function that is not expressly prohibited by law. These services and functions include, but are not limited to, things like agricultural extension services; community and rural development services; libraries; park and recreation services; emergency medical services; fire prevention and protection services; solid waste collection and disposal services; public health services; and any other services related to county affairs (ACA 14-14-802).

County government elects nine executive officers and a countywide legislative body called the Quorum Court to provide these various services. The nine elected officials are county judge, sheriff, county clerk, circuit clerk, collector, assessor, treasurer, coroner and surveyor. Some counties combine two of these offices into one, such as county clerk/circuit clerk, sheriff/collector, or treasurer/collector. Also, not all counties elect a surveyor and in the counties that do elect them, this job is usually not a full-time position. The county legislative body is entitled the Quorum Court and is composed of 9-15 members called Justices of the Peace. These justices of the peace are district officers and not county officials because they represent a district within the county.

The chief executive officer for county government in Arkansas is the county judge. As chief executive, the judge authorizes and approves the disbursement of all appropriated county funds, operates the system of county roads, administers ordinances enacted by the quorum court, has custody of county property, accepts grants from federal, state, public and private sources, hires county employees except those persons employed by other elected officials of the county, and presides over the quorum court without a vote, but with the power of veto. (ACA 14-14-1101 - 1102)

All powers not vested in the county judge as the chief executive officer of the county shall continue to be exercised and administered by the county court, over which the county judge shall preside. The county court, in fact, is the county judge sitting in a judicial role.

The county court of each county has exclusive original jurisdiction in all matters relating to:

1. County Taxes: Including real and personal ad valorem taxes collected by county government. The county court's authority in this area includes jurisdiction over the assessment of property, equalization of assessments on appeal, tax levies, tax collections, and the distribution of tax proceeds.

2. Paupers: The court's jurisdiction includes all county administrative actions affecting the conduct of human services programs serving indigent residents of the county where such services are financed in total or in part by county funds.

3. Jurisdiction in each other case that may be necessary to the internal improvement and local concerns of the respective counties including county financial activities and works of general public utility or advantage designed to promote intercommunication, trade and commerce, transportation of persons and property, or the development of natural resources, which are not otherwise transferred to the county judges to be administered in an executive capacity.

4. The county court shall have all other jurisdiction now vested by law in the county court except with respect to those powers formerly vested in the county court under the provisions of Section 28 of Article 7 of the Constitution which were transferred to the county judge under the provisions of Section 3 of Amendment 55 to the Arkansas Constitution, (and those powers removed by Amendment 67 as they pertain to the apprenticeship of minors. (ACA 14-14-1105)

In addition to the duties of the county court, the county judge is responsible for coordinating the day-to-day inter-governmental relations between the various state and federal agencies operating at the county level. The judge must also apply for all federal and state assistance moneys for which the county is eligible, and appoints the members to all administrative and advisory boards in the county, some of which have to be confirmed by the quorum court.

The county sheriff is the sheriff of the courts, maintains public peace, and has custody of the county jail. As chief enforcement officer of the circuit courts, the sheriff's office, which includes the sheriff and deputies, is charged by constitutional and statutory laws with the execution of summons, enforcement of judgments, orders, injunctions, garnishments, attachments, and the making of arrests on warrants issued by the courts. The sheriff also opens and attends each term of circuit court, notifies residents selected to jury duty and assists in handling witnesses and prisoners during a given court term.

The sheriff, or a member of that staff, often prepares and assembles evidence of the Prosecuting Attorney's case against defendants charged with both felonies and misdemeanors. The sheriff also transports convicted prisoners and others declared by the court to the various penal and mental institutions of the state.

The sheriff in every county has the custody, rule, and charge of the county jail and all prisoners committed in his county (ACA 12-41-502). The sheriff shall be conservator of the peace in his county (ACA 14-15-501). It shall be the duty of each sheriff to quell and suppress all assaults and batteries, affrays, insurrections, and unlawful assemblies; and he shall apprehend and commit to jail all felons and other offenders (ACA 14-14-1301). The sheriff also works with the various local municipal law enforcement officials or other state and federal officials charged with law enforcement.

The county clerk is the official bookkeeper of county government and serves as the clerk for the county, quorum and probate courts.

As clerk of the county court, the clerk has the duty of keeping a regular account between the treasurer and the county. The clerk charges the treasurer with all moneys received and credits the treasurer with all moneys dispersed. In addition, the clerk keeps an accurate account of all financial transactions within the county and files all documents, vouchers, and other papers pertaining to the settlement of any account to which the county is involved. It is the responsibility of the county clerk to prepare all checks on the treasury for moneys ordered to be paid by the county court and to keep complete and accurate records of all these financial transactions ready for the court's inspection at any time (ACA 16-20-402). [An alternate method of the county treasurer issuing checks, allowed by ACA 14-24-204, is used by many counties.]

The county clerk shall serve, unless otherwise designated by county ordinance, as the secretariat of the quorum court. These duties involve keeping a complete permanent record of the proceedings of the Quorum Court including minutes, ordinances, resolutions and an index to provide easy access to the information (ACA 14-14-902 and 14-14-903).

As clerk to the probate court, the clerk files all instruments making them a matter of record in decedent estate cases, and swears in all witnesses in contested estates. The clerk, also in this capacity, maintains all records relative to adoptions and guardianship cases within the county.

The county clerk, or the clerk's designee, serves as the secretary of the Board of Equalization and records the minutes of their meetings (ACA 26-27-307). Also, if the clerk is the preparer of tax books for the county, the clerk is responsible for extending the taxes in the information provided by the assessor and the Board of Equalization (ACA 26-28-101 through 26-28-108).

The clerk became the official voter registrar with the adoption of Amendment 51 to the Arkansas Constitution in

1966. The clerk maintains an accurate and up-to-date voter registration list within the office and stores the ballot boxes between elections. In addition, the clerk is the custodian of absentee ballots and is responsible for early voting. It is common practice in many counties for the county clerk to assist the county election commission in the overall performance of the election process. With the increasing complexity of elections, however, there is an increasing trend towards the hiring of election coordinators to aid the county election commission and the county clerk in their respective election responsibilities. (ACA 7-5-401 et seq.)

The clerk issues marriage licenses (ACA 9-11-201), and keeps a record of all firms in the county which have incorporated (ACA 4-26-1201). The clerk issues special licenses allowing certain activities (ACA 26-76-102).

The circuit clerk is the clerk of the circuit court and juvenile court and usually acts as the ex-officio recorder of the county.

Unless otherwise provided by law, the county recorder is the circuit clerk of the county. In a county that under law has assigned the duties of the county recorder to the county clerk, all Code references to circuit clerk that concern recording functions shall mean the county clerk.

The administrative duties of the circuit clerk are to maintain a record of all proceedings of the circuit courts to enter docket number and name of the defendant and to prepare the dockets for these courts (ACA 16-20-102). The circuit clerk prepares summons, warrants, orders, judgments, and injunctions authorized by the circuit court for delivery by the county sheriff. The circuit clerk also maintains a file of all cases pending in either court, as well as a record of all past court cases and their disposition (ACA 16-20-303 and 16-20-304). The clerk has 20 days before commencement of each of the dockets in all cases. In addition, the circuit clerk acts as a secretary to the jury commission by keeping a list of all prospective jurors (ACA 16-32-101 et seq.)

The circuit clerk is also the ex-officio county recorder; and is responsible for recording deeds, mortgages, liens, and surety bonds, and many other orders and instruments which involve property within the county (ACA 14-15-401 et seq). The circuit clerk maintains a record of many miscellaneous items, and files certain licenses. The circuit clerk also swears in all notaries public and files regulations of state agencies which license trade or professional workers.

The county collector is the collector of taxes for the county and collects municipal, county, school and improvement district taxes and turns them over to the county treasurer. The collector is responsible for collecting all property taxes from the first day of March to the fifteenth day of October during the calendar year after they are assessed. By statute, the collector is required to turn over all tax revenue to the treasurer at least once a month (ACA 26-39-201). The County Depository Board may require the collector and other county officials to settle with the county treasurer

more frequently than once a month (ACA 19-8-106). Taxpayers may pay their taxes in installments, with one-fourth of the total being due between March and April, one-fourth being due between April and July, and the remaining one-half between July and October 15 (ACA 26-35-501).

Any real or personal property taxes not paid by the fifteenth day of October, or falling within one of the exceptions to the required that taxes be paid by October 15 of each year (i.e., postmarked prior to October 15 or paid after October 15 if the fifteenth falls on a weekend or holiday), are considered delinquent and the collector extends a 10% penalty against the taxpayer (ACA 26-36-201). Before December 1st of each year, the collector of taxes shall prepare a list of delinquent personal property taxes and deliver a copy of the list to a legal newspaper in the county. Within seven (7) days thereafter, the newspaper shall publish the list. If there is no newspaper in the county or district, the publication shall be in the nearest newspaper having a general circulation in the county or districts for which the list is being published. (ACA 26-36-203) The collector shall, by the fourth Wednesday of October in each year, file with the clerk of the county court a list of taxes levied on real estate that the collector has been unable to collect.

The duty of the county assessor is to appraise and assess all real property between the first Monday of January and the first of July, and all personal property between the first Monday in January and the thirty-first of May. (ACA 26-26-1408 and 26-26-1101). All property in the state shall be assessed according to its value on the first of January except merchants and manufacturers inventory that is assessed at its average value during the year immediately preceding the first of January (ACA 26-26-1201).

The assessor must make an abstract of assessment showing the total assessed value of the county. On August 1st, the assessor turns over to the County Equalization Board his/her Real Property Assessment Book and his/her Personal Property Assessment Book.

The assessor is required to maintain current appraisal and assessment records by securing necessary filed data and making changes in valuations as they occur in land use and improvements. He/she is also charged with staying abreast of all property transactions within the county and keeping a file on all properties updated throughout the year (ACA 26-26-715).

The county treasurer is the disbursement officer of the county, and is the unofficial or quasi comptroller. A few counties do have a county comptroller. The treasurer is responsible for the custody and disbursement of all county funds and school district funds. The treasurer, therefore, receives county property tax collections, county sales tax collections, county turnback funds, grant funds, fees and fines from other county officials and departments, and revenues from various other sources. The treasurer, after receiving this revenue, distributes the money to the various taxing entities and the other units of the county. The county treasurer signs checks, prepared and signed by the county clerk indicating that the expenditure has been

authorized by the county court, to pay employees and creditors of the county. A copy of each check serves as a warrant and is filed in the county financial records. ACA 14-24-204 provides for an alternate method whereby the county treasurer prepares and issues the check.

The treasurer must keep an accurate and detailed account of all receipts and disbursements of the county (ACA 14-15-807). The treasurer is required to make a monthly financial report to the quorum court on the fiscal condition of the county (ACA 14-20-105).

The county treasurer is required to charge a two percent commission on all funds coming to his/her office. There are a few exceptions. No commission is allowed for the handling of borrowed money, proceeds of school bond sales, the teacher's salary fund, money collected from insurance on losses, fire protection premium taxes (Act 833 funds for fire departments, but inactive fire departments will not receive funding under this section) and all non-revenue receipts, which is defined as reimbursement of all or a part of a payment made by a county (ACA 21-6-302, 6-17-908, 6-20-221 and 14-284-403). Also, the county treasurer is allowed a smaller commission, 1/4 of 1%, on funds from school districts that employ their own treasurer (ACA 6-13-701) and 1/8 of 1% on funds from municipal improvement districts (ACA 14-90-913). The commission is not kept by the treasurer but is intended to create a source of revenue accruing to the office from which the salary and operation of the office is paid. Any excess treasurer's commission shall be redistributed to the various entities that were charged on a pro-rata basis (AG Opinion #78-112).

The county coroner is charged with the responsibility of determining the cause of death for those deaths properly the responsibility of the coroner. Although the duties of the county coroner are, necessarily, intermittent, the office is a full-time position. The coroner is tasked with the investigation of deaths occurring within the county 24 hours a day, 7 days a week and 365 days per year. At any time the coroner is required to investigate deaths. When a death is reported to the coroner, he shall conduct an investigation concerning the circumstances surrounding the death of an individual and gather and review background information, including but not limited to, medical information and any other information which may be helpful in determining the cause and manner of death. (ACA 14-15-301). These duties are mandated to be completed in very short timeframes.

The county surveyor locates boundaries of specific properties at the request of the assessor, and establishes disputed property lines upon request of the county, circuit or chancery court (ACA 14-15-702). The surveyor is also county timber inspector and determines the amount of timber cut, records the log markings, and prosecutes persons who remove timber from state owned lands (ACA 15-32-201).

A constable is a constitutional township official not a county official as some might think. A constable is charged, by

law, to conserve the peace in his township (ACA 16-19-301). In order for a constable to have access to information from the Arkansas Crime Information Center and to carry a firearm, the officer must receive required training. Uniform and vehicle requirements are also mandated for constables in the performance of official duties (ACA 14-14-1314).

The legislative body of county government is called the quorum court and is composed of 9, 11, 13 or 15 members depending on the population of the county. The quorum court members are called justices of the peace and are elected for two-year terms from districts within the county. These district officials meet each month, more often if necessary, to conduct county business and review ordinances and resolutions for passage. The county judge is the presiding officer over the quorum court without a vote, but with the power of veto. This veto can be overridden with a 3/5ths vote of the total membership of the quorum court. (See generally ACA 14-14-801 et seq and 14-14-901 et seq.)

As provided by Amendment No. 55 of the Arkansas Constitution, a county government acting through its quorum court may exercise local legislative authority not expressly prohibited by the Constitution or by law for the affairs of the county (ACA 14-14-801). Some limitations are: The quorum court cannot declare any act a felony (felonies are covered by the State Criminal Code); quorum

courts may not participate in the day-to-day administration of county executive branch offices and exercise no authority unrelated to county affairs (ACA 14-14-806).

The quorum court may exercise the following powers, but not limited to: A) the levy of taxes in manner prescribed by law; B) appropriate public funds for the expenses of the county in a manner prescribed by ordinance; C) preserve the peace and order and secure freedom from dangerous or noxious activities; provided, however, that no act may be declared a felony; D) for any public purpose, contract, or join with another county, or with any political subdivision or with the United States; E) create, consolidate, separate, revise, or abandon any elected office or offices except during the term thereof; provided, however, that a majority of those voting on the question at a general election have approved said action; F) fix the number and compensation of deputies and county employees; G) fix the compensation of each county officer with a minimum and maximum to be determined by law; H) fill vacancies in elected county offices; I) provide for any service or performance of any function relating to county affairs; J) to exercise other powers, not inconsistent with law, necessary for effective administration of authorized services and functions (ACA 14-14-801).



## Chapter 2 – GENERAL DUTIES OF THE OFFICE OF SHERIFF

### Origin of the Office

The office of Sheriff is one of the oldest offices known to the common law system of jurisprudence. The office dates back to at least the reign of Alfred the Great in England and some scholars even argue that the office of Sheriff was first created during the Roman occupation of England.

The word "Sheriff" was evolved from the Saxon word "Sayre", signifying shire, meaning geographic units or county. The word "Reve" was used to describe a representative that acted on behalf of the King of England in each shire or county. The "shire-reve" or Kings' representative in each county, became the "sheriff" as the English language changed over the years. The shire-reve or sheriff was the chief law enforcement officer of each county in the year 1000 A.D.

### Duties of the Office

The duties of the office of county sheriff in Arkansas are divided into 3 major areas.

The sheriff is the chief enforcement officer of the courts, conservator of the peace in the county, and has custody of the county jail. The Arkansas Constitution states (Ark. Const. Art. 7, Sec. 46) that each county shall elect one sheriff, who shall be the ex-officio collector of taxes, unless otherwise provided by law.

As chief enforcement officer of the circuit and chancery courts, the sheriff is charged by the constitution and by statute with the execution of summonses, enforcement of judgments, orders, injunctions, garnishments, attachments, and the making of arrest on warrants issued by the courts. The sheriff also opens and attends each term of circuit and chancery court and notifies residents selected to jury duty, assists in handling witnesses and prisoners during a given court term.

A second major area of duties surrounds the responsibility of the sheriff in law enforcement (ACA 14-15-501). The responsibility in this area is very broad and includes the preservation of the public peace; the protection of life and property; the prevention, detection, and investigation of criminal activity; the apprehension and confinement of offenders and the recovery of property; the control of crowds at public events; the control of vehicular traffic and the investigation of traffic accidents; and the rendering of services and the protection of property during civil emergencies or natural disasters.

The responsibility for the custody of the county jail in each county is given to the county sheriff (ACA 12-41-502). The sheriff has custody of accused felons and some misdemeanors apprehended in the county and is charged with feeding and keeping these accused persons. A log of all prisoners kept in the county jail and those transferred is maintained by the sheriff, as well as a bail bond book.

### Qualifications and Term of Office

In Arkansas, a candidate for sheriff must be a

qualified elector and resident of the county in which they seek office. The term of office for a sheriff is two years (Ark. Const. Art. 7, Sec. 46) and is elected by the voters of the county. There is no limit to the number of times a person may be elected sheriff.

### Vacancy in the Office

The County Quorum Court has the authority to appoint a person to fill a vacancy in all elective county offices. However, the determination that a vacancy does exist shall be conducted through the process of resolution as prescribed by law; provided, however, that such a resolution shall have been published prior to the meeting date in which such resolution is to be considered by the court. Any person who is appointed must meet all the qualifications for election to that office. In addition, any member of the Quorum Court or relative within the fourth degree of consanguinity is ineligible to serve. This person appointed shall serve out the remainder of the term or until their successor is elected and qualified and shall not be eligible for appointment or election to succeed himself. (ACA 14-14-1310) Act 229 of 2009 requires the sheriff and quorum court to adopt a line of succession for an interim sheriff to act during an emergency.

### Salary of the Office

Compensation of each county office shall be fixed by the Quorum Court within a minimum and maximum to be determined by law. Salary may not be decreased during the term of office and fees of the office shall not be the basis of compensation for officers or employees of county offices. (Ark. Const. Amend. 55, Sec. 5)

A classification of counties based on population, was devised to determine the salaries of the elected county officers. ACA 14-14-1204 established 7 classifications and salary ranges which are subject to change every two years when the legislature is in session.

During the 2009 General Assembly, Act 320, which amends ACA 14-14-1204, was passed. This Act raised the minimum and maximum salaries for elected county officials in the various classes of counties. The sheriff's minimum and maximum salaries are as follows:

<u>Classification</u>	<u>Salary per Annum</u>
Class 1	not less than \$31,827
	nor more than \$79,185
Class 2	not less than \$32,888
	nor more than \$80,729
Class 3	not less than \$33,949
	nor more than \$82,273
Class 4	not less than \$35,010
	nor more than \$83,816
Class 5	not less than \$36,071
	nor more than \$85,359
Class 6	not less than \$37,132
	nor more than \$91,532
Class 7	not less than \$38,192
	nor more than \$105,266

In any county in which the offices of sheriff and collector are combined into a single office, the maximum and minimum salaries for that office in the appropriate county classification shall be increased by the following amounts:

<u>Classification.....</u>	<u>Additional Salary</u>
Class 1.....	\$1,500
Class 2.....	\$1,500
Class 3.....	\$2,500
Class 4.....	\$2,500
Class 5.....	\$3,000
Class 6.....	\$3,000
Class 7.....	\$4,000

Act 320 also provides for a cost-of-living adjustment as follows:

**14-14-1210. Cost-of-living adjustment.** - (a) Beginning January 1, 2011, and on each January 1 thereafter, three percent (3%) per annum shall be added to the minimum and maximum salaries and per diems of elected county officers as a cost-of-living adjustment.

(b) Beginning September 1, 2010, and on each September 1 thereafter, the Association of Arkansas Counties shall provide each county and the Division of Legislative Audit with a schedule of the minimum and maximum salaries and per diems of elected county officers with the added cost-of-living adjustment for the following year. [Acts 2009, No. 320, § 3.]

**Appointment of Deputies**

Every deputy sheriff appointed as provided by law shall possess all of the powers of his principal and may perform any of the duties required by law to be performed by the sheriff. "The appointment of a deputy sheriff continues no longer than the term for which his principal was elected; and if the principal sheriff be reelected, it requires a new appointment, and approval under the statute, to continue in the office of his former deputy." (ACA 14-15-503 and Greenwood v. State, 17 Ark. 332 (1856))

Act 452 of 1975, as amended, established the Executive Commission on Law Enforcement Standards which has the power to establish reasonable minimum standards for the selection and training of law enforcement officers in Arkansas. This commission will also certify officers as being qualified by training and education; examine and evaluate instructors and courses of instruction and certify the extent of qualification respectively. (ACA 12-9-104)

**Wage and Hour Policies**

Since 1987 we have had several counties that experienced citations by the Department of Labor. Complaints alleging violations are always being investigated and employees also have the right to file private suits under the Fair Labor Standards Act (FLSA).

The following are things employers must do to avoid these type situations:

A. The question of overtime pay or overtime

compensation - policy must be decided prior to the fact and should be part of a personnel policy.

B. Each constitutional official is responsible for documenting their personnel's overtime.

C. Elected officials and their political appointees (i.e. - administrative assistant or chief deputy) are not covered by these rules.

D. Non-commissioned personnel are on a straight 7-day, 40-hour workweek and may accumulate no more than 240 compensatory hours (160 overtime work hours x 1.5 = 240 comp. hours.)

E. Commissioned personnel are allowed to work either a 28 day, 171 hour schedule or a 7 day, 43 hour schedule. They may accumulate no more than 480 compensatory hours.

The above information was obtained from the Department of Labor Bulletin 29 CFR Part 553 Part II dated Friday, January 16, 1987. This bulletin is the latest published information from the Department of Labor. If you have any questions regarding this material you can contact:

Employment Standards Administration  
 Wage Hour Division  
 Suite 611, Savers Building  
 320 West Capitol  
 Little Rock, Arkansas 72201

**Removal of Office**

The Circuit Court shall have jurisdiction upon information, presentment or indictment to remove any county or township officer from office for incompetence, corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or nonfeasance in office. (ACA 14-14-1311)

**Coroner Can Assume Custody of the County Jail**

The sheriff may be imprisoned in the jail of his own county. For the time the sheriff shall be confined, the coroner shall have the custody, rule, keeping, and charge of the jail and shall, by himself and his securities, be answerable for the faithful discharge of his duties in that office. (ACA 12-41-511)

As the Sheriff has the responsibility for the county jail we at AAC consider it appropriate to add as an addendum to this chapter the following laws concerning the housing of state inmates in county jails.

**12-27-114. Inmates in county jails-Reimbursement of county-medical care.**

(a)(1)(A)(i) In the event the Department of Correction cannot accept inmates from county jails due to insufficient bed space, the Department of Correction shall reimburse the counties from the County Jail Reimbursement Fund at rates determined by the Chief Fiscal Officer of the State, after consultation with the Division of Legislative Audit and the Department of Correction and upon approval by the Governor, until the appropriation and funding provided for that purpose are exhausted.

(ii) The reimbursement rate shall include the county's cost of transporting the inmates to the Department

of Correction.

(B)(i) Reimbursement shall begin on the date of sentencing if the judgment and commitment order is received by the Department of Correction not later than twenty-one (21) days from the sentencing date.

(ii) If the judgment and commitment order is received by the Department of Correction twenty-two (22) or more days after the sentencing date, reimbursement shall begin on the date the Department of Correction receives the judgment and commitment order.

(2)(A) In the event the Department of Community Correction cannot accept inmates from county jails due to insufficient bed space or shall have an inmate confined in a county jail under any prerelease program, the Department of Community Correction shall reimburse the counties from the fund at rates determined by the Chief Fiscal Officer of the State, after consultation with the division and the Department of Correction, and upon approval by the Governor, until the appropriation and funding provided for that purpose are exhausted.

(B)(i) Reimbursement shall begin on either the date of sentencing or the date of placement on probation accompanied with incarceration in the Department of Community Correction if the judgment and commitment order or the judgment and disposition order, whichever is applicable, is received by the Department of Community Correction not later than twenty-one (21) days from either the date of sentencing or the date of placement on probation accompanied with incarceration in the Department of Community Correction.

(ii) If the judgment and commitment order or the judgment and disposition order, whichever is applicable, is received by the Department of Community Correction twenty-two (22) or more days after the date of sentencing or the date of placement on probation accompanied with incarceration in the Department of Community Correction, reimbursement shall begin on the date the Department of Community Correction receives either the judgment and commitment order or the judgment and disposition order, whichever is applicable.

(b)(1)(A) In the first week of each month, the Department of Correction and the Department of Community Correction shall prepare an invoice for each inmate received from a county during the previous month.

(B) The invoice shall reflect the number of days an inmate was in the county jail in an awaiting-bed-space status.

(2)(A) The Department of Correction and the Department of Community Correction shall verify and forward the invoices to the applicable sheriff to certify the actual number of days the state inmates were physically housed in the county jail.

(B)(i) Upon written request of a county judge, county treasurer, or county sheriff, the Department of Correction and the Department of Community Correction shall provide to the county official making the request of a written report summarizing the year-to-date county jail reimbursement invoices prepared and forwarded for verification by the Department of Correction and the Department of Community Correction and payment from the fund.

(ii) In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any

balances owed.

(3) The certified invoices shall then be returned to the Department of Correction and the Department of Community Correction for payment from the fund.

(4) The sheriff shall maintain documentation for three (3) calendar years to confirm the number of days each inmate was housed in the county jail.

(5) The documentation maintained by the sheriff is subject to review by the division.

(c)(1) The Board of Corrections shall adopt regulations by which the Department of Correction or the Department of Community Correction may reimburse any county, which is required to retain an inmate awaiting delivery to the custody of either the Department of Correction or the Department of Community Correction for more than thirty (30) days, for the actual costs paid for any emergency medical care for physical injury or illness of the inmate retained under this section if the injury or illness is directly related to the incarceration and the county is required by law to provide the care for inmates in the jail.

(2) The Director of the Department of Correction or his or her designee or the Director of the Department of Community Correction or his or her designee may accept custody of any inmate as soon as possible upon request of the county upon determining that the inmate is required to have extended medical care.

#### **12-29-205. Good times earned pending transfer to Department of Correction.**

(a) Any person who is sentenced by a circuit court to the Department of Correction and is awaiting transfer to the Department of Correction may earn meritorious good time in accordance with law and regulations as adopted by the Board of Correction.

(b) The Department of Correction shall solicit the recommendation of the sheriff of the county where the inmate was housed prior to incarceration within the Department of Correction. Meritorious good time will only be given for being housed in a jail awaiting transfer on the conviction resulting in sentence from the county. Meritorious good time will be calculated upon reception within the Department of Correction.

(c) Meritorious good time will be awarded only after the sheriff recommends it and only then on the prisoner's good and orderly behavior, good discipline and conduct, and performance of such duties and responsibilities as assigned.

(d) This good time award is subject to all rules and regulations regarding meritorious good time, including, but not limited to, those regulations forfeiture, as adopted by the Board of Correction.

#### **12-30-407. Housing of participants.**

(a) (1) (A) The Board of Corrections may promulgate rules and regulations to allow the proper classification of inmates to be released to the county sheriffs of approved jail facilities or chiefs of police or other authorized law enforcement officers of city-operated approved jail facilities or community correction centers outside the Department of Correction.

(B) (i) Inmates shall be interviewed to develop a

classification of each inmate's skills, work experiences, job background, and education.

(ii) Such inmates are to work at jobs that directly benefit those facilities or a political subdivision and that are related to a particular inmate's background classification and where they are to be under supervision at all times.

(2) (A) (i) County sheriffs, chiefs of police, or other authorized law enforcement officers of approved jail facilities may request assignment of inmates to their approved facilities to perform particular jobs for the facilities or for a political subdivision which are in a particular area of need of the facility or a political subdivision.

(ii) The Department of Correction shall review the requests and shall submit a list of inmates with appropriate skills or backgrounds for the particular job needs of the approved facility in accordance with the Department of Correction's classification of inmates' skills and backgrounds.

(iii) County sheriffs, chiefs of police, or other authorized law enforcement officers will choose inmates from the submitted list which are appropriate for the needs of their facilities or a political subdivision.

(B) County sheriffs, chiefs of police, or other authorized law enforcement officers shall not request the assignment of a particular inmate to their approved facility and may refuse the assignment of a particular inmate.

(3) (A) An inmate shall not be released to approved jail facilities until notification of the release is first sent to the county sheriff of the county from which the inmate was tried and convicted, the prosecuting attorney's office who convicted the inmate, and, upon a written request, to the victim or victim's family.

(B) Notification of the victim or victim's family shall be done by mail to the last known address supplied to the Department of Correction in accordance with Department of Correction policies.

(4) (A) Inmates so released shall be entitled to credit on their sentences under the meritorious classification system of the Department of Correction.

(B) However, no inmate shall be eligible to be released to the county sheriff, chief of police, or other authorized law enforcement officer of an approved jail facility unless the inmate is within thirty (30) months of his or her first parole eligibility date or his or her first post prison transfer eligibility date, unless:

(i) The inmate is returning to the county from which he or she was tried and convicted and the victim or victim's immediate family, if residing in the county from which the inmate was tried and convicted, has been notified of the inmate's return; or

(ii) (a) If the inmate is released to a county other than a county from which he or she was tried and convicted, the county sheriff of the county from which he or she was tried and convicted shall be notified as provided in subdivision (a)(3)(A) of this section.

(b) (1) Unless the county sheriff responds within fifteen (15) days of notification that he or she disapproves of the transfer, the inmate may be transferred as provided in this section.

(2) If the county sheriff disapproves of the transfer and an inmate becomes eligible to be released again, the notifications required by subdivision (a)(3) of this section shall be made again.

(b) (1) The number of persons on prerelease, work-release, and other rehabilitative programs that may be housed at the Arkansas Health Center shall not exceed a number appropriate to maintain the security and good order of the center.

(2) However, with the approval of the Department of Human Services State Institutional System Board and the Administrator of the Arkansas Health Center, a maximum number of persons on prerelease, work-release, and other rehabilitative programs to be housed at the center may be established by the Board of Corrections.

(c) Inmates released to the county sheriff of approved jail facilities or community correction centers pursuant to this section prior to July 28, 1995, shall remain eligible for release, notwithstanding the provisions of this section.

## Chapter 3 - DUTIES OF A SHERIFF AS LAW ENFORCEMENT OFFICER

This chapter was included to assist County Sheriffs by describing the basic duties of a Sheriff as a Law Enforcement Officer. The information presented in this chapter is divided into six (6) areas for purposes of understanding and discussion.

They are:

- A. Law Enforcement Personnel Training Standards Summary
- B. Law Enforcement Budgeting
- C. Domestic Abuse
- D. Index of Criminal & Civil Offenses
- E. Law Enforcement Records
- F. Preparation of Search Warrant

### INTRODUCTION

The information compiled in this section of the manual is a summary gathered from State of Arkansas, Commission on Law Enforcement Standards & Training, Manual of Regulations, Revised 1990. This information has been developed to provide the sheriff with a concise summary of the minimum standards and does not attempt to replace them, but only present them.

If you need specific or detailed information regarding these regulations, please refer to the regulations or call or contact:

Deputy Director of Personnel Standards  
Commission on Law Enforcement  
Standards & Training  
3703 West Roosevelt Road  
Little Rock, Arkansas 72204  
(501) 324-9209

### THE COMMISSION ON LAW ENFORCEMENT STANDARDS AND TRAINING

#### Guidelines

The Commission on Law Enforcement Standards and Training was created under the authority of Act 45, passed by the General Assembly in 1981, hereafter referred to as the Commission.

#### Director of the Commission

The Director of the Commission, hereafter referred to as the Director, is appointed by the Governor. The Director performs duties directed by the Commission.

#### Commission Membership

The Commission consists of eight (8) members who are appointed by the Governor and approved by the Senate. Each member serves a seven (7) year term. Representation on the Commission is as follows:

- 1) Two Chiefs of Police
- 2) Two Sheriffs
- 3) Two members of the general public
- 4) An educator in the field of criminal justice.

5) One member sixty (60) years of age to represent the elderly

Each Congressional district is represented on the Commission

### POWERS AND DUTIES OF THE COMMISSION

#### Guidelines

In addition to the powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training in 12-9-104 - 12-9-107, the Commission shall have power to:

(1) Promulgate rules and regulations for the administration of this subchapter;

(2) Require the submission of reports and information by law enforcement agencies within this state;

(3) Establish minimum selection and training standards for admission to appointment as an auxiliary law enforcement officer. The standards may take into account different requirements for urban and rural areas. However, the minimum selection and training standards for admission to appointment may not exceed those required for part-time officers;

(4) Establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs of schools operated by and for the training of auxiliary law enforcement officers.

(5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police training schools and programs or courses of instruction;

(6) Approve institutions and facilities to be used by or for the state or any political subdivision thereof for the specific purpose of training law enforcement officers and recruits;

(7) Exclude auxiliary law enforcement officers from training classes sponsored and supported by the Arkansas Law Enforcement Training Academy;

(8) Adopt rules and minimum standards for such schools which shall include, but not be limited to, establishing minimum;

(A) Basic training requirements which an auxiliary law enforcement officer must satisfactorily complete before being eligible for appointment;

(B) Course attendance and equipment requirements;

(C) Requirements for instructors.

(9) Conduct review of agency records to assist any department head in complying with the provisions of this subchapter;

(10) Adopt and amend bylaws, consistent with law, for its internal management and control;

(11) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter. (ACA 12-9-302, Acts 1983, No. 757, 2; ASA 1947, 42-1402)

## **MINIMUM STANDARDS FOR EMPLOYMENT OR APPOINTMENT**

(1) Verification of minimum employment standards must be maintained by the employing department.

(2) Every officer employed by a law enforcement unit shall:

(a) Be a citizen of the United States.

(b) Be at least 21 years of age.

(c) Be fingerprinted and a search initiated of state and national fingerprint files to disclose any criminal record.

(d) Be free of felony record and this will be evidenced by not having entered a plea of guilty or having been convicted, pardoned or otherwise relieved by a state or federal government of a crime, the punishment for which could have been imprisonment in a federal penitentiary or a state prison.

(e) Be of good character as determined by a thorough background investigation.

(f) Be a high school graduate or have passed the General Education Development (GED) Test indicating high school graduation level.

(g) Be examined by a licensed physician and meet the physical requirements prescribed.

(h) Be interviewed personally prior to employment by the department head or his representative, or representatives, to determine such things as the applicant's motivation, appearance, demeanor, attitude and ability to communicate. Commission Form F-11, Qualifications Appraisal Guide, or other appropriate form may be used to record the interview.

(i) Be examined by an individual licensed to practice psychiatry or psychology and qualified to perform such evaluations in the State of Arkansas, who after the examination makes a recommendation to the employing agency.

(j) Possess a valid driver's license.

(3) It is emphasized that these are minimum standards for employment or appointment. Higher standards are recommended whenever the availability of qualified applicants meet the demand.

(4) The minimum standards for employment or appointment must be compiled with as contained herein before employment. The decision to employ an applicant should depend upon the results and recommendations received by the investigator and examiners.

(5) Law enforcement officers who have complied with the minimum standards for employment or appointment, who terminate their employment and are reemployed by a law enforcement agency within six (6) months following their termination date, may transfer the required documentation evidencing compliance with the standards to the files of the new agency. The only pre-employment requirement that the new employer will be required to complete is a new background investigation and oral interview. The employing agency may require the officer to meet any and or all pre-employment requirements, again, if they so desire.

(6) If an officer is determined by the Commission to be in noncompliance, the Commission will notify the director of the employing agency by certified letter. The individual will not be eligible to function as a law enforcement officer until proof of compliance is presented to the Commission by the agency director or his representative. If proof of compliance has not been received by the Commission within ten (10) working days of the formal notification of non-compliance, the officer will be removed from the agency payroll and will not be eligible to be employed in any capacity as a law enforcement officer until compliance is met and proof is furnished to the Commission by the agency director or his representative.

## **MINIMUM STANDARDS FOR APPOINTMENT**

### **Guidelines**

Because auxiliary law enforcement officers have legal authority beyond that of a private citizen, auxiliary officers must meet the minimum standards established by the Commission. (ACA 12-9-301 et seq)

### **Minimum Standards For Appointment**

All auxiliary law enforcement officers shall:

1) Be a United States citizen

2) Be at least twenty-one (21) years of age

3) Be free of any state or federal convictions for which punishment could have been imprisonment in a federal or state penitentiary.

4) Have completed one hundred (100) hours of Commission approved law enforcement training, which includes a firearm qualification course equivalent to the firearm qualification requirements for a fulltime officer.

All persons who are serving as an auxiliary officer before 3-24-83 are exempt from the appointed requirements. These persons are not exempt from the minimum training requirements.

All persons who are serving as an auxiliary officer have one (1) year from 3-24-83 to complete the minimum training requirements. If the training requirements have not been completed, any action taken as a law enforcement officer shall be held invalid.

Persons appointed as auxiliary officers after March 24, 1983 must meet all appointment and training requirements. (ACA 12-9-304)

## **DEFINITIONS**

A Full-Time Law Enforcement Officer is one who is employed by and receives a salary authorized by a law enforcement unit; has the statutory authority to enforce the criminal, traffic or highway laws of the State; works 40 or more hours per week.

A Part-Time Law Enforcement Officer I is one who is employed by and receives a salary authorized by a law enforcement unit; has the statutory authority to enforce the criminal, traffic or highway laws of this State; works 20 or more hours but less than 40 hours per week.

A Part-Time Law Enforcement Officer II is one who is

employed by and receives a salary authorized by a law enforcement unit; has the statutory authority to enforce the criminal, traffic or highway laws of this State; works less than 20 hours per week.

An Auxiliary Law Enforcement Officer is any reserve, volunteer, posse, mounted patrol member or other groups or terms in common usage and refers to persons appointed and who receive no salary or wages for the performance of any assigned duty.

A Police Traffic Radar Operator is any Full-Time or Part-Time I law enforcement officer who has satisfactorily completed both the Commission approved Basic Police Training Course and the Police Traffic Radar Operations Course.

Specialized Police Personnel are those Full-Time or Part-Time officers authorized by statute or employed by a law enforcement unit whose duty as prescribed by law or ordinance is enforcing some part of the criminal, traffic, or highway laws of this State and their authority is limited to the facility or area in which they work.

It is emphasized that these are minimum standards for employment or appointment. Higher standards are recommended whenever the availability of qualified applicants meets the demand. The minimum standards for employment or appointment must be completed before employment eligibility is established. Employment eligibility should depend upon the results and recommendations received by the investigator and examiners.

### **Probation Period**

Every officer employed or appointed below the level of department head shall satisfactorily complete a probationary period of not less than twelve (12) months with the employing department.

A department head is not required to serve a probationary period. Every officer who is promoted or appointed as an assistant department head, middle management or supervisory position shall satisfactorily complete a probationary period of not less than six (6) months.

No law enforcement officer who lacks the training qualifications required by the Commission may have his temporary or probationary period extended beyond one year by renewal of appointment or otherwise, unless extraordinary circumstances exist in the majority opinion of the Commission whereupon the Commission may approve an extension of probation for no more than an eight (8) month period of time.

### **MINIMUM STANDARDS FOR TRAINING**

#### **Basic Police Training Course**

Each Full-Time law enforcement officer must satisfactorily complete the Basic Police Training Course within twelve (12) months from the date of his appointment.

The Commission may, where extraordinary circumstances exist in the majority opinion of the Executive Body, extend the twelve (12) month requirement for any period of time up to, but not exceeding eight (8) months for an absolute maximum period of twenty (20) months. All

requests for extensions must be submitted to and received by the Commission prior to the end of the twelve (12) month probationary period.

Part-Time I law enforcement officers who are employed and working 20 or more hours per week, but less than 40 hours per week, must meet the minimum training requirements for Full-Time law enforcement officers.

A Full-Time or Part-Time I law enforcement officer who has previously met the minimum training requirements, and has been separated from law enforcement for more than seven (7) years shall be required to satisfactorily complete an approved Basic Police Training Course.

If extraordinary circumstances exist in the opinion of the Commission, they may choose to waive the full Basic and may require the Refresher Course only.

Appointment or employment as an Auxiliary, Part-Time II, or Specialized Police Person during the seven (7) year period of separation will not exclude the Full-Time or Part-Time I law enforcement officer from mandatory attendance of a new Basic Training Course.

Part-Time II law enforcement officers who are employed and working less than 20 hours per week and Auxiliary law enforcement officers will be required to satisfactorily complete not less than 100 hours of Commission approved law enforcement training including a firearms qualification course equivalent to the firearms qualification requirements for a Full-Time law enforcement officer. Separation from law enforcement for three (3) years will result in the Auxiliary and the Part-Time II law enforcement officer being required to attend a new 100-hour training course.

Any Full-Time or Part-Time I law enforcement officer who fails to satisfactorily complete the training requirements within twelve (12) months or with a Commission approved extension of eight (8) months will not be eligible for training nor certification for twenty-four (24) months following the date of failure of the training course or the date of expiration of the probationary period.

If an officer fails to satisfactorily complete the required training in a total of twenty (20) months from the original date of employment or appointment, he shall not be eligible to be retained as a law enforcement officer in this State. Reappointment or re-employment as a law enforcement officer will be considered only after the person has been separated from law enforcement for at least twenty-four (24) months. Upon reappointment or re-employment an officer would be eligible to begin a new twelve (12) month probationary period.

Should the officer fail to meet the minimum training requirement for a second time, he or she will not be eligible for certification as a full-time, part-time, auxiliary or in any other law enforcement officer position.

#### **Supervisory Course**

It is recommended, but not required, that all officers promoted, appointed or transferred to a first level supervisory position should satisfactorily complete the Supervisory Course as prescribed the Commission.

Officers must have satisfactorily completed the Basic Police Training Course prior to enrollment in the Supervisory Course.

## **Middle Management Course**

The Middle Management Course shall be optional and voluntary. The Commission recommends, but does not require, that each officer promoted, appointed or transferred to a middle management position should satisfactorily complete the prescribed Middle Management Course.

Officers must have satisfactorily completed a Police Supervision Course before enrollment in the Middle Management Course.

## **Executive Course**

Executive Courses shall be optional and voluntary for Department Heads. As a condition of course certification by the Commission, enrollment and attendance shall be restricted to Department Heads, Assistant Department Heads and Division Heads unless special approval to attend is granted by the Commission.

Officers who are not Department Heads should have successfully completed the recommended Middle Management Course prior to enrollment in an Executive Course.

## **Law Enforcement Officer Refresher Course**

The Refresher Course will be required for all Full-Time law enforcement officers who are new employees and completed their training in another state.

The Refresher Course will be required for all Full-Time and Part-Time I law enforcement officers who have previously met the training requirements, but have been separated from law enforcement for a period of three (3) to seven (7) years. Appointment or employment as an Auxiliary, Part-Time II, and Specialized Police Person during a three (3) to seven (7) year period of separation will not exclude the Full-Time or Part-Time I law enforcement officer from mandatory attendance of the Refresher Course.

Any Full-Time officer not required to attend the Refresher Course may voluntarily apply and if accepted, receive the training.

## **Specialized Courses**

Specialized Courses shall be optional and voluntary courses.

## **LAW ENFORCEMENT BUDGETING**

### **Background**

Why budget? Why breathe? Having a good law enforcement budgeting and accounting system will usually result in a long and successful tenure as sheriff. The day is gone when records could be kept on a "blue horse tablet" and memories had to be juggled to justify requesting more dollars to run your office. Good records will provide more and better information to the county constituents and at the same time pave the way for additional appropriations for the office or sheriff.

ACA 14-21-101 authorized the Division of Legislative

Audit to develop a comprehensive financial management system for all revenue and expenditure functions in county government. The system developed assigns a county office code to each office and a separate one for the sheriff and county jail. Expenditures are divided into 4 major categories: 1) Personal Services, 2) Supplies, 3) Other Services and Charges and 4) Capital Outlay.

Since the Arkansas Supreme Court ruled in 1982 in Special School District of Fort Smith v Sebastian C n No. 82-188, it has become necessary for those counties that have a combined office of Sheriff/ Collector to account for the collector's office expense separately. The Arkansas Supreme Court ruled that combined offices of sheriff and collector could no longer use the collector's fees to help underwrite the expenses of the sheriff's office. As a result of this decision, all excess fees, other than that necessary to operate the collector's office, must be redistributed to all of the taxing units.

### **Timeframe**

The fiscal year in county government coincides with the calendar year, January 1 December 31. The process of putting a budget together for the next year usually begins in September of each year. The first steps involve reviewing the current budget and knowing how much of it has been spent to date and how much is remaining in each category. As you know, it is always very important to know what your expenditures have been over the past few years. Knowing the amount of money your office has spent and where it was spent over the last several years is necessary to planning expenditures for the future. A good system of financial record keeping is essential to planning future budgets. Also, this type of information is usually necessary to present to the quorum court to get additional funding for your office.

In many counties, the quorum court has a budget committee which reviews the requests from each county office. These meetings usually take place in October of each year and sometimes involve the entire quorum court meeting as a committee of the whole. The county judge in other counties reviews all the budgets before they are submitted to the quorum court or budget committee.

The quorum court meets at its regularly scheduled meeting in November and levies the county, municipal, and school taxes for the current year (ACA 14-14-904). Also, before the end of each fiscal year, the quorum court usually passes a budget for the next year. Sometimes agreement cannot be reached before the end of the year and thus the current budget is carried over into the next year. By declaration of emergency, or determination that an emergency exists and the safety of the general public is at risk, the county judge may change the date, place, or time of the regular meeting of the quorum court upon twenty-four (24) hour notice.

### **Reports to the Quorum Court**

Some counties require a monthly or quarterly report from the sheriff to the members of the quorum court. If this is a mandate from your quorum court, do a good job and have the necessary information regarding the activities and finances of your office.



The Association of Arkansas Counties views this report not only as a necessary chore of the office, but it also allows the sheriff the opportunity to improve his relationship with the quorum court. Also, this report allows the sheriff to build a justification for increased appropriations. A basic type of report should include the following:

### **Law Enforcement**

- 1) Number of complaints filed
- 2) Number of burglaries filed
- 3) Number of burglaries cleared by arrest
- 4) Number of thefts reported
- 5) Number of thefts cleared by arrest
- 6) Number of other crimes reported
- 7) Number of other crimes cleared by arrest
- 8) Number of arrest reports filed
- 9) Number of miles patrolled

### **Jail**

- 1) Number of prisoners jailed
  - a) Time period jailed
  - b) County prisoners
  - c) City prisoners
- 2) Number of meals served
- 3) Cost of meals
  - a) Per meal cost
  - b) Total cost

### **Criminal and Civil Process**

- 1) Criminal warrants served
- 2) Civil papers served
- 3) Attendance in court

### **Financial**

- 1) Fees reported to Co. Treasurer
- 2) Fines reported to Co. Treasurer
- 3) Fines and court costs from Circuit Court
- 4) Fines and court costs from Municipal Court

## **DOMESTIC ABUSE**

### **Introduction**

This section on the Domestic Abuse Legislative has been added due to the fact that Sheriffs and police the state over are intimately aware of the problems that can arise in a serious domestic dispute.

This section is to give you, as the Sheriff, a quick reference to the Domestic Abuse Act of 1991 as codified and the legislation providing for the warrant less arrest and the crime of violation of an order of protection.

### **9-15-101. Purpose.**

The purpose of this chapter is to provide an adequate mechanism whereby the State of Arkansas can protect the general health, welfare and safety of its citizens by intervening when abuse of a member of a household by

another member of a household occurs or is threatened to occur, thus preventing further violence. The General Assembly has assessed domestic abuse in Arkansas and believes that the relief contemplated under this chapter is injunctive, and therefore, equitable in nature. The General Assembly of the State of Arkansas hereby finds that this chapter is necessary to secure important governmental interests in the protection of victims of abuse and the prevention of further abuse through the removal of offenders from the household and other injunctive relief for which there is no adequate remedy in current law. The General Assembly hereby finds that this chapter shall meet a compelling societal need and is necessary to correct the acute and pervasive problem of violence and abuse within households in this state. The equitable nature of this remedy requires the legislature to place proceedings contemplated by this chapter under the jurisdiction of the chancery courts.

### **9-15-102. Title.**

This chapter shall be known and may be cited as "The Domestic Abuse Act of 1991"

### **9-15-103. Definitions.**

As used in this chapter:

(1) "County where the petitioner resides" means the county in which the petitioner physically resides at the time the petition is filed and may include a county where the petitioner is located for a short-term stay in a domestic violence shelter;

(2)(A) "Dating relationship" means a romantic or intimate social relationship between two (2) individuals that shall be determined by examining the following factors:

- (i) The length of the relationship;
- (ii) The type of the relationship; and
- (iii) The frequency of interaction between the two

(2) individuals involved in the relationship.

(B) "Dating relationship" shall not include a casual relationship or ordinary fraternization between two (2) individuals in a business or social context;

(3) "Domestic abuse" means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state; and

(4) "Family or household members" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together.

### **9-15-201. Petition -Requirements generally.**

(a) All petitions under this chapter shall be verified.

(b) The petition shall be filed in the county where the petitioner resides, where the alleged incident of abuse

occurred, or where the respondent may be served.

(c)(1) A petition for relief under this chapter may be filed in the circuit court.

(2) A petition for relief under this chapter may be filed in a pilot district court if the jurisdiction is established by the Supreme Court under Amendment 80, Section 7 of the Arkansas Constitution and if the cases are assigned to the pilot district court through the Court Administrative Plan under the Arkansas Supreme Court Administrative Order No. 14.

(d) A petition may be filed by:

(1) Any adult family or household member on behalf of himself or herself;

(2) Any adult family or household member on behalf of another family or household member who is a minor, including a married minor;

(3) Any adult family or household member on behalf of another family or household member who has been adjudicated an incompetent; or

(4) An employee or volunteer of a domestic-violence shelter or program on behalf of a minor, including a married minor.

(e)(1) A petition for relief shall:

(A) Allege the existence of domestic abuse;

(B) Disclose the existence of any pending litigation between the parties; and

(C) Disclose any prior filings of a petition for an order of protection under this chapter.

(2) The petition shall be accompanied by an affidavit made under oath that states the specific facts and circumstances of the domestic abuse and the specific relief sought.

(f) The petition may be filed regardless of whether there is any pending litigation between the parties.

(g) A person's right to file a petition, or obtain relief hereunder shall not be affected by his or her leaving the residence or household to avoid abuse.

### **9-15-202. Filing fees.**

(a) The court, clerks of the court, and law enforcement agencies shall not require any initial filing fees or service costs.

(b) Established filing fees may be assessed at the full hearing.

(c) (1) The abused in any domestic violence petition for relief for a protection order sought pursuant to this subchapter shall not bear the cost associated with its filing, or the costs associated with the issuance or service of a warrant and witness subpoena.

(2) Nothing in this subsection shall be construed to prohibit a judge from assessing costs if the allegations of abuse are determined to be false.

### **9-15-203. Petition -Form.**

(a) The circuit clerk shall provide simplified forms and clerical assistance to help petitioners with the writing and filing of a petition under this chapter if the petitioner is not represented by counsel.

(b) The petition form shall not require or suggest

that a petitioner include his or her social security number or the social security number of the respondent in the petition. Subsection (c) sets forth the form of the petition.

### **9-15-204. Hearing -Service.**

(a)(1) When a petition is filed pursuant to this chapter, the court shall order a hearing to be held on the petition for the order of protection not later than thirty (30) days from the date on which the petition is filed or at the next court date, whichever is later.

(2) A denial of an ex parte temporary order of relief does not deny the petitioner the right to a full hearing on the merits.

(b)(1) Service of a copy of the petition, the ex parte temporary order of protection, if issued, and notice of the date and place set for the hearing described in subdivision (a)(1) of this section shall be made upon the respondent:

(A) At least five (5) days before the date of the hearing; and

(B) In accordance with the applicable rules of service under the Arkansas Rules of Civil Procedure.

(2) If service cannot be made on the respondent, the court may set a new date for the hearing.

(c) This section does not preclude the court from setting an earlier hearing.

### **9-15-205. Relief generally -Duration.**

(a) At the hearing on the petition filed under this chapter, upon a finding of domestic abuse as defined in § 9-15-103, the court may provide the following relief:

(1) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(2) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(3) (A) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties.

(B) (i) If a previous child custody or visitation determination has been made by another court with continuing jurisdiction with regard to the minor children of the parties, a temporary child custody or visitation determination may be made under subdivision (a)(3)(A) of this section.

(ii) The order shall remain in effect until the court with original jurisdiction enters a subsequent order regarding the children;

(4) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(5) Allow the prevailing party a reasonable attorney's fee as part of the costs;

(6) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order;

(7) Direct the care, custody, or control of any pet owned, possessed, leased, kept, or held by either party residing in the household; and

(8) (A) Order other relief as the court deems

necessary or appropriate for the protection of a family or household member.

(B) The relief may include, but not be limited to, enjoining and restraining the abusing party from doing, attempting to do, or threatening to do any act injuring, mistreating, molesting, or harassing the petitioner.

(b) Any relief granted by the court for protection under the provisions of this chapter shall be for a fixed period of time not less than ninety (90) days nor more than ten (10) years in duration, in the discretion of the court, and may be renewed at a subsequent hearing upon proof and a finding by the court that the threat of domestic abuse still exists.

#### **9-15-206. Temporary order.**

(a) When a petition under this chapter alleges an immediate and present danger of domestic abuse or that the respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of domestic abuse, the court shall grant a temporary order of protection pending a full hearing if the court finds sufficient evidence to support the petition.

(b) An ex parte temporary order of protection may:

(1) Include any of the orders provided in §§ 9-15-203 and 9-15-205; and

(2) Provide the following relief:

(A) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(B) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(C) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties;

(D) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(E) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order; and

(F)(i) Order such other relief as the court considers necessary or appropriate for the protection of a family or household member.

(ii) The relief may include without limitation enjoining and restraining the abusing party from doing, attempting to do, or threatening to do an act injuring, mistreating, molesting, or harassing the petitioner.

(c) An ex parte temporary order of protection is effective until the date of the hearing described in § 9-15-204.

(d) Incarceration or imprisonment of the abusing party shall not bar the court from issuing an ex parte temporary order of protection.

#### **9-15-207. Protection order - Enforcement - Penalties Criminal jurisdiction.**

(a) Any order of protection granted under this chapter is enforceable by a law enforcement agency with proper jurisdiction.

(b) An order of protection shall include a notice to

the respondent or party restrained that:

(1) A violation of the order of protection is a Class A misdemeanor carrying a maximum penalty of one (1) year imprisonment in the county jail or a fine of up to one thousand dollars (\$1,000), or both;

(2) A violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;

(3) It is unlawful for an individual who is subject to an order of protection or convicted of a misdemeanor of domestic violence to ship, transport, or possess a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(8) and (9) as it existed on January 1, 2007; and

(4) A conviction of violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony.

(c) For respondents eighteen (18) years of age or older or emancipated minors, jurisdiction for the criminal offense of violating the terms of an order of protection is with the circuit court or other courts having jurisdiction over criminal matters.

(d)(1) In the final order of protection, the petitioner's home or business address may be excluded from notice to the respondent.

(2) A court shall also order that the petitioner's copy of the order of protection be excluded from any address where the respondent happens to reside.

(e) A law enforcement officer shall not arrest a petitioner for the violation of an order of protection issued against a respondent.

(f) When a law enforcement officer has probable cause to believe that a respondent has violated an order of protection and has been presented verification of the existence of the order of protection, the officer may arrest the respondent without a warrant whether or not the violation occurred in the presence of the officer if the order of protection was obtained according to this chapter and the Arkansas Rules of Criminal Procedure.

(g) An order of protection issued by a court of competent jurisdiction in any county of this state is enforceable in every county of this state by any court or law enforcement officer.

#### **9-15-208. Law enforcement assistance.**

When an order is issued under this chapter, upon request of the petitioner the court may order a law enforcement officer with jurisdiction to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence or to otherwise assist in execution or service of the order of protection. The court may also order a law enforcement officer to assist petitioner in returning to the residence and getting personal effects.

#### **9-15-209. Modification of orders.**

Any order of protection issued by the court pursuant to petition filed as authorized herein may be modified upon application of either party, notice to all parties, and a hearing thereon.

### **9-15-210. Contempt proceedings.**

When a petitioner or any law enforcement officer files an affidavit with a court which has issued an order of protection under the provisions of this chapter alleging that the respondent or person restrained has violated the order, the court may issue an order to the respondent or person restrained requiring the person to appear and show cause why he should not be found in contempt.

### **9-15-217. Order of protection — Violations — Domestic violence surveillance program — Global positioning devices.**

(a)(1)(A) A person who is charged with violating an ex parte order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

(B) A person who is charged with violating a final order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

(2) The court having jurisdiction over the charge may order the defendant released from electronic surveillance before the adjudication of the charge.

(b) A person who is found guilty of violating an order of protection may be placed under electronic surveillance at his or her expense as part of his or her sentence for a minimum of four (4) months but not to exceed one (1) year.

(c) As used in this section, "electronic surveillance" means active surveillance technology worn by or attached to a person that is a single-piece device that immediately notifies law enforcement or other monitors of a violation of the distance requirements or locations that the defendant is barred from entering and may also include technology that:

(1) Immediately notifies the victim of any violation;

(2) Allows law enforcement or monitors to speak to the offender in some manner through or in conjunction with the device;

(3) Has a loud alarm that can be activated to warn the potential victim of the offender's presence in a place he or she is barred from entering;

(4) Is waterproof; and

(5) Can be tracked by either satellite or cellular phone tower triangulation.

### **5-53-134. Violation of a protection order.**

(a) (1) A person commits the offense of violation of an order of protection if:

(A) A circuit court or other court with competent jurisdiction has issued a temporary order of protection or an order of protection against the person pursuant to the The Domestic Abuse Act of 1991, § 9-15-101 et seq.;

(B) The person has received actual notice or notice pursuant to the Arkansas Rules of Civil Procedure of a temporary order of protection or an order of protection pursuant to the The Domestic Abuse Act of 1991, § 9-15-101 et seq.; and

(C) The person knowingly violates a condition of an order of protection issued pursuant to the The Domestic Abuse Act of 1991, § 9-15-101 et seq.

(2) A person commits the offense of violation of an out-of-state order of protection if:

(A) The court of another state, a federally recognized Indian tribe, or a territory with jurisdiction over the parties and matters has issued a temporary order of protection or an order of protection against the person pursuant to the laws or rules of the other state, federally recognized Indian tribe, or territory;

(B) The person has received actual notice or other lawful notice of a temporary order of protection or an order of protection pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory;

(C) The person knowingly violates a condition of an order of protection issued pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory; and

(D) The requirements of § 9-15-302 concerning the full faith and credit for an out-of-state order of protection have been met.

(b) (1) Except as provided in subdivision (b)(2) of this section, violation of an order of protection under this section is a Class A misdemeanor.

(2) Violation of an order of protection under this section is a Class D felony if:

(A) The offense is committed within five (5) years of a previous conviction for violation of an order of protection under this section;

(B) The order of protection was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate; and

(C) The facts constituting the violation on their own merit satisfy the elements of any felony offense or misdemeanor offense, not including an offense provided for in this section.

(c) (1) A law enforcement officer may arrest and take into custody without a warrant any person who the law enforcement officer has probable cause to believe:

(A) Is subject to an order of protection issued pursuant to the laws of this state; and

(B) Has violated the terms of the order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(2) Under § 9-15-302, a law enforcement officer or law enforcement agency may arrest and take into custody without a warrant any person who the law enforcement officer or law enforcement agency has probable cause to believe:

(A) Is subject to an order of protection issued pursuant to the laws or rules of another state, a federally recognized Indian tribe, or a territory; and

(B) Has violated the terms of the out-of-state order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(d) It is an affirmative defense to a prosecution under this section if:

(1) The parties have reconciled prior to the violation of the order of protection; or

(2) The petitioner for the order of protection:

(A) Invited the defendant to come to the petitioner's residence or place of employment listed in the order of protection; and

(B) Knew that the defendant's presence at the

petitioner's residence or place of employment would be in violation of the order of protection.

(e) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse in an effort to comply with this subchapter shall have immunity from civil or criminal liability

## **.LAW ENFORCEMENT RECORDS**

### **Introduction**

To describe a complete record system needed by a sheriff's office, or to discuss total information management in today's age of computers, would not be feasible within the scope of this manual. At best, the following pages present an overview, with notations on where to obtain more details and assistance.

Records must be kept on all law enforcement activities involving the detection, apprehension, detention, and prosecution of individuals. This is accomplished through "paperwork", or the careful filling out and maintaining of various "forms".

To properly carry out his/her law enforcement responsibilities, a sheriff also needs access to information from others. An important source of such information is the state land national computer systems.

Finally, for planning and evaluation purposes, complete and accurate crime statistics are essential.

### **Arkansas Crime Information Center**

In 1971, the Arkansas General Assembly established a special state agency to administer a computerized information system. This agency, known as the Arkansas Crime Information Center (ACIC), serves local, county and state law enforcement agencies. It is responsible not only for the state computerized system, but also provides technical assistance to enforcement officials on manual records, crime statistics reporting and use, and voice communication.

### **Manual Records**

The fundamental law enforcement records kept by a sheriff are those covering the arrest of individuals. All departments should have pre-printed forms to record the details of offenses and the identification of individuals arrested. Such forms may be purchased from printing companies, may be designed and printed by the county, or are available from the ACIC.

All persons arrested on felony charges, as well as on serious misdemeanor charges, should be fingerprinted. Cards for this purpose are available at no cost. Two copies of completed fingerprint cards should be immediately submitted to the state Identification Board.

Some of the other forms that should be maintained in a sheriff's office include incident reports, stolen property reports, name and warrant indexes, etc. More information on this area can be found in the "Special Assistance" section ahead.

### **Computerized Records**

Today, all law enforcement officials make heavy use of computerized records. While only a small number of departments have their own computer, the state ACIC system, the FBI NCIC system, and the National Law Enforcement Telecommunications System (NLETS) are available to all departments at no cost.

The ACIC system contains information on motor vehicle registrations, driver license and driver history, stolen property, wanted and missing persons, and criminal histories.

The NCIC system contains information on stolen property, wanted and missing persons, criminal histories, and a national index to state criminal history records.

The NLET'S system is the national "teletype" system, allowing enforcement officials to send and receive messages to and from all other states.

The services of NCIC and NLETS are available in Arkansas through ACIC.

### **Uniform Crime Reporting**

One of the record requirements of a sheriff is to participate in Uniform Crime Reporting, which is a national program to keep track of the number of offenses know to law enforcement, the number of arrests made, and other crime statistics. This information is reported each month to ACIC on special forms.

In addition to contributing to the vital state and national crime statistical picture, ACIC can provide compiled information back to a department on its own reported crime (for current and prior years) with special comparisons and other statistical services available at no cost.

### **Special Assistance and Forms**

One of the primary functions of ACIC is to provide special training and technical assistance in records management and voice communications.

ACIC Agents are assigned to multi-county areas of the state. They conduct scheduled training classes and are available on request for special assistance to individual departments or officials.

For manual records, ACIC has a variety of standard forms which are available on request at no cost to departments.

For access to the state and national computer files, a department can go through a nearby terminal site or can apply to ACIC for a terminal of its own on the ACIC network. ACIC Agents can answer any questions on these procedures.

### **Security and Privacy of Records**

Most official law enforcement records are considered to be "open". Information regarding arrests and prosecution are never closed or kept secret.

There are exceptions, including intelligence and investigative files. These are generally not regarded as official records, but are accepted as necessary in the operation of any department. They are not "open" files.

Another exception is information received from ACIC and NCIC. State and federal statutes place very strict controls on the use of information from these computer systems. In

fact, unauthorized release of certain records from the systems can be a felony, punishable by a \$5,000 fine and up to three years in the penitentiary.

## Introduction

The information compiled in this section of the manual is designed to assist the sheriff or his deputies in the proper preparation of a search warrant. It is based upon various manuals available for search warrant preparation and was submitted by Special Agent Donald H. Kidd of the Federal Bureau of Investigation.

## SEARCH WARRANT PREPARATION

The language of the Fourth Amendment to the United States Constitution is not complex in its description of what is required to obtain a search warrant. It states, "No warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." In addition, the Arkansas Criminal Code sets forth procedural requirements for the issuance, contents, and execution of a search warrant. Thus, Arkansas warrants, both arrest and search, are judged not only as to their compliance with constitutional principles but also according to their procedural accuracy.

If the Arkansas law enforcement officer is faced with a situation where he must prepare a search warrant, he should always seek the assistance of his prosecutor, police legal advisor, or judge. These individuals have the necessary legal ability to insure the proper drafting of a legal warrant. The United States Supreme Court, however, has recognized in *United States v Ventresca*, 380 U.S. 102 (1965) that affidavits for "search warrants are normally drafted by nonlawyers in the midst and haste of a criminal investigation." Accordingly, this material is intended for the Arkansas law enforcement officer who is faced with an emergency situation where he needs a search warrant and also is going to have to prepare it without the benefit of expert legal advice.

The purpose of the affidavit for a search warrant is to communicate facts in an understandable way. The preparation of the probable cause statement will not be difficult in the usual case. The basic technique is to concentrate on the answers to the questions of what, when, where, who and why in the manner of a good police report. As a general rule, when in doubt as to whether certain facts are relevant to a finding of probable cause, the law enforcement officer should include such facts in his statement. Remember, information known to the law enforcement officer but not included in the affidavit cannot be considered in the probable cause determination or later used to bolster a defective search warrant.

To provide probable cause, the affidavit must disclose sufficient facts to enable the judicial officer to make an independent determination as to whether the items sought to be seized are presently in the place to be searched. The affidavit must disclose both the specific facts upon which the judgment may be made and the source from which the law enforcement officer learned of these facts. The affidavit should provide the date on which the information presented

was received by the officer as well as the date on which the source obtained the information.

There exists in Arkansas several standardized forms which are utilized by law enforcement officers in the preparation of their affidavit for search warrant.

These forms have been drafted to insure procedural compliance with the laws of Arkansas. Many of these forms, however, do not contain sufficient space to set forth full details of the probable cause statement. It is important to remember that additional pages may be incorporated in the application for search warrant by reference. Attachments may be used to provide supplemental information, as where the affidavit contains the statement, "continued on attachment No. 2," or where detailed data such as particularized descriptions of premises to be searched or directions for finding them are recorded on sheets of paper and physically attached. The important consideration is the state of the document at the time of submission to the judicial officer. If the forms, sheets, and pages are fastened so as to be intended as one instrument at the time the affiant signs it under oath, it will satisfy the form requirement just as readily as would a single page statement.

## Description of Place to be Searched

The Fourth Amendment requires that the place to be searched be described with particularity. The general rule is that the description should be of sufficient particularity so that if a law enforcement officer with no knowledge of the case was assigned to execute the search warrant, he would have no difficulty in identifying and locating the person, place, or thing to be searched.

**Dwelling** - The complete address and a brief description of its outer appearance should be included. A phrase which makes clear the search is to encompass the entire structure should be included, and where appropriate, a description of surrounding grounds and other related building and improvements, such as storage sheds and detached garages. For example, the description might be as follows:

"...The premises at 1418 Cedar Drive, El Dorado, Arkansas; further described as a single-story dwelling house, Georgian brick exterior, white shutters, and a gray roof, and all rooms, attic, basement, and other parts herein, and the surrounding grounds and any garage, storage rooms, and outbuildings of any kind located thereon."

In giving a street address, it is important to specify "North," "South," "East," or "West," if that is part of the address. Also, the "Street," "Place," or "Drive," as the case may be should be shown.

**Apartment** - An apartment unit, not the entire apartment building, should be particularly described unless probable cause dictates otherwise. The apartment number or letter must be included where possible. If such a designation is not available, the location of the apartment within the building must be otherwise definitively shown. For example:

"1234 Dumas Road, El Dorado, Arkansas, Apartment

Number 1-A; further described as an apartment unit within a two story, multi-unit apartment house, white brick structure bearing the name 'Ginger House Apartments, and all rooms, attics, and other arts within Apartment Number 1-A, and all garages, trash containers, and storage areas designated for the use of Apartment Number 1-A."

**Store or Business** - The address, name of the business, and a brief description of its outer appearance should be stated. For example:

"the premises known as 'Joe's Coffee Shop,' located at 1234 Strong Highway, El Dorado, Arkansas; a coffee shop in a single-story commercial building with the word 'Joe's' appearing in large black letters on the front window, and all rooms, dining areas, service areas, kitchens, pantries, stoves, refrigerators, restrooms, and other parts within the building, including an office located in the rear of the premises, and any storage rooms, storage areas, trash areas, and trash containers attached or unattached."

**Place Where Address is Unknown** - If no address is known or the location is not marked with an address, a specific description will be especially important. The description should be sufficiently detailed to avoid mistaking the place to be searched. In this regard, the use of photographs and diagrams as a supplement to a written description should be considered. For example:

"a small wooden dilapidated red barn located on the west side of Mt. Holly Road approximately 1.7 miles south of Agnes Road in Union County, Arkansas, as shown on the color photographs attached hereto and incorporated as Exhibit Number 1, and all rooms, lofts, storage areas, and the surrounding grounds." Duplicate photographs should then be marked Exhibit Number 1 and attached to the affidavit and to the search warrant.

**Vehicles** - As a general rule, the color, year, make, model, and license number of the vehicle to be searched are sufficient to constitute an adequate description. For example:

" a white, 1983 Ford, Thunderbird, two-door automobile, bearing Arkansas license FDC-963."

If the license number cannot be obtained or is unknown, details of its appearance, so as to distinguish it from other vehicles, should be included. Examples of such distinguishing characteristics might be: a broken right headlight, a dented right rear fender, or a distinctive decal.

**Persons** - Description of a person would include the name, sex, race, age, height, weight, hair color, and eye color, as well as distinguishing tattoos or marks. If the search of the person is being conducted in conjunction with the search of the premises, the law enforcement officer should include in the description his belief that the person will be located within the described premises. Body cavity searches, unless

incidental to an arrest should only be made after consultation with an attorney.

### Description of Property to be Seized

The Fourth Amendment to the United States Constitution forbids a general exploratory warrant. Thus, property to be seized under a warrant should be identified as clearly and distinctly as possible. If the property lends itself to ready identification by physical description and serial number, both of which are reasonably available to the law enforcement officer, then data such as this should be included in the affidavit. In other cases, the property identified by brand name and a specific quantity will serve to distinguish the property sought. For example:

"That the affiant has reason to believe, and does believe, that there is now being concealed certain property, to wit: a large number, believed to be 3,000, Hamilton Beach Electric Blenders, which electric blenders were part of a burglary..."

In this manner armed robbery loot could be sufficiently described by reference to the total amount or the approximate number of bills of each denomination taken. Precise descriptive data, such as complete individual serial numbers, may be impossible or impractical to furnish. As a rule of thumb, if the property is contraband property, the possession of which is unlawful, it does not have to be described in great detail; however, if it is not contraband, then greater detail must be used in describing it.

### Statement of Probable Cause

In drafting a statement for a probable cause arrest warrant, the Arkansas law enforcement officer must answer the hypothetical question: "What makes you think that this individual committed the crime?" In an affidavit for search warrant the officer must ask himself two questions: (1) "How can I show the items sought are connected with the crime?" and (2) "How can I show the items sought will be found in the place to be searched?" Remember, the results of your investigation must be recorded in such a manner that they will convey understanding of each fact and will persuade the judicial officer that an arrest and/or search is justified.

The majority of law enforcement officers have found it helpful to organize the elements of their probable cause into paragraphs. If it is possible, state the date your information was received, the individual or source of your information, the address or background about the individual who furnished the information and the observations and/or information of the source of your information. For example:

1. A statement of John Ball, Manager, Ball's Pharmacy, 115 South Jackson, El Dorado, Arkansas, on December 17, 1993, to Detective James Smith, El Dorado, Arkansas, Police Department, that on the night of December 16- 17, 1993, his pharmacy had been broken into and approximately 150 blank Travelers Checks had been stolen from a safe at his pharmacy.

2. A telephonic statement of James Joyce, Security

Director, Travelers Checks, Inc., 1070 West 101st Street, New York, New York, on December 17,1993, to Detective Ron Herman, El Dorado, Arkansas, Police Department, that a review of their records reflected that Ball's Pharmacy, El Dorado, Arkansas, had been issued 150 Travelers Checks bearing the serial numbers..."

### **The Probable Cause Statement - Information From Informants**

There are informants whose identities must be kept confidential. While it may be more difficult to establish reliability from such a source, the information may be nevertheless used to establish probable cause. A two-prong test is used to assess such information. The test focuses on the veracity of the informant and the factual basis of the informant's information. In other words, the law enforcement officer must show to the judicial officer that, (1) his informant is reliable, and (2) his informant's information is reliable.

The following example illustrates how information received from a reliable confidential informant might be stated:

"on December 18,1993, Detective Ron Herman, El Dorado, Arkansas, Police Department, met with a confidential and reliable informant. This informant is believed to be reliable because he has furnished information on six past occasions within the past six months which has proven to be accurate on each occasion. The information he has furnished resulted in the recovery of property from a store burglary in El Dorado, Arkansas, as well as property stolen from a home in Union County, Arkansas. His information has also resulted in the arrest of two individuals at El Dorado, Arkansas. Further details as to past information provided by this informant would furnish clues to his identity. The identity of this informant should be kept confidential because disclosing his identity would impair his future usefulness to law enforcement and endanger his life." The informant told me that on December 18, 1993, he had been inside a warehouse at 1234 Robin Road, El Dorado, Arkansas, and that while there he observed two stacks of blank Travelers Checks, Inc., checks. During the time the informant was inside the warehouse there were approximately 15 or 20 other persons present. Several people came in and departed while he was there. He told me that while he was inside the warehouse he saw a man called 'Shorty, 'who was described to him as the owner of the warehouse. Shorty was described as..."

If the informant has not furnished information on previous occasions, it may still be possible to show his information is reliable. Examples of this might include information that the informant was an eyewitness to a crime; a participant in the criminal activity; his information has been sufficiently corroborated to show that the information is probably reliable; the informer could not supply this information unless he was telling the truth; or, the informant's information plus other facts together are sufficient to show reliability.

### **The Nighttime Warrant**

Rule 13.2 of the Arkansas Rules of Criminal Procedure provides that the warrant shall be served between the hours of 6:00 a.m. and 8:00 p.m. Before a valid nighttime (8:00 p.m. to 6:00 a.m.) search under a warrant can be made, the affidavit must reflect probable cause to show that:

1. The place to be searched is difficult for speedy access; or
2. The objects to be seized are in danger of imminent removal; or
3. The warrant can only be safely or successfully executed at nighttime or under circumstances the occurrence of which is difficult to predict with accuracy.

The affidavit for search warrant must set forth probable cause of the foregoing if a nighttime warrant is desired. Thereafter, the issuing judicial officer may, by appropriate provision in the warrant, authorize its execution at any time, day or night.

### **Preparation Guidelines**

The validity of the warrant may be jeopardized by careless or negligent mistakes in the preparation of the supporting affidavit. The following may help eliminate those mistakes:

**Timely Information** - If information showing probable cause to believe that a person has committed a crime is gathered, this probable cause for an arrest warrant will still be present weeks, months, or even years later. Yet, the same is not true with respect to information gathered showing probable cause to believe that certain sizable items are to be found at a particular place. In regard to information used for this purpose, it is important to clearly state in the affidavit that the information being furnished is current. Generally, information which is over two or three weeks old is considered "stale" and needs updating to show that it can still be relied upon. Facts furnished must lead to a present probability; that is, facts taken in their entirety must describe a reasonable basis for concluding that right now there is concealed in that particular place, certain goods subject to seizure.

**Specific Information** - The language used in drafting a statement of probable cause should be plain and specific. Names, times, dates, addresses, events, etc., should set out in detail so as to add to the credibility of the allegation. Moreover, the specific report will reflect favorable upon the reliability of the source.

For better organization and ease of reading, a separate paragraph for each item of probable cause, or at least a separate paragraph for each source of information being used, should be included. The paragraphs can be numbered.

The statement should be limited to facts and such conclusions as may be drawn from the facts expressed. When marshaling the facts for a statement of probable cause, it is essential to present distinct and persuasive



evidence. A conclusion should not be expressed without supporting facts.

**Indicating Sources of Information-** The judicial officer's determination of probable cause is largely dependent upon the credibility of the source of information; therefore, as a general rule, the source of each fact recited in the statement must be clearly indicated. The law enforcement officer may be the sole affiant in furnishing the facts of probable cause. He is authorized to relate his personal observations plus those facts acquired from other sources, but he is responsible for indicating which items of information are his and which are hearsay and merely being transmitted. Therefore, the source of each fact should be identified. The law enforcement officer should not, by implication or otherwise, claim credit for information as being firsthand when it is actually hearsay. Hearsay grows weaker rapidly with each person involved. Middlemen should be eliminated if at all possible in favor of attributing the facts to the original source.

## **Chapter 4 - ARKANSAS RULES ON CRIMINAL PROCEDURE**

### **RULE 2. PRE-ARREST CONTACTS**

#### **Rule 2.1. Definitions.**

For the purposes of this Article, unless the context otherwise plainly requires:

"Reasonable suspicion" means a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.

#### **Rule 2.2. Authority to request cooperation.**

(a) A law enforcement officer may request any person to furnish information or otherwise cooperate in the investigation or prevention of crime. The officer may request the person to respond to questions, to appear at a police station, or to comply with any other reasonable request.

(b) In making a request pursuant to this rule, no law enforcement officer shall indicate that a person is legally obligated to furnish information or to otherwise cooperate if no such legal obligation exists. Compliance with the request for information or other cooperation hereunder shall not be regarded as involuntary or coerced solely on the ground that such a request was made by a law enforcement officer.

#### **Rule 2.3. Warning to persons asked to appear at a police station.**

If a law enforcement officer acting pursuant to this rule requests any person to come to or remain at a police station, prosecuting attorney's office or other similar place, he shall take such steps as are reasonable to make clear that there is no legal obligation to comply with such a request.

### **RULE 3. DETENTION WITHOUT ARREST**

#### **Rule 3.1. Stopping and detention of person: time limit.**

A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At

the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense.

#### **Rule 3.2. Advice as to reason for detention.**

A law enforcement officer who has detained a person under Rule 3.1 shall immediately advise that person of his official identity and the reason for the detention.

#### **Rule 3.3. Use of force.**

A law enforcement officer acting under the authority of Rule 3.1 may use such nondeadly force as may be reasonably necessary under the circumstances to stop and detain any person for the purposes authorized by Rules 3.1 through 3.5.

#### **Rule 3.4. Search for weapons.**

If a law enforcement officer who has detained a person under Rule 3.1 reasonably suspects that the person is armed and presently dangerous to the officer or others, the officer or someone designated by him may search the outer clothing of such person and the immediate surroundings for, and seize, any weapon or other dangerous thing which may be used against the officer or others. In no event shall this search be more extensive than is reasonably necessary to ensure the safety of the officer or others.

#### **Rule 3.5. Stop of witness to crime.**

Whenever a law enforcement officer has reasonable cause to believe that any person found at or near the scene of a felony is a witness to the offense, he may stop that person. After having identified himself, the officer must advise the person of the purpose of the stopping and may then demand of him his name, address, and any information he may have regarding the offense. Such detention shall in all cases be reasonable and shall not exceed fifteen (15) minutes unless the person shall refuse to give such information, in which case the person, if detained further, shall immediately be brought before any judicial officer or prosecuting attorney to be examined with reference to his name, address, or the information he may have regarding the offense.

### **RULE 4. ARREST: GENERAL PROVISIONS**

#### **Rule 4.1. Authority to arrest without warrant.**

(a) A law enforcement officer may arrest a person without a warrant if:

(i) the officer has reasonable cause to believe that such person has committed a felony;

(ii) the officer has reasonable cause to believe that such person has committed a traffic offense involving:

- (A) death or physical injury to a person; or
- (B) damage to property; or
- (C) driving a vehicle while under the influence of any intoxicating liquor or drug;

(iii) the officer has reasonable cause to believe that such person has committed any violation of law in the officer's presence;

(iv) the officer has reasonable cause to believe that such person has committed acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined by law against a family or household member and which occurred within four (4) hours preceding the arrest if no physical injury was involved or 12 (twelve) hours preceding the arrest if physical injury, as defined in Ark. Code Ann. § 5-1-102, was involved;

(v) the officer is otherwise authorized by law.

(b) A private person may make an arrest where he has reasonable grounds for believing that the person arrested has committed a felony.

(c) An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the officer or private citizen is unable to determine the particular offense which may have been committed.

(d) A warrantless arrest by an officer not personally possessed of information sufficient to constitute reasonable cause is valid where the arresting officer is instructed to make the arrest by a police agency which collectively possesses knowledge sufficient to constitute reasonable cause.

(e) A person arrested without a warrant shall not be held in custody unless a judicial officer determines, from affidavit, recorded testimony, or other information, that there is reasonable cause to believe that the person has committed an offense. Such reasonable cause determination shall be made promptly, but in no event longer than forty-eight (48) hours from the time of arrest, unless the prosecuting attorney demonstrates that a bona fide emergency or other extraordinary circumstance justifies a delay longer than forty-eight (48) hours. Such reasonable cause determination may be made at the first appearance of the arrested person pursuant to Rule 8.1.

#### **Rule 4.2. Authority to arrest with warrant.**

Any law enforcement officer may arrest a person pursuant to a warrant in any county in the state.

#### **Rule 4.3. Arrest pursuant to warrant: possession of warrant unnecessary.**

A law enforcement officer need not have a warrant in his possession at the time of an arrest, but upon request he shall show the warrant to the accused as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall inform the accused of the fact that the warrant has been issued.

#### **Rule 4.4. Procedures on arrest.**

Upon making an arrest, a law enforcement officer

shall

(a) identify himself as such unless his identity is otherwise apparent;

(b) inform the arrested person that he is under arrest; and

(c) as promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest.

#### **Rule 4.5. Limitations on questioning.**

No law enforcement officer shall question an arrested person if the person has indicated in any manner that he does not wish to be questioned, or that he wishes to consult counsel before submitting to any questioning.

#### **Rule 4.6. Procedures on arrest: prompt taking to police station.**

Any person arrested, if not released pursuant to these rules, shall be brought promptly to a jail, police station, or other similar place. The arresting officer may, however, first take the person to some other place, if:

(a) the person so requests; or

(b) such action is reasonably necessary for the purpose of having the person identified:

(i) by a person who is otherwise unlikely to be able to make the identification; or

(ii) by a person near the place of the arrest or near the scene of a recently committed offense.

#### **RULE 5. RELEASE BY A LAW ENFORCEMENT OFFICER ACTING WITHOUT AN ARREST WARRANT**

##### **Rule 5.1. Definitions.**

For the purposes of this Article, unless the context otherwise plainly requires:

(a) "Citation" means a written order, issued by a law enforcement officer who is authorized to make an arrest, requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.

(b) "Summons" means an order issued by a judicial officer or, pursuant to the authorization of a judicial officer, by the clerk of a court, requiring a person against whom a criminal charge has been filed to appear in a designated court at a specified date and time.

(c) "Order to appear" means an order issued by a judicial officer at or after the defendant's first appearance releasing him from custody or continuing him at large pending disposition of his case but requiring him to appear in court or in some other place at all appropriate times.

(d) "Release on own recognizance" means the release of a defendant without bail upon his promise to appear at all appropriate times, sometimes referred to as "personal recognizance."

(e) "Release on bail" means the release of a defendant upon the execution of a bond, with or without sureties, which may be secured by the pledge of money or property.

(f) "First appearance" means the first proceeding at which a defendant appears before a judicial officer.

### **Rule 5.2. Authority to issue citations.**

(a) A law enforcement officer in the field acting without a warrant who has reasonable cause to believe that a person has committed any misdemeanor may issue a citation in lieu of arrest or continued custody.

(b) When a person is arrested for any misdemeanor, the ranking officer on duty at the place of detention to which the arrested person is taken may issue a citation in lieu of continued custody.

(c) Upon the recommendation of a prosecuting attorney, the ranking officer on duty at the place of detention to which the arrested person is taken may issue a citation in lieu of continued custody when the person has been arrested for a felony.

(d) In determining whether to continue custody or issue a citation under (a) or (b) above, the officer shall inquire into and consider facts about the accused, including but not limited to:

- (i) place and length of residence;
- (ii) family relationships;
- (iii) references;
- (iv) present and past employment;
- (v) criminal record; and
- (vi) other relevant facts such as:

(A) whether an accused fails to identify himself satisfactorily;

(B) whether an accused refuses to sign a promise to appear pursuant to citation;

(C) whether detention is necessary to prevent imminent bodily harm to the accused or to another;

(D) whether the accused has ties to the jurisdiction reasonably sufficient to assure his appearance and there is a substantial likelihood that he will respond to a citation;

(E) whether the accused previously has failed to appear in response to a citation.

### **Rule 5.3. Form of citation.**

(a) Every citation shall:

(i) be in writing;

(ii) be signed by the officer issuing it with the title of his office;

(iii) state the date of issuance and the municipality or county where issued;

(iv) specify the name of the accused and the offense alleged;

(v) designate a time, place, and court for the appearance of the accused; and

(vi) provide a space for the signature of the accused acknowledging his promise to appear.

(b) Every citation shall inform the accused that failure to appear at the stated time, place, and court may result in his arrest and shall constitute a separate offense for which he may be prosecuted.

### **Rule 5.4. Procedure for issuing citations.**

(a) In issuing a citation the officer shall deliver one (1) copy of the citation to the accused.

(b) The officer shall thereupon release the accused or, if the person appears mentally or physically unable to care for himself, take him to an appropriate medical facility.

(c) As soon as practicable, one (1) copy of the citation shall be filed with the court specified therein, and one (1) copy shall be delivered to the prosecuting attorney.

### **Rule 5.5. [Repealed.]**

## **RULE 6. ISSUANCE OF SUMMONS IN LIEU OF ARREST WARRANT**

### **Rule 6.1. Authority to issue summons.**

(a) A judicial officer with the authority to issue an arrest warrant may issue, or authorize the clerk of the court to issue, a criminal summons in lieu thereof in any case in which a complaint, information, or indictment is filed or returned against a person not already in custody.

(b) A prosecuting attorney who files an information or approves the filing of a complaint against a person not already in custody may authorize the clerk of a court to issue a criminal summons in lieu of an arrest warrant.

(c) A summons shall not be issued pursuant to this Rule if:

(i) the offense, or the manner in which it was committed, involved violence to a person or the risk or threat of imminent serious bodily injury; or

(ii) it appears that the person charged would not respond to a summons.

In determining whether the defendant would respond to a summons, appropriate considerations include, but are not limited to:

(A) the nature and circumstances of the offense charged;

(B) the weight of the evidence against the person;

(C) place and length of residence;

(D) present and past employment;

(E) family relationship;

(F) financial circumstances;

(G) apparent mental condition;

(H) past criminal record;

(I) previous record of appearance at court proceedings; and

(J) any other relevant information.

### **Rule 6.2. Form of summons.**

(a) A summons shall:

(i) be in writing;

(ii) be signed by the officer issuing it with the title of his office;

(iii) state the date of issuance and the municipality or county where issued;

(iv) specify the name of the accused and the offense alleged;

(v) designate a time, place, and court for the appearance of the accused; and

(vi) have attached a copy of the information, complaint or indictment.

(b) Every summons shall inform the accused that failure to appear at the stated time, place, and court may result in his arrest and shall constitute a separate offense for which he may be prosecuted.

### **Rule 6.3. Service of criminal summons.**

Criminal summons may be served by:

(a) any method prescribed for personal service of civil process; or

(b) certified mail, for delivery to addressee only with return receipt requested.

### **RULE 7. ARREST WITH A WARRANT**

#### **Rule 7.1. Arrest with a warrant: basis for issuance of arrest warrant.**

(a) A judicial officer may issue an arrest warrant for a person who has failed to appear in response to a summons or citation.

(b) In addition, a judicial officer may issue a warrant for the arrest of a person if, from affidavit, recorded testimony, or other information, it appears there is reasonable cause to believe an offense has been committed and the person committed it. A judicial officer may issue a summons in lieu of an arrest warrant as provided in Rule 6.1.

(c) A judicial officer who has determined in accordance with Rule 7.1(b) that an arrest warrant should be issued may authorize the clerk of the court or his deputy to issue the warrant.

#### **Rule 7.2. Form of warrant.**

(a) Every arrest warrant shall:

(i) be in writing and in the name of the state;

(ii) be directed to all law enforcement officers in the state;

(iii) be signed by the issuing official with the title of his office and the date of issuance;

(iv) specify the name of the accused or, if his name is unknown, any name or description by which he can be identified with reasonable certainty;

(v) have attached a copy of the information, if filed, or, if not filed, a copy of any affidavit supporting issuance; and

(vi) command that the accused be arrested and that unless he complies with the terms of release specified in the warrant he be brought before a judicial officer without unnecessary delay.

(b) The warrant may specify the manner in which it is to be executed, and may specify terms of release and requirements for appearance.

#### **Rule 7.3. Return of warrant and summons; execution after return.**

(a) The law enforcement officer executing a warrant shall make return thereof to the court before which the accused is brought, and notice thereof shall be given to the prosecuting attorney.

(b) On or before the date for appearance the officer to whom a summons was delivered for service shall make return thereof to the judicial officer before whom the summons is returnable.

(c) At any time while a complaint, information or indictment is pending, the issuing official may deliver a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a duplicate of either to a law enforcement officer or other authorized person for execution or service.

### **RULE 8. RELEASE BY JUDICIAL OFFICER AT FIRST APPEARANCE**

#### **Rule 8.1. Prompt first appearance.**

An arrested person who is not released by citation or by other lawful manner shall be taken before a judicial officer without unnecessary delay.

#### **Rule 8.2. Appointment of counsel.**

(a) An accused's desire for, and ability to retain, counsel should be determined by a judicial officer before the first appearance, whenever practicable.

(b) Whenever an indigent is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel, the court shall appoint counsel to represent the indigent, unless the indigent is charged with a misdemeanor and the court has determined that under no circumstances will incarceration be imposed as a part of the punishment if the indigent is found guilty. A suspended or probationary sentence to incarceration shall be considered a sentence to incarceration if revocation of the suspended or probationary sentence may result in the incarceration of the indigent without the opportunity to contest guilt of the offense for which incarceration is imposed.

(c) Attorneys appointed by district courts, city courts, and police courts may receive fees for services rendered upon certification by the presiding judicial officer if provision therefore has been made by the county or municipality in which the offense is committed or the services are rendered. Attorneys so appointed shall continue to represent the indigent accused until relieved for good cause or until substituted by other counsel.

#### **Rule 8.3. Nature of first appearance.**

(a) Upon the first appearance of the defendant the judicial officer shall inform him of the charge. The judicial officer shall also inform the defendant that:

(i) he is not required to say anything, and that anything he says can be used against him;

(ii) he has a right to counsel; and

(iii) he has a right to communicate with his counsel, his family, or his friends, and that reasonable means will be provided for him to do so.

(b) No further steps in the proceedings other than pretrial release inquiry may be taken until the defendant and his counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived his right to

counsel or has refused the assistance of counsel.

(c) The judicial officer, if unable to dispose of the case at the first appearance, shall proceed to decide the question of the pretrial release of the defendant. In so doing, the judicial officer shall first determine by an informal, non-adversary hearing whether there is probable cause for detaining the arrested person pending further proceedings. The standard for determining probable cause at such hearing shall be the same as that which governs arrests with or without a warrant.

**Rule 8.4. Pretrial release inquiry: in what circumstances conducted.**

(a) An inquiry by the judicial officer into the relevant facts which might affect the pretrial release decision shall be made:

(i) in all cases where the maximum penalty for the offense charged exceeds one (1) year and the prosecuting attorney does not stipulate that the defendant may be released on his own recognizance;

(ii) in those cases where the maximum penalty for the offense charged is less than one (1) year and in which a law enforcement officer gives notice to the judicial officer that he intends to oppose release of the defendant on his own recognizance.

(b) In all other cases, the judicial officer may release the defendant on his own recognizance or on order to appear without conducting a pretrial release inquiry.

**Rule 8.5. Pretrial release inquiry: when conducted; nature of.**

(a) A pretrial release inquiry shall be conducted by the judicial officer prior to or at the first appearance of the defendant.

(b) The inquiry should take the form of an assessment of factors relevant to the pretrial release decision, such as:

(i) the defendant's employment status, history and financial condition;

(ii) the nature and extent of his family relationships;

(iii) his past and present residence;

(iv) his character and reputation;

(v) persons who agree to assist him in attending court at the proper times;

(vi) the nature of the current charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty;

(vii) the defendant's prior criminal record, if any, and, if he previously has been released pending trial, whether he appeared as required;

(viii) any facts indicating the possibility of violations of law if the defendant is released without restrictions; and

(ix) any other facts tending to indicate that the defendant has strong ties to the community and is not likely to flee the jurisdiction.

(c) The prosecuting attorney should make recommendations to the judicial officer concerning:

(i) the advisability and appropriateness of pretrial release;

(ii) the amount and type of bail bond;

(iii) the conditions, if any, which should be imposed on the defendant's release.

**Rule 8.6. Time for Filing Formal Charge.**

If the defendant is continued in custody subsequent to the first appearance, the prosecuting attorney shall file an indictment or information in a court of competent jurisdiction within sixty days of the defendant's arrest. Failure to file an indictment or information within sixty days shall not be grounds for dismissal of the case against the defendant, but shall, upon motion of the defendant, result in the defendant's release from custody unless the prosecuting attorney establishes good cause for the delay. If good cause is shown, the court shall reconsider bail for the defendant.

**RULE 9. THE RELEASE DECISION**

**Rule 9.1. Release on order to appear or on defendant's own recognizance.**

(a) At the first appearance the judicial officer may release the defendant on his personal recognizance or upon an order to appear.

(b) Where conditions of release are found necessary, the judicial officer should impose one (1) or more of the following conditions:

(i) place the defendant under the care of a qualified person or organization agreeing to supervise the defendant and assist him in appearing in court;

(ii) place the defendant under the supervision of a probation officer or other appropriate public official;

(iii) impose reasonable restrictions on the activities, movements, associations, and residences of the defendant;

(iv) release the defendant during working hours but require him to return to custody at specified times; or

(v) impose any other reasonable restriction to ensure the appearance of the defendant.

**Rule 9.2. Release on money bail.**

(a) The judicial officer shall set money bail only after he determines that no other conditions will reasonably ensure the appearance of the defendant in court.

(b) If it is determined that money bail should be set, the judicial officer shall require one (1) of the following:

(i) the execution of an unsecured bond in an amount specified by the judicial officer, either signed by other persons or not;

(ii) the execution of an unsecured bond in an amount specified by the judicial officer, accompanied by a deposit of cash or securities equal to ten per cent (10%) of the face amount of the bond. Ninety per cent (90%) of the deposit shall be returned at the conclusion of the proceedings, provided the defendant has not defaulted in the performance of the conditions of the bond; or

(iii) the execution of a bond secured by the deposit of the full amount in cash, or by other property, or by obligation of qualified sureties.

(c) In setting the amount of bail the judicial officer should take into account all facts relevant to the risk of wilful nonappearance including:

(i) the length and character of the defendant's residence in the community;

(ii) his employment status, history and financial condition;

(iii) his family ties and relationship;

(iv) his reputation, character and mental condition;

(v) his past history of response to legal process;

(vi) his prior criminal record;

(vii) the identity of responsible members of the community who vouch for the defendant's reliability;

(viii) the nature of the current charge, the apparent probability of conviction and the likely sentence, in so far as these factors are relevant to the risk of nonappearance; and

(ix) any other factors indicating the defendant's roots in the community.

(d) Nothing in this rule shall be construed to prohibit a judicial officer from permitting a defendant charged with an offense other than a felony from posting a specified sum of money which may be forfeited or applied to a fine and costs in lieu of any court appearance.

(e) An appearance bond and any security deposit required as a condition of release pursuant to subsection (b) of this rule shall serve to guarantee all subsequent appearances of a defendant on the same charge or on other charges arising out of the same conduct before any court, including appearances relating to appeals and upon remand. If the defendant is required to appear before a court other than the one ordering release, the order of release together with the appearance bond and any security or deposit shall be transmitted to the court before which the defendant is required to appear. This subsection shall not be construed to prevent a judicial officer from:

(i) decreasing the amount of bond, security or deposit required by another judicial officer; or

(ii) upon making written findings that factors exist increasing the risk of wilful nonappearance, increasing the amount of bond, security, or deposit required by another judicial officer.

Upon an increase in the amount of bond or security, a surety may surrender a defendant.

### **Rule 9.3. Prohibition of wrongful acts pending trial.**

If it appears that there exists a danger that the defendant will commit a serious crime or will seek to intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judicial officer, upon the release of the defendant, may enter an order:

(a) prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order shall be deemed to prohibit any lawful and ethical activity of defendant's counsel;

(b) prohibiting the defendant from going to certain described geographical areas or premises;

(c) prohibiting the defendant from possessing any dangerous weapon, or engaging in certain described activities or indulging in intoxicating liquors or in certain drugs;

(d) requiring the defendant to report regularly to and remain under the supervision of an officer of the court.

### **Rule 9.4. Notice of penalties.**

(a) When the conditions of the release of a defendant are determined or an order is entered under Rule 9.3, the judicial officer shall inform the defendant of the penalties for failure to comply with the conditions or terms of such order.

(b) All conditions of release and terms of orders under Rule 9.3 shall be recorded in writing and a copy given to the defendant.

### **Rule 9.5. Violations of conditions of release.**

(a) A judicial officer shall issue a warrant directing that the defendant be arrested and taken forthwith before any judicial officer having jurisdiction of the charge for a hearing when the prosecuting attorney submits a verified application alleging that:

(i) the defendant has willfully violated the conditions of his release or the terms of an order under Rule 9.3; or

(ii) pertinent information which would merit revocation of the defendant's release has become known to the prosecuting attorney.

(b) A law enforcement officer having reasonable grounds to believe that a released defendant has violated the conditions of his release or the terms of an order under Rule 9.3 is authorized to arrest the defendant and to take him forthwith before any judicial officer having jurisdiction when it would be impracticable to secure a warrant.

(c) After a hearing, and upon finding that the defendant has willfully violated reasonable conditions or the terms of an order under Rule 9.3 imposed on his release, the judicial officer may impose different or additional conditions of release upon the defendant or revoke his release.

["Order for Issuance of Arrest Warrant and Summons/Order for Surety to Appear;" Implementing Act 752 of 2003 Arkansas General Assembly; To be appended to Rule 9.5, Rules of Criminal Procedure. Effective January 1, 2005. [PDF, WP5.1] See per curiam delivered November 18, 2004. [HTML, WP5.1]]

### **Rule 9.6. Commission of felony while awaiting trial.**

If it is shown that any court has found reasonable cause to believe that a defendant has committed a felony while released pending adjudication of a prior charge, the court which initially released him may revoke his release.

## **RULE 10. GENERAL PROVISIONS ON SEARCH AND SEIZURE**

### **RULE 10.1. Definitions**

For the purposes of this Article, unless a different meaning is plainly required:

(a) "Search" means any intrusion other than an arrest, by an officer under color of authority, upon an individual's person, property, or privacy, for the purpose of seizing individuals or things or obtaining information by inspection or surveillance, if such intrusion, in the absence of legal authority or sufficient consent, would be a civil wrong, criminal offense, or violation of the individual's rights under

the Constitution of the United States or this state.

(b) "Seizure" means the taking of any person or thing or the obtaining of information by an officer pursuant to a search or under other color of authority.

(c) "Search Warrant" means an order issued by a judicial officer authorizing a search or seizure or both.

(d) "Officer" means a law enforcement officer or other person acting under color of authority to search and seize.

(e) "Individual" includes a corporation.

(f) "Vehicle" includes any craft or device for the transportation of persons or things by land, sea or air. (g) "Property" means real or personal property, including vehicles.

(h) "Reasonable Cause to Believe" means a basis for belief in the existence of facts which, in view of the circumstances under and purposes for which the standard is applied, is substantial, objective, and sufficient to satisfy applicable constitutional requirements.

(i) "Reasonable Belief" means a belief based on reasonable cause to believe.

### **RULE 10.2. Permissible Objects of Seizure.**

(a) Unless prohibited by other express provision, the following are subject to seizure:

(i) evidence of or other information except privileged information concerning the commission of a criminal offense or other violation of law;

(ii) contraband, the fruits of crime, or things possessed in violation of the laws of this state;

(iii) weapons or other things used or likely to be used as means of committing a criminal offense; and

(iv) an individual for whose arrest there is reasonable cause, or who is unlawfully held in confinement or other restraint.

### **RULE 11. SEARCH AND SEIZURE BY CONSENT.**

#### **RULE 11.1. Authority to Search and Seize Pursuant to Consent.**

(a) An officer may conduct searches and make seizures without a search warrant or other color of authority if consent is given to the search.

(b) The state has the burden of proving by clear and positive evidence that consent to a search was freely and voluntarily given and that there was no actual or implied duress or coercion.

(c) A search of a dwelling based on consent shall not be valid under this rule unless the person giving the consent was advised of the right to refuse consent. For purposes of this subsection, a "dwelling" means a building or other structure where any person lives or which is customarily used for overnight accommodation of persons. Each unit or structure divided into separately occupied units is itself a dwelling. (Amended November 18, 2004, effective January 1, 2005.)

#### **RULE 11.2. Persons from Whom Effective Consent May be Obtained.**

The consent justifying a search and seizure can only be given, in the case of:

(a) search of an individual's person, by the individual in question or, if the person is under fourteen (14) years of age, by both the individual and his parent, guardian, or a person in loco parentis;

(b) search of a vehicle, by the person registered as its owner or in apparent control of its operation or contents at the time consent is given; and

(c) search of premises, by a person who, by ownership or otherwise, is apparently entitled to give or withhold consent.

### **RULE 11.3. Search Limited by Scope of Consent.**

A search based on consent shall not exceed, in duration or physical scope, the limits of the consent given.

### **RULE 11.4. Items Seized: Receipt.**

After making a seizure, the officer shall make a list of the things seized, and shall deliver a receipt fairly describing the things seized to the person consenting to the search.

### **RULE 11.5. Withdrawal or Limitation of Consent.**

A consent given may be withdrawn or limited at any time prior to the completion of the search, and if so withdrawn or limited, the search under authority of the consent shall cease, or be restricted to the new limits, as the case may be. Things discovered and subject to seizure prior to such withdrawal or limitation of consent shall remain subject to seizure despite such change termination of the consent.

### **RULE 12. SEARCH AND SEIZURE TO ARREST.**

#### **RULE 12.1. Permissible Purposes.**

An officer who is making a lawful arrest may, without a search warrant, conduct a search of the person or property of the accused for the following purposes only:

(a) to protect the officer, the accused, or others;

(b) to prevent the escape of the accused;

(c) to furnish appropriate custodial care if the accused is jailed; or

(d) to obtain evidence of the commission of the offense for which the accused has been arrested or to seize contraband, the fruits of crime, or other things criminally possessed or used in conjunction with the offense.

#### **RULE 12.2. Search of the Person: Permissible Scope.**

An officer making an arrest and the authorized officials at the police station or other place of detention to which the accused is brought may conduct a search of the accused's garments and personal effects ready to hand, the surface of his body, and the area within his immediate control.

#### **RULE 12.3. Search of the Person: Search of Body Cavities.**



(a) Search of an accused's blood stream, body cavities, and subcutaneous tissues conducted incidental to an arrest may be made only:

(i) if there is a strong possibility that it will disclose things subject to seizure and related to the offense for which the individual was arrested; and

(ii) if it reasonably appears that he delay consequent upon procurement of a search warrant would probably result in the disappearance or destruction of the objects of the search; and

(iii) if it reasonably appears that the search is otherwise reasonable under the circumstances of the case, including the seriousness of the offense and the nature of the invasion of the individual's person.

(b) Any search pursuant to this rule shall be conducted by a physician or a licensed nurse.

#### **RULE 12.4. Search of Vehicles: Permissible Circumstances.**

(a) If, at the time of the arrest, the accused is in a vehicle or in the immediate vicinity of a vehicle of which he is in apparent control, and if the circumstances of the arrest justify a reasonable belief on the part of the arresting officer that the vehicle contains things which are connected with the offense for which the arrest is made, the arresting officer may search the vehicle for such things and seize any things subject to seizure and discovered in the course of the search.

(b) The search of a vehicle pursuant to this rule shall only be made contemporaneously with the arrest or as soon thereafter as is reasonably practicable.

#### **RULE 12.5. Search of Premises: Permissible circumstances, Time and Scope.**

(a) If at the time of the arrest:

(i) the accused is in or on premises all or part of which he is apparently entitled to occupy; and

(ii) in view of the circumstances the officer has reason to believe that such premises or part thereof contain things which are:

(A) subject to seizure; and

(B) connected with the offense for which the arrest is made; and

(C) likely to be removed or destroyed before a search warrant can be obtained and served; the arresting officer may search such premises or part thereof for such things, and seize any things subject to seizure.

(b) Search of premises pursuant to subsection (a) shall only be made contemporaneously with the arrest, and search of building interiors shall only be made consequent upon an entry into the building made in order to effect an arrest therein. In determining the necessity for and scope of the search to be undertaken, the officer shall take into account, among other things, the nature of the offense for which the arrest is made, the behavior of the individual arrested and others on the premises, the size and other characteristics of the things to be searched for, and whether or not any such things are observed while making the arrest.

#### **RULE 12.6. Custodial Taking of Property Pursuant to Arrest, Vehicles.**

(a) Things not subject to seizure which are found in the course of a search of the person of an accused may be taken from his possession if reasonably necessary for custodial purposes. Documents or other records may be read or otherwise examined only to the extent necessary for such purposes, including identity checking and ensuring the physical well-being of the person arrested. Disposition of things so taken shall be made in accordance with Rule 15 hereof.

(b) A vehicle impounded in consequence of an arrest, or retained in official custody for other good cause, may be searched at such times and to such extent as is reasonably necessary for safekeeping of the vehicle and its contents.

#### **RULE 13. SEARCH AND SEIZURE PURSUANT TO WARRANT**

##### **RULE 13.1. Issuance of Search Warrant.**

(a) A search warrant may be issued only by a judicial officer.

(b) The application for a search warrant shall describe with particularity the persons or places to be searched and the persons or things to be seized, and shall be supported by one (1) or more affidavits or recorded testimony under oath before a judicial officer particularly setting forth the facts and circumstances tending to show that such persons or things are in the places, or the things are in possession of the person, to be searched. If an affidavit or testimony is based in whole or in part on hearsay, the affiant or witness shall set forth particular facts bearing on the informant's reliability and shall disclose, as far as practicable, the means by which the information was obtained. An affidavit or testimony is sufficient if it describes circumstances establishing reasonable cause to believe that things subject to seizure will be found in a particular place. Failure of the affidavit or testimony to establish the veracity and bases of knowledge of persons providing information to the affiant shall not require that the application be denied, if the affidavit or testimony viewed as a whole, provides a substantial basis for a finding of reasonable cause to believe that things subject to seizure will be found in a particular place.

(c) Before acting on the application, the judicial officer may examine on oath the affiants or witnesses, and the applicant and any witnesses he may produce, and may himself call such witnesses as he deems necessary to a decision. He shall make and keep a fair written summary of the proceedings and the testimony taken before him, except that if sworn testimony alone is offered in support of the application, such testimony shall be recorded pursuant to subsection (b) hereof.

(d) If the judicial officer finds that the application meets the requirements of this rule and that, on the basis of the proceedings before him, there is reasonable cause to believe that the search will discover persons or things specified in the application and subject to seizure, he shall issue a search warrant based on his finding and in accordance with the requirements of his rule. If he does not so find, the judicial officer shall deny the application.

(e) The proceedings upon application for a search

warrant shall be conducted with such secrecy as the issuing judicial officer deems appropriate to the circumstances. [Amended by Per Curium February 2,1990, effective March 1, 1990.]

**RULE 13.2. Contents of Search Warrant.**

(a) A search warrant shall be dated, issued in duplicate, and shall be addressed to any officer.

(b) The warrant shall state, or describe with particularity:

(i) the identity of the issuing judicial officer and the date and place where application for the warrant was made;

(ii) the judicial officer's finding of reasonable cause for issuance of the warrant;

(iii) the identity of the person to be searched, and the location and designation of the places to be searched;

(iv) the persons or things constituting the object of the search and authorized to be seized; and

(v) the period of time, not to exceed five (5) days after execution of the warrant, within which the warrant is to be returned to the issuing judicial officer.

(c) Except as hereafter provided, the search warrant shall provide that it be executed between the hours of six a.m. and eight p.m., and within a reasonable time, not to exceed sixty (60) days. Upon a finding by the issuing judicial officer of reasonable cause to believe that:

(i) the place to be searched is difficult of speedy access; or

(ii) the objects to be seized are in danger of imminent removal; or

(iii) the warrant can only be safely or successfully executed at nighttime or under circumstances the occurrence of which is difficult to predict with accuracy; the issuing judicial officer may, by appropriate provision in the warrant, authorize its execution at any time, day or night, and within a reasonable time not to exceed sixty (60) days from the date of issuance.

(d) If the warrant authorizes the seizure of documents other than lottery tickets, policy slips, and other non-testimonial documents used as instrumentality's of crime, the warrant shall require that it be executed in accordance with the provisions of Rule 13.5 and may, in the discretion of the issuing judicial officer, direct that any files or other collections of documents, among which the documents to be seized are reasonably believed to be located, shall be impounded under appropriate protection where found.

**RULE 13.3. Execution of a Search Warrant.**

(a) A search warrant may be executed by an officer. The officer charged with its execution may be accompanied by such other officers or persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.

(b) Prior to entering a dwelling to execute a search warrant, the executing officer shall make known the officer's presence and authority for entering the dwelling and shall wait a period of time that is reasonable under the circumstances before forcing entry into the dwelling. The

officer may force entry into the dwelling without prior announcement if the officer reasonably suspects that making known the officer's presence would, under the circumstances, be dangerous or futile or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. For purposes of this rule, a "dwelling" means a vehicle, building, or other structure (i) where any person lives or (ii) which is customarily used for overnight accommodation of persons whether or not a person is actually present. Each unit of a structure divided into separately occupied units is itself a dwelling.

(c) In the course of any search or seizure pursuant to the warrant, the executing officer shall give a copy of the warrant to the person to be searched or the person in apparent control of the premises to be searched. The copy shall be furnished before undertaking the search or seizure unless the officer has reasonable cause to believe that such action would endanger the successful execution of the warrant with all practicable safety, in which case he shall, as soon as is practicable, state his authority and purpose and furnish a copy of the warrant. If the premises are unoccupied by anyone in apparent and responsible control, the officer shall leave a copy of the warrant suitable affixed to the premises.

(d) The scope of search shall be only such as is authorized by the warrant and is reasonable necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of such search, the officer discovers things not specified in the warrant which he reasonably believes to be subject to seizure, he may also take possession of the things so discovered.

(e) Upon completion of the search, the officer shall make and deliver a receipt fairly describing the things seized to the person from whose possession they are taken or the person in apparent control of the premises from which they are taken. If practicable, the list shall be prepared in the presence of the person to whom the receipt is to be delivered. If the premises are unoccupied by anyone in apparent and responsible control, the executing officer shall leave the receipt suitably affixed to the premises.

(f) The executing officer, and other officers accompanying and assisting him, may use such degree of force, short of deadly force, against persons, or to effect an entry or to open containers as is reasonably necessary for the successful execution of the search warrant with all practicable safety. The use of deadly force in the execution - of a search warrant, other than in self-defense or defense of others, is justifiable only if the executing officer reasonably believes that there is substantial risk that the persons or things to be seized will suffer, cause, or be used to cause death or serious bodily harm if their seizure is delayed, and that the force employed creates no unnecessary risk of injury to other persons.

**RULE 13.4. Return of a Search Warrant.**

(a) If a search warrant is not executed, the officer shall return the warrant to the issuing judicial officer within a reasonable time, not to exceed sixty (60) days from the date

of issuance, together with a report of the reasons why it was not executed.

(b) An officer who has executed a search warrant or, if such officer is unavailable, another officer acting in his behalf, shall, as soon as possible and not later than the date specified in the warrant, return the warrant to the issuing judicial officer together with a verified report of the facts and circumstances of execution, including a list of things seized.

(c) Subject to the provisions of subsection (d), the issuing judicial officer shall file the warrant, report, and list returned to him with the record of the proceedings on the application for the warrant. In any event, the judicial officer shall cause the list to be given such public notice as he may deem appropriate.

(d) If the issuing judicial officer does not have jurisdiction to try the offense in respect to which the warrant was issued or the offense apparently disclosed by the things seized, he may transmit the warrant and the record of proceedings for its issuance, together with the documents submitted on the return, to an appropriate court having jurisdiction to try the offense disclosed.

#### **RULE 13.5. Execution and Return of Warrants for Documents.**

(a) If the warrant authorizes documentary seizure, the executing officer shall endeavor by all appropriate means to search for and identify the documents to be seized without examining the contents of documents not covered by the warrant.

(b) If the documents to be seized cannot be searched for or identified without examining the contents of other documents, or if they constitute items or entries in account books, diaries, or other documents containing matter not specified in the warrant, the executing shall not examine the documents but shall either impound them under appropriate protection where found, or seal and remove them for safekeeping.

(c) An executing officer who has impounded or removed documents pursuant to subsection (b) of this rule shall, as promptly as practicable, report the fact and circumstances of the impounding or removal to the issuing judicial officer. As soon thereafter as the interest of justice permit, and upon due and reasonable notice to all interested persons, a hearing shall be held before the issuing judicial officer or a judicial officer contemplated by Rule 13.4(d), at which the person from whose possession or control the documents were taken, and any other person asserting any right or interest in the documents, may appear, in person or by counsel, and move either for the return of the documents or for specification of such conditions and limitations on the further search for the documents to be seized as may be appropriate to prevent unnecessary or unreasonable invasion of privacy. If the motion for the return of the documents is granted, in whole or in part, the documents covered by the granting order shall forthwith be returned or released from impoundment. If the motion is not granted, the search shall proceed under such conditions and limitations as the order shall prescribe, and at the conclusion of the search all documents other than those covered by the warrant, or otherwise subject to seizure, shall be returned or released from impoundment.

(d) Documents seized shall thereafter be handled and disposed of in accordance with the other provisions of this rule and Rules 15 and 16 hereof. No statements or testimony given in support of a motion made pursuant to this rule shall thereafter be received in evidence against the witness in any subsequent proceeding, other than for purposes of impeachment or in a prosecution for perjury or contempt in the giving of such statements or testimony.

#### **RULE 13.6. Issuance and Execution of Warrants for Illegally Possessed Pictures and Literature.**

If a warrant issued under this rule shall provide for the seizure of tangible instruments of expression, including but not limited to moving or still pictures, recordings, books, or other literature, the warrant shall authorize the seizure only of such instruments or copies thereof as are reasonably necessary for evidentiary use in a proceeding to determine whether the content of such instruments is constitutionally protected. If the effect of seizing such instruments or copies thereof is to stop or substantially impede their showing or distribution, the warrant shall provide that the possessor of such instruments be given a reasonable opportunity to furnish duplicate copies for seizure, or that he may retain possession of them and must display them during an adversary proceeding or at such times and places, including trial, as the court having jurisdiction over the matter may direct

#### **RULE 14. VEHICULAR, EMERGENCY AND OTHER SEARCHES AND SEIZURES**

##### **RULE 14.1. Vehicular Searches.**

(a) An officer who has reasonable cause to believe that a moving or readily moving vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is:

- (i) on a public way or waters or other area open to the public;
- (ii) in a private area unlawfully entered by the vehicle; or
- (iii) in a private area lawfully entered by the vehicle, provided that exigent circumstances require immediate detention, search, and seizure to prevent destruction or removal of the things subject to seizure.

(b) If the officer does not find the things subject to seizures by his search of the vehicle, and if:

(i) the things subject to seizure are of such a size and nature that they could be concealed on the person; and

(ii) the officer has reason to suspect that one (1) or more of the occupants of the vehicle may have the things subject to seizure so concealed; the officer may search the suspected occupants; provided that this subsection shall not apply to individuals traveling as passengers in a vehicle operating as a common carrier.

(c) This rule shall not be construed to limit the authority of an officer under Rules 2 and 3 hereof.

## **RULE 14.2. Search of Open Lands.**

An officer who has reasonable cause to believe that premises or a vehicle contain:

(a) individuals in immediate danger of death or serious bodily harm; or

(b) things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property; or

(c) things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed; may, without a search warrant, enter and search such premises and vehicles, and the persons therein, to the extent reasonably necessary for the prevention of such death, bodily harm, or destruction.

## **Rule 14.3. Emergency searches.**

An officer who has reasonable cause to believe that premises or a vehicle contain:

(a) individuals in imminent danger of death or serious bodily harm; or

(b) things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property; or

(c) things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed; may, without a search warrant, enter and search such premises and vehicles, and the persons therein, to the extent reasonably necessary for the prevention of such death, bodily harm, or destruction.

## **RULE 14.4. Seizure Independent of Search.**

An officer who, in the course of otherwise lawful activity, observes the nature and location of things which he reasonably believes to be subject to seizure, may seize such things.

## **SHERIFF'S GENERAL ORDERS OR POLICIES RELATED TO FEDERALLY PROTECTED RIGHTS**

### **All sheriffs departments should adopt policies related to federally protected rights.**

It is the opinion of the AAC Chief Legal Counsel, Mark Whitmore, that all sheriffs in Arkansas should adopt formal written policies that relate to federally protected rights. Indeed, any newly elected Sheriff or Sheriff lacking such policies is advised to discharge this paramount responsibility.

A set of policies entitled Sheriff's General Orders has been developed by Mike Rainwater, Attorney at Law, to assist many Sheriffs in the State of Arkansas to adopt policies that direct law enforcement officers in accordance with federally protected rights. To date Mr. Rainwater has developed twelve such General Orders, entitled Sheriff's General Order No. 1 through Sheriff's General Order No. 12. Any newly elected Sheriff or Sheriff lacking such policies should review Mr. Rainwater's Sheriff's General Order No. 1 through Sheriff's General Order No. 12 in their entirety at their

convenience in consultation with Mr. Rainwater, AAC General Counsel, or their own legal representation.

Listed below are the subtitles and general topics of the Sheriff's General Order No. 1 through Sheriff's General Order No. 12. Again, the information provided below does NOT constitute Sheriff's General Order No. 1 through Sheriff's General Order No. 12 in their entirety. This listing is intended to demonstrate the necessity and prudence of Sheriffs to adopt policies in accordance with federally protected rights.

**Sheriff's General Order No. 1 is subtitled: "Preservation of the Orderly Pursuit of Happiness by Free Persons".** Sheriff's General Order No. 1 generally relates to the following legal concepts: The law enforcement powers of the Sheriff and deputies shall be used for maintaining order, preserving security and keeping the peace. Individuals have the right to the enjoyment of life, liberty and property. Those federally protected rights should not be abridged as a breach of peace by law enforcement unless their conduct actually disturbs the peace or creates a security breach in violation of the law.

**Sheriff's General Order No. 2 is subtitled: "Official Policy" includes Constitution and Laws'.** Sheriff's General Order No. 2 generally relates to the following legal concepts: A Sheriff's department should make it official policy that all use of governmental power or authority in conformity with the limitations imposed by the constitution and laws of the United States and of the State of Arkansas. Sheriff's General Order No.2 further addresses specifically by reference those provisions of law constraining the use of governmental power or authority such as the Civil Rights Acts of the U.S. and State of Arkansas, the Arkansas Rules of Criminal Procedure, the Arkansas Criminal Code, the 14<sup>th</sup> Amendment, 4<sup>th</sup> Amendment, Due Process & Equal Protection Clauses and other laws such as, the Family Medical Leave Act, Fair Labor Standards Act, etc.

**Sheriff's General Order No. 3 is subtitled: "The written protocol of the sheriff's department shall include the prescribed order of control authority".** Sheriff's General Order No. 3 generally relates to the following legal concepts: The Arkansas Rules of Criminal Procedure incorporate the limitations imposed on sheriffs and their deputies by the Constitution and therefore set forth the procedure to be used by sheriffs and their deputies. General Orders set forth the overall policies for operation of the sheriff's department. Post Orders are specific written commands given for the performance of a particular function or task assigned to a particular post of operation. Policy and Procedures Manual sets forth the normal routine to be followed by the department. Training and Judgment requires officer to act in accordance with written protocol, but as well shall use his or her training and judgment as needed to act with objective reasonableness (with respect to search and seizure, including any use of force) and without deliberate indifference (in discharge of any duty to protect a person in custody or in a special relationship that imposes an affirmative duty to protect). Operating Guidelines for Law Enforcement Functions operates to require that in the event

a search or seizure matter arises (including any use of force) for which there is no written general order, no post order, no policy or procedure directly on point, then the CJI Model Law Enforcement Policy shall be the operating Guideline for that law enforcement activity of the Sheriff's department. Likewise, in the event a duty-to-protect matter arises for which there is no written general order, no post order, no policy or procedure directly on point, then the CJI Model Detention Facilities Policy and Procedures Manual (which incorporates the Arkansas Jail Standards) shall be the Operating Guideline for that detention activity of the Sheriff's department.

**Sheriff's General Order No. 4 is subtitled: "4th Amendment, Use of Force, and Objective Reasonableness Required".** Sheriff's General Order No. 4 generally relates to the following legal concepts: All force by a Sheriff's department must be objectively reasonable in light of the facts and circumstances confronting the officer without regard to the intent or underlying motivation of the officer. Objective reasonableness requires that a reasonable officer on the scene under the circumstances, as if "standing in the officers shoes". Emergency situations will allow for split-second decisions and the test will be was the decision reasonable under the emergency situation. *Graham v. Connor*, 490 U.S. 386 (1989) held that the "reasonableness" of a particular use of force "must be judged from the perspective of a reasonable officer on the scene". Each officer is entitled to make split-second decisions in an emergency that is not inconsistent with his training and written protocol.

**Sheriff's General Order No. 5 is subtitled: "4th Amendment, deadly force, violence prevention".** Sheriff's General Order No. 5 generally relates to the following legal concepts: Use of deadly force by a law enforcement officer should be limited to the following: to effect an arrest (or prevent an escape after arrest) of a person whom the officer reasonably believes: has committed a felony; and the felon either had used deadly force in the commission of the felony or would use deadly force against the officer if not immediately apprehended *and* the felon can not otherwise be apprehended. Also, an officer can use deadly force to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force. Ark. Code Ann. §5-2-610(b)(1) has been declared unconstitutional because it unconstitutionally permits the use of deadly physical force to prevent the escape of a non-violent fleeing felon. Only violent fleeing felons may be subjected to the use of deadly physical force to prevent their escape.

**Sheriff's General Order No. 6 is subtitled: "Warrantless arrests and reasonable cause to believe required".** Sheriff's General Order No. 6 generally relates to the following legal concepts: A Sheriff and his deputies may arrest a person for a felony without a warrant for arrest, only if, the officer has reasonable cause to believe that the person has engaged in *conduct* that that is a felony. A Sheriff and his deputies may arrest a person for a misdemeanor without a warrant for arrest only if, the person engages in *conduct* that constitutes a misdemeanor in the officer's presence. A Sheriff and his deputies may arrest a person for a traffic

violation without a warrant for arrest only if, the officer has reasonable cause to believe that the person has engaged in *conduct* that that is a traffic offense involving: death or physical injury to a person, damage to property or a DWI.

**Sheriff's General Order No. 7 is subtitled: "Pre-arrest Contacts, Reasonable Suspicion Required".** Sheriff's General Order No. 7 generally relates to the following legal concepts: The Arkansas Rules of Criminal Procedure are in accord with the Constitution and require a reasonable suspicion that an offense has been committed to interfere with a persons liberty or detention without an arrest. Sheriff's and deputies may request a person to volunteer information or cooperation. If reasonably necessary to verify the identity of a person or to determine the lawfulness of a person's conduct, officers may stop and detain persons whom the officer reasonably believes is committing, has committed, or is about to commit a felony or misdemeanor involving danger of forcible injury to persons or appropriation or damage to property. The officer must be acting in the performance of his duty and be lawfully present at the subject location. The officer must advise the person detained of the officer's identity and the reason for detention. The duration of the stop must be reasonable and not exceed 15 minutes. Thereafter, the person must be released or arrested and charged with an offense. Arkansas Rules of Criminal Procedure, Rules 3.1 and 3.2. "Reasonable Suspicion" means a suspicion that is based on facts or circumstances which do not by themselves give rise to probable cause for arrest, but which give rise to more than bare suspicion that an offense has been or is being committed.

**Sheriff's General Order No. 8 is subtitled: "Warrantless Searches, Particularized Belief and Objective Basis Required".** Sheriff's General Order No. 8 generally relates to the following legal concepts: The Arkansas Rules of Criminal Procedure, Rules 10.1 through 16.2 set forth the rules for different types of searches, such as search pursuant to arrest and strip searches, etc. An officer making an arrest without a warrant may conduct a search of the person or property of the accused to: protect the officer, the accused and others; to prevent escape; to furnish appropriate custodial care; to obtain evidence in furtherance of the arrest or to seize contraband, weapons, or fruits of the crime. A strip search of an arrestee must be based upon a particular and objective basis that the arrestee is concealing a weapon or contraband. *Donny Ringo v. City of Pine Bluff*, USDC PB-C-88-49.

**Sheriff's General Order No. 9 is subtitled: "14th Amendment, Punishment of Detainees Prohibited".** Sheriff's General Order No. 9 generally relates to the following legal concepts: A pre-trial detainee may not be subjected to any punishment. *Hamilton v. Love*, 328 F. supp. 1182 (E.D. Ark. 1971). No employee of a Sheriff's department shall act in any manner that is deliberately indifferent to the protection and safety need of a jail detainee. *Estelle v. Gamble*, 429 U.S. 97 (1976). A sheriff may insure security and order in the jail as legitimate objectives.

**Sheriff's General Order No. 10 is subtitled: "14th Amendment, Substantive Due Process".** Sheriff's General Order No. 10 generally relates to the following legal concepts: In accord with the 14<sup>th</sup> Amendment, Substantive Due Process Clause, the action of a Sheriff's department must be non-arbitrary and rationally related to the effectuation of legitimate governmental objectives. A deprivation of life interest, liberty interest or property interest must be rationally related to keeping the peace, maintaining order, or preserving security.

**Sheriff's General Order No. 11 is subtitled: "14th Amendment, Equal Protection, Differences in Treatment".** Sheriff's General Order No. 11 generally relates to the following legal concepts: In accord with the 14<sup>th</sup> Amendment, Equal Protection Clause, the action of a Sheriff's department must treat persons similarly situated in a substantially similar manner. There must be a rational basis for treating similarly situated persons in a substantially different manner. Stops, arrests, or searches based on race, ethnicity, religion or national origin are prohibited. Act 1207 of 2003 embodies this legal principle and prohibits unlawful racial profiling, but provides for exceptions in accord with the 14<sup>th</sup> Amendment.

**Sheriff's General Order No. 12 is subtitled: "14th Amendment, Procedural Due Process, Citizen Complaint Hearing Process".** Sheriff's General Order No. 12 generally relates to the following legal concepts: In accord with the Procedural Due Process Clause of the 14<sup>th</sup> Amendment, notice and an opportunity for a hearing are required before final governmental decision to deprive a person of life interest, liberty interest or property interest. However, the procedure required varies with the importance of the interest involved. Reasonable grounds to believe the reasons given for deprivation may be sufficient. The Arkansas Rules of Criminal Procedure set forth the notice and procedures required for various law enforcement activities. When circumstances are not addressed by the Arkansas Rules of Criminal Procedure, a hearing process should be provided via citizens complaint. *Cleveland v. Loudermill*, 105 S. Ct. 1487 (1985) and Act 1207 of 2003.

The foregoing is merely the subtitles and general topics of the Sheriff's General Order No. 1 through Sheriff's General Order No. 12. The foregoing does not represent the General Orders in their entirety or the format appropriate for adoption by a sheriff. Again, any newly elected Sheriff or Sheriff lacking policies related to federally protected rights should review Mr. Rainwater's Sheriff's General Order No. 1 through Sheriff's General Order No. 12 in their entirety at their convenience in consultation with Mr. Rainwater, AAC General Counsel, or their own legal representation.

## **RACIAL PROFILING PROHIBITED**

### **12-12-1401. Definition.**

(a) For purposes of this subchapter, "racial profiling" means the practice of a law enforcement officer's relying to any degree on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory

activities or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.

(b) "Racial profiling" does not include reliance on the criteria in combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect and the description is thought to be reliable and locally relevant.

### **12-12-1402. Prohibition on racial profiling.**

(a) No member of the Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department, a sheriff's department, or a municipal police department, constable, or any other law enforcement officer of this state shall engage in racial profiling.

(b) The statements of policy and definitions contained in this sub-chapter shall not be construed or interpreted to be contrary to the Arkansas Rules of Criminal Procedure or the United States Constitution or the Arkansas Constitution.

### **12-12-1403. Policies.**

(a) The Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department, all sheriffs' departments, municipal police departments, constables, and all other law enforcement agencies of this state shall adopt a written policy that:

(1) Prohibits racial profiling as defined in § 12-12-1401;

(2) Requires that law enforcement officers have reasonable suspicion prior to a stop, arrest, or detention;

(3) Defines reasonable suspicion to ensure that individuals are stopped for valid reasons and that race, ethnicity, national origin, or religion is not the basis for stops for violations for which non-group members would not be stopped;

(4) Requires law enforcement officers to identify themselves by full name and jurisdiction and state the reason for the stop and when possible present written identification;

(5) Provides for a systematic review process by supervising personnel within a department or law enforcement agency for investigating allegations of racial profiling to determine whether any officers of the law enforcement agency have a pattern of stopping or searching persons, and if the review reveals a pattern, requires an investigation to determine whether a trend is present indicating that an officer may be using race, ethnicity, national origin, or religion as a basis for investigating other violations of criminal law;

(6) When a supervisor or other reviewer has detected a pattern of racial profiling, provides timely assistance, remediation, or discipline for individual law enforcement officers who have been found to be profiling by race, ethnicity, national origin, or religion;

(7) Ensures that supervisors will not retaliate against officers who report racial profiling by others; and

(8) Provides standards for the use of in-car audio and visual equipment, including the duration for which the recordings are preserved.

(b)(1) Each law enforcement agency shall include a copy of the law enforcement agency's policy in the annual report that the law enforcement agency submits to the Division of Legislative Audit.

(2) The Division of Legislative Audit shall submit to the Attorney General the name of any law enforcement agency that fails to comply with subdivision (b)(1) of this section, and the Attorney General shall take such action as may be necessary to enforce this section.

(3) The Division of Legislative Audit shall forward to the Attorney General a copy of each law enforcement agency's policy received by the Division of Legislative Audit. The Attorney General shall review each law enforcement agency's policy to ensure that the law enforcement agency's policy meets the standards required by law.

(c)(1) Each law enforcement agency may promote public awareness of the law enforcement agency's efforts to comply with the mandates of this section.

(2) In addition, each law enforcement agency shall make available for public inspection a copy of the law enforcement agency's policy.

#### **12-12-1404. Training.**

(a) Each law enforcement agency shall provide annual training to all officers that:

(1) Emphasizes the prohibition against racial profiling;

(2) Ensures that operating procedures adequately implement the prohibition against racial profiling and that the law enforcement agency's law enforcement personnel have copies of, understand, and follow the operating procedures; and

(3) Includes foreign language instruction, if possible, to ensure adequate communication with residents of a community.

(b) The course or courses of instruction and the guidelines shall stress understanding and respect for racial, ethnic, national, religious, and cultural differences and development of effective and appropriate methods of carrying out law enforcement duties.

(c) (1) (A) The Arkansas Commission on Law Enforcement Standards and Training shall adopt an initial training module concerning diversity and racial sensitivity for recruits and officers.

(B) The commission shall also adopt a training module for biennial recertification for all recruits and officers who have completed the initial training module.

(2) An officer currently employed by any law enforcement agency shall be required to complete the initial training module described in subdivision (c)(1)(A) of this section before June 30, 2006.

(d) (1) By January 1, 2006, the commission shall promulgate rules that will set significant standards for all training required in this section.

(2) The commission may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) The commission may review and recommend changes to the racial profiling policy of any law enforcement agency.

(4) Upon request, the racial profiling policy of any law enforcement agency shall be made available to the commission for the purpose described in subdivision (d)(3) of this section.

(5) The commission may establish a toll-free hotline and an email address to receive complaints concerning racial profiling.

### **ACT 1207 of 2003 - POLICY PROHIBITING UNLAWFUL PROFILING**

**Mandate Written Unlawful Profiling Policy:** Act 1207 of 2003 mandates that all Sheriff's offices adopt a written policy by January 1, 2004, that: (1) prohibits unlawful profiling as defined by Act 1207 (racial, ethnic, national origin, or religious profiling); (2) requires law enforcement officers to have reasonable suspicion prior to a stop, arrest, or detention; (3) defines reasonable suspicion to ensure that individuals are stopped for valid reasons and that stopping on the basis of racial, ethnic, national origin, or religious is not a valid reason for a stop; and (4) requires law enforcement officers to identify themselves by name and by jurisdiction, requires the officers to state the reason for the stop, and when possible to give the reasons for the stop.

**Unlawful Profiling Defined:** Act 1207 prohibits any member of sheriff's department or any law enforcement officer in the state to engage in {unlawful} profiling and the detention of any individual on the basis of any non-criminal factor or combination of non-criminal factors. "Racial Profiling" is defined by Act 1207 as the practice of law enforcement relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory activities. Racial profiling does not include reliance on the criteria in a combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, national origin is part of the description of the suspect, and the description is thought to be reliable and locally relevant.

**Mandates Systematic Review Process:** Act 1207 mandates that by January 1, 2004, all sheriff's offices require: (1). Supervisors to systematically review all officers to determine if any have a pattern of stopping or searching persons; (2) if pattern is revealed, must determine if a trend indicates that an officer may be using race, ethnicity, national origin, or religion as basis for stops or searches; 930 if pattern is detected of racial profiling, the law enforcement officer there should be timely assistance, remediation, or discipline for officers found to be unlawfully profiling; (4) must ensure no retaliation to officers reporting unlawful profiling; and (5) standards for use of in car audio and visual equipment to investigate unlawful profiling and retention of those records.

**Annual Training Required:** Section 4 of Act 1207 requires all sheriff's departments to provide annual training beginning on January 1, 2004 to all officers that "emphasizes the prohibition against all {unlawful} profiling...and stresses development of effective and appropriate methods of carrying out law enforcement duties.

## Chapter 5 - DUTIES OF THE SHERIFF AS AN OFFICER OF THE COURT

The sheriff is the chief enforcement officer of the circuit and chancery court and is charged with (1) the service and execution of warrants and civil process, (2) bailiff duties which include the opening and attendance of each term of court, and (3) transporting of inmates. This chapter is divided into 3 sections for purposes of understanding and discussion. They are:

	<b>PAGE</b>
A. Civil Process	36
B. Summons of Petit Jurors	45
C. Bailiff Duties	45

### Introduction

The information compiled in this section of the manual is designed to assist the sheriff or his deputies in the proper service and executions of warrants and civil process. It is based upon various Arkansas Statutes and Arkansas Court Rules.

### CIVIL PROCESS OUTLINE

- I. Responsibility for Service
  - A. Sheriff
  - B. Authority of Deputy
- II. Commencement of Action
- III. Summons
  - A. Issuance
  - B. Form
  - C. By Whom Served
  - D. Personal Service Inside State
    - 1. Defendant in Person
    - 2. Defendant under 14 Years
    - 3. Defendant incompetent
    - 4. Defendant confined to Correctional Facility
    - 5. Domestic or foreign corporation
    - 6. United States or officer thereof
    - 7. State or other governmental subdivision
    - 8. Service by Mail
  - E. Other Services
  - F. Service by Warning Order
  - G. Proof of Service
  - H. Amendment
  - I. Time Limit for Service
  - J. Service of Other Writs & Papers
- IV. Service and Filing of Pleadings and Other Papers
  - A. When Required
  - B. How Made
  - C. Filing
  - D. Filing with the judge
  - E. Proof of Service
- V. Determination of Status of Property Subject to Execution
  - A. Property subject to execution
  - B. Property not subject to execution
  - C. Assignment or transfer of debt

- D. Encumbered property
- E. Homestead exemption from legal process
- F. Levy not discharged on giving bond
- G. Selection of property to be sold
- H. Right of levying officer to require indemnifying bond
- I. Notice of sale of real personal property
- VI. Performance Under Order of Delivery or Attachment
  - A. Order of delivery
  - B. Forcible entry & detained
  - C. Writ of possession
- VII. Attachments
  - A. Order of attachment
  - B. Personal property

### I. Responsibility for Service

Service of summons shall be made by (1) a sheriff of the county where the service is to be made, or his or her deputy, unless the sheriff is a party to the action; (2) any person appointed pursuant to Administrative Order No. \_\_\_\_ for the purpose of serving summons by either the court in which the action is filed or a court in the county in which services is to be made; (3) any person authorized to serve process under the law of the place outside this state where service is made; or (4) in the event of service by mail or commercial delivery company pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

### II. Commencement of Action

A civil action is commenced by filing a complaint with the clerk of the proper court who shall note therein the date and precise time of filing. (Rules of Civil Procedure - Rule 3)

Commencement of Action. - A civil action is started by filing a complaint in the office of the clerk of the proper court and causing a summons to be issued and placed in the hands of the sheriff for service. If two summonses are issued in different courts involving the same matter, both may be served properly, but that summons which reaches the hands of the sheriff first, shall become the primary summons and its court shall have jurisdiction. The sheriff shall endorse on each summons the exact date and time of day when he received the summons. (ACA 16-58-101) The Following Information is Located in the Rules of Civil Procedure - Rule 4.

### III. Summons

(a) **Issuance.** Upon the filing of the complaint, the clerk shall forthwith issue a summons and cause it to be delivered for service to a person authorized by this rule to serve process.

(b) **Form.** The summons shall be styled in the name of the court and shall be dated and signed by the clerk; be under the seal of the court; contain the names of the parties;



be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the address of the plaintiff; and the time within which these rules require the defendant to appear, file a pleading, and defend and shall notify him that in case of his failure to do so, judgment by default may be entered against him for the relief demanded in the complaint.

(c) **By Whom Served.** Service of summons shall be made by (1) a sheriff of the county where the service is to be made, or his or her deputy, unless the sheriff is a party to the action; (2) any person appointed pursuant to Administrative Order No. 20 for the purpose of serving summons by either the court in which the action is filed or a court in the county in which service is to be made; (3) any person authorized to serve process under the law of the place outside this state where service is made; or (4) in the event of service by mail or commercial delivery company pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

(d) **Personal Service Inside the State.** A copy of the summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made upon any person designated by statute to receive service or as follows:

(1) Upon an individual, other than an infant by delivering a copy of the summons and complaint to him personally, or if he refuses to receive it, by offering a copy thereof to him, or by leaving a copy thereof at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age, or by delivering a copy thereof to an agent authorized by appointment or by law to receive service of summons.

(2) When the defendant is under the age of 14 years, service must be upon a parent or guardian having the care and control of the infant, or upon any other person having the care and control of the infant and with whom the infant lives. When the infant is at least 14 years of age, service shall be upon him.

(3) Where the defendant is a person for whom a plenary, limited or temporary guardian has been appointed, the service must be upon the individual and the guardian. If the person for whom the guardian has been appointed is confined in a public or private institution for the treatment of the mentally ill, service shall be upon the superintendent or administrator of such institution and upon the guardian.

(4) Where the defendant is incarcerated in any jail, penitentiary, or other correctional facility in this state, service must be upon the administrator of the institution, who shall deliver a copy of the summons and complaint to the defendant. A copy of the summons and complaint shall also be sent to the defendant by first class mail and marked as "legal mail" and, unless the court otherwise directs, to the defendant's spouse, if any.

(5) Upon a domestic or foreign corporation or upon a partnership, limited liability company, or any unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, partner other than a limited partner, managing or general agent, or any agent authorized by appointment or by law to receive service of summons.

(6) Upon the United States or any officer or agency

thereof, by service upon any person and in such manner as is authorized by the Federal Rules of Civil Procedure or by other federal law.

(7) Upon a state or municipal corporation or other governmental organization or agency thereof, subject to suit, by delivering a copy of the summons and complaint to the chief executive officer thereof, or other person designated by appointment or by statute to receive such service, or upon the Attorney General of the state if such service is accompanied by an affidavit of a party or his attorney that such officer or designated person is unknown or cannot be located.

(8)(A)(i) Service of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5), and (7) of this subdivision (d) may be made by the plaintiff or an attorney of record for the plaintiff by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee. The addressee must be a natural person specified by name, and the agent of the addressee must be authorized in accordance with U.S. Postal Service regulations. However, service on the registered agent of a corporation or other organization may be made by certified mail with a return receipt requested.

(ii) Service pursuant to this paragraph (A) shall not be the basis for the entry of a default or judgment by default unless the record contains a return receipt signed by the addressee or the agent of the addressee or a returned envelope, postal document or affidavit by a postal employee reciting or showing refusal of the process by the addressee. If delivery of mailed process is refused, the plaintiff or attorney making such service, promptly upon receipt of notice of such refusal, shall mail to the defendant by first class mail a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default may be rendered against him unless he appears to defend the suit. Any such default or judgment by default may be set aside pursuant to Rule 55(c) if the addressee demonstrates to the court that the return receipt was signed or delivery was refused by someone other than the addressee or the agent of the addressee.

(B) Alternatively, service of a summons and complaint upon a defendant of any class referred to in paragraphs (1)-(5) and (7) of this subdivision of this rule may be made by the plaintiff by mailing a copy of the summons and the complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgement conforming substantially to a form adopted by the Supreme Court and a return envelope, postage prepaid, addressed to the sender. If no acknowledgement of service is received by the sender within twenty days after the date of mailing, service of such summons and complaint shall be made pursuant to subdivision (c)(1)-(3) of this rule in the manner prescribed by subdivisions (d)(1)-(5) and (d)(7). Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within twenty days after mailing, the notice and acknowledgement of receipt of summons. The notice and acknowledgement of receipt of summons and complaint shall be executed under oath or affirmation.

(C) Service of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5) and (7) of this subdivision may also be made by the plaintiff or an attorney of record for the plaintiff using a commercial delivery company that (i) maintains permanent records of actual delivery, and (ii) has been approved by the circuit court in which the action is filed or in the county where service is to be made. The summons and complaint must be delivered to the defendant or an agent authorized to receive service of process on behalf of the defendant. The signature of the defendant or agent must be obtained. Service pursuant to this paragraph shall not be the basis for a judgment by default unless the record reflects actual delivery on and the signature of the defendant or agent, or an affidavit by an employee of an approved commercial delivery company reciting or showing refusal of the process by the defendant or agent. If delivery of process is refused, the plaintiff or attorney making such service, promptly upon receipt of notice of such refusal, shall mail to the defendant by first class mail a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default may be rendered against the defendant unless he or she appears to defend the suit. A judgment by default may be set aside pursuant to Rule 55(c) if the court finds that someone other than the defendant or agent signed the receipt or refused the delivery or that the commercial delivery company had not been approved as required by this subdivision.

(e) **Other Services.** Whenever the law of this state authorizes service outside this state, the service, when reasonably calculated to give actual notice, may be made:

(1) By personal delivery in the same manner prescribed for service within this state;

(2) In any manner prescribed by the law of the place in which service is made in that place in an action in any of its courts of general jurisdiction;

(3) By mail as provided in subdivision (d)(8) of this rule;

(4) As directed by a foreign authority in response to a letter rogatory or pursuant to the provisions of any treaty or convention pertaining to the service of a document in a foreign country;

(5) As directed by the court.

(f) **Service By Warning Order.** (1) If it appears by the affidavit of a party seeking judgment or his or her attorney that, after diligent inquiry, the identity or whereabouts of a defendant remains unknown, or if a party seeks a judgment that affects or may affect the rights of persons who are not and who need not be subject personally to the jurisdiction of the court, service shall be by warning order issued by the clerk. This subdivision shall not apply to actions against unknown tortfeasors.

(2) The warning order shall state the caption of the pleadings; include, if applicable, a description of the property or other res to be affected by the judgment; and warn the defendant or interested person to appear within 30 days from the date of first publication of the warning order or face entry of judgment by default or be otherwise barred from asserting his or her interest. The party seeking judgment shall cause the warning order to be published weekly for two consecutive weeks in a newspaper having general circulation in the county where the action is filed and to be mailed, with

a copy of the complaint, to the defendant or interested person at his or her last known address by any form of mail with delivery restricted to the addressee or the agent of the addressee.

(3) If the party seeking judgment has been granted leave to proceed as an indigent without prepayment of costs, the clerk shall conspicuously post the warning order for a continuous period of 30 days at the courthouse or courthouses of the county wherein the action is filed. The party seeking judgment shall cause the warning order to be mailed, with a copy of the complaint, to the defendant or interested person as provided in paragraph (2). Newspaper publication of the warning order is not required.

(4) No judgment by default shall be taken pursuant to this subdivision unless the party seeking the judgment or his or her attorney has filed with the court an affidavit stating that 30 days have elapsed since the warning order was first published as provided in paragraph (2) or posted at the courthouse pursuant to paragraph (3). If a defendant or other interested person is known to the party seeking judgment or to his or her attorney, the affidavit shall also state that 30 days have elapsed since a letter enclosing a copy of the warning order and the complaint was mailed to the defendant or other interested person as provided in this subdivision.

(g) **Proof of Service.** The person effecting service shall make proof thereof to the clerk within the time during which the person served must respond to the summons. If service is made by a sheriff or his deputy, proof may be made by executing a certificate of service or return contained in the same document as the summons. If service is made by a person other than a sheriff or his deputy, the person shall make affidavit thereof, and if service has been by mail or commercial delivery company, shall attach to the affidavit a return receipt, envelope, affidavit or other writing required by Rule 4(d)(8). Proof of service in a foreign country, if effected pursuant to the provisions of a treaty or convention as provided in Rule 4(e)(4), shall be made in accordance with the applicable treaty or convention.

(h) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the summons is issued.

(i) **Time Limit for Service.** If service of the summons is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon motion or upon the court's initiative. If a motion to extend is made within 120 days of the filing of the suit, the time for service may be extended by the court upon a showing of good cause. The order granting any such extension, however, must be entered within 30 days after the motion to extend is filed, or by the end of the 120-day period, whichever date is later. If service is made by mail pursuant to this rule, service shall be deemed to have been made for the purpose of this provision as of the date on which the process was accepted or refused. This paragraph shall not apply to service in a foreign country pursuant to Rule 4(e) or to complaints filed against unknown tortfeasors.

(j) **Service of Other Writs and Papers.** Whenever any rule or statute requires service upon any person, firm,

corporation or other entity of notices, writs, or papers other than a summons and complaint, including without limitation writs of garnishment, such notices, writs or papers may be served in the manner prescribed in this rule for service of a summons and complaint. Provided, however, any writ, notice or paper requiring direct seizure of property, such as a writ of assistance, writ of execution, or order of delivery shall be made as otherwise provided by law.

#### **IV Service and Filing of Pleadings & Other Papers (Rule 5 - Rules of Civil Procedure)**

(a) **Service:** When Required. Except as otherwise provided in these rules, every pleading and every other paper, including all written communications with the court, filed subsequent to the complaint, except one which may be heard ex parte, shall be served upon each of the parties, unless the court orders otherwise because of numerous parties. No service need be made upon parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served in the manner provided for service of summons in Rule 4. Any pleading asserting new or additional claims for relief against any party who has appeared shall be served in accordance with subdivision (b) of this rule. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) **Service: How Made.** (1) Whenever under this rule or any statute service is required or permitted to be made upon a party represented by an attorney, the service shall be upon the attorney, except that service shall be upon the party if the court so orders or the action is one in which a final judgment has been entered and the court has continuing jurisdiction.

(2) Except as provided in paragraph (3) of this subdivision, service upon the attorney or upon the party shall be made by delivering a copy to him or by sending it to him by regular mail or commercial delivery company at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy for purposes of this paragraph means handing it to the attorney or to the party; by leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age. Service by mail is presumptively complete upon mailing, and service by commercial delivery company is presumptively complete upon depositing the papers with the company. When service is permitted upon an attorney, such service may be affected by electronic transmission, provided that the attorney being served has facilities within his office to receive and reproduce verbatim electronic transmissions. Service by a commercial delivery company shall not be valid unless the company: (A) maintains permanent records of actual delivery, and (B) has been approved by the circuit court in which the action is filed or in the county where service is to be made.

(3) If a final judgment or decree has been entered and the court has continuing jurisdiction, service upon a

party by mail or commercial delivery company shall comply with the requirements of Rule 4(d)(8)(A) and (C), respectively.

(c) **Filing.** (1) All papers after the complaint required to be served upon a party or his attorney shall be filed with the clerk of the court either before service or within a reasonable time thereafter. The clerk shall note the date and time of filing thereon. However, proposed findings of fact, proposed conclusions of law, trial briefs, proposed jury instructions, and responses thereto may but need not be filed unless ordered by the court. Depositions, interrogatories, requests for production or inspection, and answers and responses thereto shall not be filed unless ordered by the court. When such discovery documents are relevant to a motion, they or the relevant portions thereof shall be submitted with the motion and attached as an exhibit unless such documents have already been filed. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in the proper form. In counties where the county clerk serves as the ex officio clerk of any division of the circuit court, the filing requirement for any pleading, paper, order, judgment, decree, or notice of appeal shall be satisfied when the document is filed with either the circuit clerk or the county clerk.

(2) Confidential information as defined and described in Sections III(A)(11) and VII(A) of Administrative Order 19 shall not be included as part of a case record unless the confidential information is necessary and relevant to the case. Section III(A)(2) of the Administrative Order defines a case record as any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding. If including confidential information in a case record is necessary and relevant to the case:

(A) The confidential information shall be redacted from the case record to which public access is granted pursuant to Section IV(A) of Administrative Order 19. The point in the case record at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting the following in brackets: [Information Redacted] or [I.R.]. The requirement that the redaction be indicated in case records shall not apply to court records rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record; and

(B) An un-redacted copy of the case record with the confidential information included shall be filed with the court under seal. The un-redacted copy of the case record shall be retained by the court as part of the court record of the case. It is the responsibility of the attorney for a party represented by counsel and the responsibility of a party unrepresented by counsel to ensure that confidential information is omitted or redacted from all case records that they submit to a court. It is the responsibility of the court, court agency, or clerk of court to ensure that confidential information is omitted or redacted from all case records, including orders, judgments, and decrees, that they create.

(3) If the clerk's office has a facsimile machine, the clerk shall accept facsimile transmissions of any paper filed under this rule and may charge a fee of \$1.00 per page. Any signature appearing on a facsimile copy shall be presumed authentic until proven otherwise. The clerk shall

stamp or otherwise mark a facsimile copy as filed on the date and time that it is received on the clerk's facsimile machine during the regular hours of the clerk's office or, if received outside those hours, at the time the office opens on the next business day.

(d) **Filing With the Judge.** The judge may permit papers or pleadings to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. If the judge permits filing by facsimile transmission, the provisions of subdivision (c)(2) of this rule shall apply.

(e) **Proof of Service.** Every pleading, paper or other document required by this rule to be served upon a party or his attorney, shall contain a statement by the party or attorney filing same that a copy thereof has been served in accordance with this rule, stating therein the date and method of service and, if by mail, the name and address of each person served.

## V. Determination of Status of Property Subject to Execution

ACA 16-66-119. Immunity of law enforcement officers. Any sheriff or other law enforcement officer acting reasonably, in good faith, and not in violation of clearly established law, and exercising due care while serving and executing writs of execution shall have immunity from suit and civil liability and shall not be liable for any civil damages for acts performed in the official performance of his duties.

A. Property Subject to Execution (ACA 16-66-201): The following described property shall be liable to be seized and sold under the execution upon any judgment, order, or decree of a court of record:

1. All goods and chattels not exempted in this subchapter;
2. All improvements on the public lands of the United States;
3. The rights and shares in the stock of any bank, insurance company, or other incorporation.
4. Any current gold or silver coin, which shall be returned as so much money collected, without exposing the current gold or silver coin to sale;
5. Any bill or other evidence of debt issued by any monied corporation of this state or any other state, belonging to any person against whom an execution shall be issued, at the time the writ is delivered to the officer to be executed, or at any time thereafter;
6. All real estate, whether patented or not, of which the defendant, or any person for his use, was seized in law or equity on the day of rendition of the judgment, order, or decree, upon which the execution is issued, or at any time thereafter.

**A. Assignment or Transfer of Debt** - Penalty for Evasion: Whoever, directly or indirectly, assigns or transfers any claims for debt against a citizen of this State for collection by legal process in a court out of this State, when the defendants intended to be reached are in the jurisdiction of the courts of this State shall be guilty of a misdemeanor. (ACA 16-66-216)

**B. Encumbered Property:** Any property, real, personal or mixed, may be seized even though it may be subject to a mortgage, deed of trust, vendor's lien, conditioned sales

contract, chattel mortgage or other lien, and sold. Any and all lien holders shall be made a party to the process by the plaintiff or his attorney serving notice upon the lien holder. This notice shall be served by any officer authorized to execute process. If the lien holders are out of State, then the plaintiff or his attorney shall notify them by registered mail. All sales held shall be made subject to the lien holder's claim. (ACA 16-66-203)

**C. Homestead exemption from legal process:** The homestead of any resident of this State who is married or the head of a family shall not be subject to levy or sale. Sale may be had to satisfy specific liens, improvement liens, taxes or for administrators, guardians, receivers, attorneys for money due them for their action in a fiduciary capacity. (ACA 16-66-210 as amended)

**D. Levy not discharged on giving bond:** The post of a bond under 16-66-304 does not discharge the levy upon the property claimed. The officer may leave the property in the possession of the person who had it pending action on the bond and may, in the meantime, proceed with the execution against any other property of the defendant. (ACA 16-66-304)  
**Officer to return Execution:** When the officer receives a certified copy of an order to cease execution on order of sale, he shall return the same immediately. (ACA 16-66-301)

**E. Selection of property to be sold - Levy:** The defendant in an execution may select what property, real or personal, shall be sold if he gives the officer a list of the property sufficient to satisfy the execution. The officer shall levy upon that property and no other if it is sufficient in his opinion to satisfy the execution. If it is not sufficient then additional property may be taken. (ACA 16-66-401)

**Levy on Shares or Stock in Corporations:** Whenever an officer levies upon the shares or stock in a corporation he shall do so by leaving a copy of the writ with the president, secretary or cashier or other officer and a certificate by the officer that he levies upon and takes the rights or shares to satisfy such execution. (ACA 16-66-404)

**Corporate officer to furnish statement of shares and encumbrances:** When an execution is used to levy upon any shares or stock in an incorporation, the cashier, secretary or chief clerk shall furnish the officer a certificate stating the number of rights or shares the defendant has. (ACA 16-66-404)

**Levy on Real Estate - Certificate of levy filed with Recorder:** The Sheriff shall, upon levying upon any real estate under an execution or attachment, file with the recorder of deeds of the county a certificate of the seizure together with a correct and full description of the real estate. The recorder shall index and record the same as if it were a lispendens. (ACA 16-66-402)

**F. Right of levying officer to require indemnifying bond:** A. If an officer who levies, or is required to levy, an execution upon personal property, doubts whether it is subject to execution, he may give to the plaintiff therein, or his agent or attorney, notice that an indemnifying bond is required.

(2) Bond may, thereupon, be given by or for the plaintiff, with one (1) or more sufficient sureties to be approved by the officer, to the effect that the obligors therein will indemnify him against the damages he may sustain in consequence of the property such estate or interest therein as is sold.

(3) Thereupon, the officer shall proceed to subject the property to the execution and shall return the indemnifying bond to the circuit court of the county from which the execution issued.

(b) Refusal to give bond - Levy discharged and property returned. If the bond mentioned in subsection (a) of this section is not given, the officer may refuse to levy the execution; or, if it had been levied, and the bond is not given in a reasonable time after it is required by the officer, he may restore the property to the person from whose possession it was taken, and the levy shall stand discharged

Duty of Officer on default of defendant - liability of surety, alias execution issued: If the defendant fails to pay or stay the execution and fails to deliver the specified property he listed or any other property to take its place, the officer shall return the execution and bond to the clerk of the issuing court and shall show in his return the list of property not delivered, the bond and any other facts. The surety on the bond shall be liable only for the dollar value of the property specified in the bond and all costs. If the property specified in the bond was not valuable enough to satisfy the execution plus costs and commissions, the court may issue another execution and give credit for the property specified in the bond. (ACA 16-66-406)

#### **G. Notice of sale of real & personal property.**

Advertisement: The time and place of sale of real property under execution, or order of sale, must be advertised for at least 20 days before the day of sale, by posting advertisements at the courthouse door and five other public places in the county. One posting is to be upon the property to be sold and it must be published in the sale shall also be posted at three of the most public places in the vicinity of the place of sale. (ACA 16-66-408)

Officers not to bid at sale:

No officer having the execution for service or any other deputy or any person acting for them shall purchase any property at any sale made under such execution. Any purchases so made will be voided. Court case: 555, Inc. v Barlow, 3 Ark. App. 139,623 S.W. 2d 843 (1981)

The sheriff's failure to return an execution within the required time may be excusable, in an action against him by a judgment creditor, where failure was due at least in part to judgment creditor. (ACA 16-66-415). However, the sheriff shall be liable for willful failure to perform duties under writs of execution. (ACA 16-65-202 - Act 1107 of 2003)

#### **Exemption from posting fidelity, surety, or performance bonds in certain transactions:**

Except when the dollar amount of responsibility assumed exceeds the net capital and surplus, no state national bank, state or national savings and loan doing business in the state shall be required to furnish fidelity, surety or performance bonds in the following transactions:

1. Garnishments
2. Replevins
3. Foreclosures
4. Forcible entry and detainer

The institutions mentioned above must furnish, upon request, each party a copy of its latest financial statement.

(ACA 23-32-305)

## **VI. Performance Under Order of Delivery or Attachment.**

### **A. Order of Delivery**

The order of delivery for property shall be delivered to the sheriff. It shall state the parties' names, the court in which the action is taken, direct the sheriff to take the property, description of the property and its value is in the plaintiff's affidavit. The order shall have a return date and shall summons the defendant to appear in court and answer to the plaintiff. If the plaintiff shall file an additional affidavit, that he believes that the property has been concealed, removed, or disposed of with the intent to keep it from the plaintiff, the clerk shall insert a clause that the sheriff shall arrest the defendant so that he may appear on the return day of the order and answer to the court. The order shall be returnable as an order of arrest. (ACA 18-60-811)

#### **Bond.**

The order shall not be carried out by the sheriff until a bond has been made by the plaintiff to the defendant, wherein the plaintiff shall return the property and pay such sums as the court may direct, not to exceed double the value of the property and costs. (ACA 18-60-812)

#### **Bond in action against officer:**

When the legal action is brought against an officer to recover possession of property taken under execution, against a person other than the plaintiff, the bond provided for in the last section shall be to the effect that the plaintiff will prosecute the action and abide by the courts decision. The plaintiff shall pay to the defendant all money as the court may direct that were adjudged in the action; not to exceed double the value of the property and costs.(ACA 18-60-812)

#### **Removal or concealment of property - Arrest of defendant:**

If the property described in the order has been removed or concealed so that the officer cannot find it, the officer, when the order contains an arrest order, shall arrest the defendant and hold him in custody until he executes bond or be discharged by the court. (ACA 18-60-819)

#### **Issuance of attachment on holiday or Sunday:**

An order of attachment for the delivery of property may be executed on any holiday except Sunday, and on Sunday when the officer believes, or there is an affidavit from the plaintiff that the property is about to be concealed or removed, or that service cannot be made after such holiday. (ACA 16-58-106)

### **B. Forcible Entry and Detainer. (ACA 18-60-301, et seq)**

Clarification of the rights and enforcement of parties claiming a cause of action by reason of forcible entry and detainer and for unlawful detainer of real property and those persons against whom such actions are brought. No person

shall enter into or upon any lands, tenements or other possessions, and detain or hold the same, but where such entry is allowed by law, and then only in a peaceable manner.

If any person shall: Enter into or upon any lands, tenements, or other possessions and detain the same without right or claim to title. Enter by breaking open the doors, window, or other parts of the house, whether anyone is home or not. By threatening to kill, maim or beat any party in possession. By words or actions that would naturally cause fear or apprehension of danger. By putting out of doors or by carrying away the goods of the party in possession. By entering peaceably and then turning out by force or frightening by threats or other circumstances of terror, the party in possession. In such cases every person so offending shall be considered guilty of a forcible entry and detained within the Act. (ACA 18-60-303)

Any person who shall hold, without right any lands, tenements or possessions after the time such properties were let to him: After demand is made to him in writing to surrender possession thereof by the person or his agent or attorney, having the right to possession. Or shall fail or refuse to pay the rent therefore when due. And after 3 days notice to vacate, and the written demand for the possession by the person entitled to possession, then shall be considered guilty of an unlawful detainer under this Act. (ACA 18-60-303)

The preceding two sections of this Act shall extend to and comprehend all estates, whether freehold or less than freehold. The aforesaid forcible entries and detainees are to come before the circuit court of any county in which such offenses are committed.

### **C. Writ of Possession (ACA 18-60-307)**

(a) When any person to whom any cause of action shall accrue under this subchapter shall file in the office of the clerk of the court a complaint signed by him or her, his or her agent or attorney, specifying the lands, tenements, or other possessions so forcibly entered and detained, or so unlawfully detained over, and by whom and when done, and shall also file the affidavit of himself or herself or some other credible person for him or her, stating that the plaintiff is lawfully entitled to the possession of the lands, tenements, or other possessions mentioned in the complaint and that the defendant forcibly entered upon and detained them or unlawfully detains them, after lawful demand therefor made in the manner described in this subchapter, the clerk of the court shall thereupon issue a summons upon the complaint. The summons shall be in customary form directed to the sheriff of the county in which the cause of action is filed, with direction for service thereof on the named defendants. In addition, he or she shall issue and direct the sheriff to serve upon the named defendants a notice in the following form:

#### **“NOTICE OF INTENTION TO ISSUE WRIT OF POSSESSION**

You are hereby notified that the attached complaint in the above styled cause claims that you have been guilty of [forcible entry and detainer] [unlawful detainer] (the inapplicable phrase shall be deleted from the notice) and

seeks to have a writ of possession directing the sheriff to deliver possession of the lands, tenements, or other possessions described in the complaint delivered to the plaintiff. If, within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, you have not filed in the office of the clerk of this court a written objection to the claims made against you by the plaintiff for possession of the property described in the complaint, then a writ of possession shall forthwith issue from this office directed to the sheriff of this county and ordering him to remove you from possession of the property described in the complaint and to place the plaintiff in possession thereof. If you should file a written objection to the complaint of the plaintiff and the allegations for immediate possession of the property described in the complaint within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, a hearing will be scheduled by the court to determine whether or not the writ of possession should issue as sought by the plaintiff. If you continue to possess the property described in the complaint, you are required to deposit into the registry of the court a sum equal to the amount of rent due on the property and continue paying rent into the registry of the court during the pendency of these proceedings in accordance with your written or verbal rental agreement. Your failure to tender the rent due without justification is grounds for the court to grant the writ of possession.

\_\_\_\_\_  
Circuit Clerk of

\_\_\_\_\_  
County

(b) If, within five (5) days, excluding Sundays and legal holidays, following service of this summons, complaint, and notice seeking a writ of possession against the defendants named therein, the defendant or defendants have not filed a written objection to the claim for possession made by the plaintiff in his or her complaint, the clerk of the court shall immediately issue a writ of possession directed to the sheriff commanding him or her to cause the possession of the property described in the complaint to be delivered to the plaintiff without delay, which the sheriff shall thereupon execute in the manner described in § 18-60-310.

(c) (1) If a written objection to the claim of the plaintiff for a writ of possession shall be filed by the defendant or defendants within five (5) days from the date of service of the notice, summons, and complaint as provided for in this section, the plaintiff shall obtain a date for the hearing of the plaintiff's demand for possession of the property described in the complaint at any time thereafter when the matter may be heard by the court and shall give notice of the date, time, and place of the hearing by certified mail, postage prepaid, either to the defendant or to his or her or their counsel of record.

(2) If the defendant continues to possess the property described in the plaintiff's complaint during the pendency of the proceedings under this subchapter, the defendant is required to deposit into the registry of the court at the time of filing the written objection a sum equal to the amount of rent due on the property and continue paying rent into the registry of the court in accordance with the written or verbal rental agreement.

(3) The failure of the defendant to deposit into the registry of the court the rent due or any rent subsequently due during the pendency of the proceeding under this subchapter without justification is grounds for the court to grant the writ of possession.

(d) (1) (A) If a hearing is required to be held on the demand of the plaintiff for an immediate writ of possession, the plaintiff shall there present evidence sufficient to make a prima facie case of entitlement to possession of the property described in the complaint. The defendant or defendants shall be entitled to present evidence in rebuttal thereof.

(B) (i) If the court decides upon all the evidence that the plaintiff is likely to succeed on the merits at a full hearing and if the plaintiff provides adequate security as determined by the court, then the court shall order the clerk forthwith to issue a writ of possession to the sheriff to place the plaintiff in possession of the property described in the complaint, subject to the provisions of subsection (e) of this section.

(ii) No such action by the court shall be final adjudication of the parties' rights in the action.

(2) A plaintiff demanding an immediate writ of possession who is a housing authority and who claims in its complaint that the defendant or defendants are being asked to surrender possession as a result of the defendant or defendants having been convicted of a criminal violation of the Uniform Controlled Substances Act, §§ 5-64-101 – 5-64-608, shall be entitled to receive an expedited hearing before the court within ten (10) days of the filing of the objection by the defendant or defendants.

(e) If the defendant desires to retain possession of the property, the court shall allow the retention upon the defendant's providing, within five (5) days of issuance of the writ of possession, adequate security as determined by the court.

### **18-60-310. Execution of writ of possession.**

(a) Upon receipt of a writ of possession from the clerk of the court, the sheriff shall immediately proceed to execute the writ in the specific manner described in this section and, if necessary, ultimately by ejecting from the property described in the writ the defendant or defendants and any other person or persons who shall have received or entered into the possession of the property after the issuance of the writ, and thereupon notify the plaintiff that the property has been vacated by the defendant or defendants.

(b) Upon receipt of the writ, the sheriff shall notify the defendant of the issuance of the writ by delivering a copy thereof to the defendant or to any person authorized to receive summons in civil cases and in like manner. If within eight (8) hours of receipt of the writ of possession, the sheriff shall not find any such person at their normal place of residence, he may serve the writ of possession by placing a copy conspicuously upon the front door or other structure of the property described in the complaint, which shall have like effect as if delivered in person pursuant to the terms hereof.

(c)(1) If, at the expiration of twenty-four (24) hours from the service of the writ of possession in the manner indicated, the defendants or any or either of them shall be and remain in possession of the property or possession has

not been returned to the plaintiff, the sheriff shall notify the plaintiff or his attorney of that fact and shall be provided with all labor and assistance required by him in removing the possessions and belongings of the defendants from the affected property to a place of storage in a public warehouse or in some other reasonable safe place of storage under the control of the plaintiff until a final determination by the court.

(2) If the determination is in favor of the defendant, then the possessions and belongings of the defendant shall be immediately restored to the defendant with the cost of storage assessed against the plaintiff.

(3) If the determination is in favor of the plaintiff, and it includes a monetary judgment for the plaintiff, then the court shall order the possessions and belongings of the defendant sold by the plaintiff in a commercially reasonable manner with the proceeds of the sale applied first to the cost of storage, second to any monetary judgment in favor of the plaintiff, and third any excess to be remitted to the defendant.

(d) In executing the writ of possession, the sheriff shall have the right forcibly to remove all locks or other barriers erected to prevent entry upon the premises in any manner which he deems appropriate or convenient and, if necessary, physically to restrain the defendants from interfering with the removal of the defendants' property and possessions from the property described in the writ of possession.

(e) The plaintiff shall not be required to give any bond, unless ordered to do so by the court, as a condition to the execution of the writ by the sheriff.

(f) The sheriff shall return the writ at or before the return date of the writ and shall state in his return the manner in which he executed the writ and whether or not the properties described herein have been delivered to the plaintiff and, if not, the reason for his failure to do so. If in a trial in court the verdict is for the plaintiff the jury shall assess the amount to be recovered. When the court has rendered a decision in favor of the plaintiff and the property has not yet been delivered, a writ of possession may be issued at this time. If the court finds for the defendant the court shall determine the costs and damages and may issue a writ of restitution ordering the Sheriff to reinstate the defendant in the property. The defendant may introduce into court any evidence showing the damages he has suffered in being removed from the property and upon the court finding in his favor may have judgment and repossession of the property. (ACA 18-60-310)

Duty of Officer serving: It shall be the duty of any officer serving a notice to return the same to the party who delivered it to him. Failure to do so may be punished as disobedience of the court. (ACA 16-55-117)

Act 1004 of 2007 created an alternative procedure to eviction under the "Residential Landlord Tenant Act of 2007". Act 482 of 2009 amended the streamline process further. The Supreme Court is consigning rule changes to allow district court eviction.

## **VII. Attachments:**

### **A. Order of Attachment.**

The Order of Attachment shall be directed and delivered to the Sheriff. It shall require him to attach and safely keep the property of the defendant, or so much of it that will satisfy the plaintiff's claim specified in his affidavit, which shall be in the order. The return day of the order shall be the same as a summons. (ACA 16-110-106)

#### **Priority of several orders of attachment.**

Where there are several orders of attachment against the same defendant, they shall be executed in the order in which they were received by the sheriff or other officer. (ACA 16-110-109) Court Decisions: Brooks v. Fry, 45 Fed. 776 Goodbar v. Brooks, 57 Ark. 450, 22 S.W. 96 To constitute an attachment of personal property capable of manual delivery, the sheriff must take the property into his custody and actual possession.

#### **B. Personal Property.**

Where the deputy sheriff under writ of attachment took the truck and drove it away without having the writ in his possession, and without serving a copy on any person, there was no lack of service, as an order of attachment may be executed upon personal property capable of manual delivery by the officer taking it into custody.

##### **B. Right of Entry.**

A sheriff having an order of attachment, or for the delivery of property may enter any building or enclosure containing the property, to take it; and if necessary for this purpose, may break the building or enclosure, having first publicly demanded the property. (ACA 16-110-111)

C. Personal Property Attached. The defendant's personal property shall be taken first under an attachment and if enough is not found, then his real property may be taken. (ACA 16-110-111)

#### **Attachment of funds in court.**

Where the property to be attached is a fund in court, the execution of the order shall be by leaving with the clerk of the court a copy of the order with a notice specifying the fund. If several orders are issued for funds in court they shall be satisfied in the order they came to hand. (ACA 16-110-112)

D. Bail Money. Under the authority of this section; funds held by the Sheriff as bail money are subject to garnishment. Court Decision - McGill v. Robbins, 231 Ark. 411, 329 S.W. (2d) 540.

#### **Attachment on joint or common property - Bond of Plaintiff .**

The Sheriff shall not, in executing an order of attachment upon personal property, held by the defendant jointly or in common with another person, take possession of such property until a bond has been made to the other person by the plaintiff. The bond shall be payable for any damages sustained due to the order. (ACA 16-110- 113)

#### **Attachment on property claimed by another - Bond of Party - Condition of Bond -**

#### **Duty of Sheriff, Additional Conditions.**

When the sheriff shall levy a writ of attachment upon property claimed by a person not a party to the writ, that person may make a claim to the property and the property shall be delivered to that person upon his posting a bond in favor of the plaintiff, which has the approval of the sheriff and be an amount double the value of the property. The sheriff shall determine the value of the property, if it is not known, by having it appraised by two citizens of the county. If the court decides that the property is the defendants, the plaintiff shall have judgment and the property shall be delivered to the sheriff whenever demanded by the sheriff. If any person shall refuse or neglect to deliver to the sheriff the property, in accordance with the bond, the sheriff shall return the writ stating that the conditions of the bond have been broken. The bond shall have as a condition to it, the clause that if its conditions are not met then the breach of it shall have the effect of a judgment for the appraisal amount of the property plus costs. If the appraisal value is less than the judgment or more than the judgment then an execution for the amount of the judgment may be issued. (ACA 16- 110-114)

1. Intervenor giving bond for attached property does not exempt it from subsequent levy in another case.

2. The sheriff is not protected in delivering attached property to a claimant without bond.

3. Money deposited in lieu of bond is to be treated as a pledge for the return of the property, and not as being absolutely liable for the judgment. Court Case Adams v. Hobbs, 27 Ark. 1

#### **Execution on Forfeiture of Bond.**

On the return of the writ showing the forfeiture of the bond, the clerk of the court shall issue an execution in favor of the plaintiff against all obligated under the bond, for the amount which may be due on the forfeited bond. (ACA 16-110- 114)

#### **Satisfaction of Bond.**

The bond can only be satisfied by actual delivery or bringing the property forward, pointing it out and tendering it to the officer. Telling the officer where the property is, and to go get it, is not sufficient. Court Case - Chapline v. Robertson, 44 Ark. 202

#### **Return of Writ.**

The sheriff shall return, upon every order of attachment, what he had done under it. The return must show the property attached, the time it was attached, and the disposition made of it. Where garnishees are summoned, their names, and the time each was summoned must be stated. Where real property is attached, the sheriff shall describe it with sufficient certainty to identify it, and where he can do so a reference to the deed or title under which the defendant holds it. He shall return the order with all bonds taken under it. (ACA 16-110- 119)



### **Garnishment in attachment.**

Whenever, in a civil action, the plaintiff has reason to believe that any other person is indebted to the defendant or is holding property belonging to the defendant, the plaintiff may have a writ issued stating his cause of action against the defendant, and summon the person to answer, as to what property of the defendants he holds, to the court. (ACA 16-110-102)

### **Removal of property from the county - pursuit.**

Where, after an order of attachment against specific property has been received by the sheriff, the property is removed from the county, the sheriff may pursue and attach it in another county, within twenty-four hours. (ACA 16-107-203)

### **Concealment of property - Contempt.**

Where it appears by the return of the sheriff or by an affidavit of the plaintiff, that any specific property against which an order of attachment has been issued, has been concealed or removed by the defendant, the court may require him to attend and, under oath be questioned in the matter, and may enforce its orders as in cases of contempt. (ACA 16-110-210)

### **16-32-106. Summons of petit jurors.**

(a) The persons whose names have been selected under § 16-32-105 shall be summoned to appear on a date set by the court to answer questions concerning their qualifications and unless excused or disqualified, to serve the required number of days or for the maximum period during the calendar year for which selected unless sooner discharged.

(b) Jurors shall be summoned by the court or by the sheriff, as the court directs, by:

- (1) A notice dispatched by first-class mail;
- (2) Notice given personally on the telephone; or
- (3) Service of summons personally or by such other method as is permitted or prescribed by law.

(c) (1) (A) If a notice is dispatched by first-class mail, the prospective jurors shall be given a date certain to contact the sheriff or the court to confirm receipt of the notice.

(B) Not later than five (5) days before the prospective juror is to appear, the sheriff or the court shall contact the prospective juror if the prospective juror has failed to acknowledge receipt of the notice.

(C) The court shall have discretion to determine whether the sheriff or the court will be the prospective juror's primary contact.

(2) A notice dispatched by first-class mail shall be sent on a form approved by the Administrative Office of the Courts or it shall include the following language: "You are hereby notified that you have been chosen as a prospective juror. You must notify the sheriff [or the court] on or before . . . . (date) . . . . to confirm that you have received this notice. If you do not notify the sheriff [or the court] to confirm this notice, the sheriff [or the court] will contact you and there will

be added cost. Please call the sheriff [or the court] at . . . . (phone number) . . . ."

(d) Unless excused by the circuit judge, a juror who has been legally summoned and who shall fail to attend on any date when directed to do so may be fined in any sum not less than five dollars (\$5.00) nor more than five hundred dollars (\$500). However, nothing in this subsection shall be construed to limit the inherent power of the court to punish for contempt. All excuses granted by the circuit judge shall be noted in the jury book or the computer program described in § 16-32-103.

### **Balliff Duties**

The Sheriff or his/her designee serves as sheriff/bailiff of the courts in their respective county (ACA 16-10-122). It is the bailiff's duty to assist in maintaining order and decorum in the courtroom and to provide security and protection for jury proceedings and jury members.

### **Transporting Inmates to the Department of Corrections**

It is the duty of the Department of Corrections to transport all inmates committed to the Department to the respective institutions. The Sheriff shall notify the Commissioner of the Department of Corrections of the number of persons in his charge which are under commitment to the Department. The Commissioner shall send for, take charge of and safely transport, free of charge, convicted persons to the Department. However, the Sheriff may transport the convicted persons to the Department and shall be entitled to the fees provided by law. (ACA 12-27-113)

### **Introduction**

This section of the manual is designed to inform sheriffs and deputies of the extradition process.

### **Extradition**

A legal definition of extradition is "the surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender".

Arkansas law, based on the Uniform Criminal Extradition Act, sets out the legal requirements for extradition in this state (Ark. Code. Ann. 16-94-101, 16-94-102, and 16-94-201 through 16-94-231). Since most states have adopted the act, the procedures for extradition from state to state tend to be quite similar. There are, however, some differences in procedure and required documentation.

The extradition of a person to Arkansas from another state is generally termed a "domestic" extradition. A request that Arkansas return a person to another state is likewise termed a "foreign" extradition.

A domestic extradition begins when an individual "wanted" in Arkansas is located in another state (asylum state). This usually occurs as the result of an N.C.I.C. "hit". The Arkansas sheriff named in the warrant is notified, the sheriff requests that the suspect be held, and a judge or magistrate in the asylum state issues a warrant.

The sheriff notifies his prosecuting attorney that the suspect has been located, and the Arkansas prosecutor prepares necessary documents to request extradition. The extradition request is sent to the Governor. If the documents are found to be in order, the Governor makes a written request to the governor of the asylum state that the subject be returned to Arkansas. This request designated the sheriff or his agents as the proper persons to take custody of the suspect and return him/ her to Arkansas if the extradition request is honored.

Under ACA 16-94-214 as amended in 1995, a procedure was established for a pre-signed waiver of extradition. ACA 16-94-214 now provides:

(a) The arrest of a person may be lawfully made also by an officer or a private citizen without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one (1) year; but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the last section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

(b) Notwithstanding any other law to the contrary, a law enforcement officer shall deliver a person in custody to the accredited agent or agents of a demanding state without the governor's warrant provided that:

(1) Such person is alleged to have broken the terms of his probation, parole, bail or any other release of the demanding state; and

(2) The law enforcement agency has received from the demanding state an authenticated copy of a prior waiver of extradition signed by such person as a term of his probation, parole, bail or any other release of the demanding state. The copy shall contain photographs, fingerprints or other evidence properly identifying such person as the

person who signed the waiver.

When the documents are received in the asylum state, they are reviewed for legal sufficiency. If they are found to be in order, the governor of the asylum state will issue a Governor's Warrant ordering the return of the suspect to Arkansas. During this process the subject may, depending on the asylum state's laws, have a Governor's Hearing before the governor's extradition official to contest the extradition, and the suspect will also be entitled to petition the state's courts for a writ of habeas corpus.

If the Governor's Warrant remains valid, the designated authorities in Arkansas are notified to pick up the fugitive. Following return to Arkansas, the suspect is available for the regular criminal justice process in this state.

Foreign extraditions basically involve the same process in reverse. An Arkansas law enforcement officer having contact with an individual learns that this person is wanted in another state (demanding state), and the proper authority in that state is notified. Soon after arrest, the subject is taken before a judge to set bond, etc. The time varies, but usually between 30 and 90 days later, the Arkansas Governor's Office receives extradition documents from the demanding state's governor. These are referred to the Attorney General for review of legal sufficiency. If the documents are in order, a Governor's Warrant is issued. The subject can request and receive a Governor's Hearing before the Extradition Counsel, and can contest the extradition by filing a writ of habeas corpus in circuit court.

If the warrant remains in effect, the authorities in the demanding state are notified that the subject may be picked up and returned to that state.

For information concerning a specific case or general information about extradition, contact the Pardon and Extradition Counsel, Office of the Governor, State Capitol, Little Rock, Arkansas 72201.

# **Chapter 6 - ADULT AND JUVENILE JAIL STANDARDS MANAGEMENT SUMMARY AND THE NECESSITY FOR TRAINING AND POLICIES**

## **Introduction**

This chapter is designed to summarize the Arkansas Criminal Detention Facilities Board's minimum standards for short-term, overnight facilities, intermediate-term, and juvenile facilities. This information has been developed to provide the sheriff with a concise summary of the minimum standards and does not attempt to replace them, but only present them. If you need specific or detailed information regarding these regulations, please refer to the regulations or call or contact:

Director  
Criminal Detention Facilities Review Committees  
P.O. Box 3278  
Little Rock, Arkansas 72203

## **Criminal Detention Facilities Review Committee**

Act 741 of 1983, as amended, created Criminal Detention Facilities Review Committee within the judicial districts of the State and repealed Act 244 of 1973, as amended, which established a statewide Criminal Detention Board. The purpose of the Act 741 of 1983 is to insure that all criminal detention facilities in the State conform to certain minimum standards of construction, maintenance and operation. This act established a Criminal Detention Facilities Review Coordinator who is appointed by the governor and is responsible for promulgating minimum standards for the construction, maintenance and operation of local, county, regional and state criminal detention facilities within the State of Arkansas. Also, this act states that the Coordinator will consult with and seek the advise of organizations representing local governments, local law enforcement agencies, and the heads of appropriate state departments and agencies. Criminal Detention Facilities Review Committees were created within each judicial district with the passage of Act 741. Each committee is composed of at least five members who are residents in that judicial District and hold no public office. The members of these committees are appointed by the Governor to serve a term of 4 years and each county within the judicial district must have a member on the committee. These review committees have the authority and responsibility to visit and inspect each criminal detention facility within their judicial district for the purposes of determining the conditions of confinement, treatment of prisoners and whether such facilities comply with the minimum standards established under the authority of the Coordinator. Each review committee is required to visit every detention facility within their judicial district at least once a year. The committee reports the findings of their inspection to the chief circuit judge of the district. Also, the committee is authorized to petition circuit court to close the facility if the affected local governing body fails to take corrective action on the items cited by the committee as needing to be corrected. At the present time, the Criminal Detention Review Committees that exist within the judicial districts in the state are reviewing detention facilities based on the minimum

standards created by the Arkansas Criminal Detention Facilities Board and Act 244 of 1973. Separate standards were developed to cover the three classifications of detention facilities found in Arkansas. These three are short term and overnight, intermediate and long-term facilities. The following is a brief description of each type of facility.

## **Overnight Lockup Facilities**

Overnight Lockup Facilities are defined as any temporary holding facility for adults held for periods of twenty-four (24) hours or less. Persons held longer than twenty-four (24) hours must be transferred to another facility. Jail Standards Chapter 2 - Part J)

## **Short Term Detention Facilities**

Short-term Facilities are defined as institutions operated by a local unit of government in which persons may be incarcerated from time of initial intake to end of fourteen days." Jail Standards Chapter 1 - Part F and Chapter 2 - Part I)

## **Intermediate/Long Term Facilities**

These type facilities are defined as a criminal detention institution in which prisoners may be held from time of intake through a one year period. Jail Standards Chapter 2 - Part H)

## **ADULT DETENTION**

### **1. Administration**

#### **Responsibility**

The responsibility authority (sheriff) of the criminal detention facility should keep fully informed about every unit of the facility. The sheriff is responsible for the staff, management, control of facility, and the custody, care, and treatment of persons that are in custody.

#### **Budget**

The proper administration of the detention facility requires adequate financial support. Elements of the budget should include the needs of the facility, justifying the needs, estimating the cost to employ professional personnel, staff training programs, and the maintenance and replacement of equipment. The budget should be simple and readable. The bookkeeping system used should be one that allows daily operating and daily prisoner cost to be determined easily. (Chapter 3-1005)

#### **Training**

The Chief Executive should encourage all employees to take the self-taught course offered at no cost by the U.S. Bureau

of Prisons and Jail Inspection. (Chapter 41002)

## **2. Personnel Standards**

### **Guidelines**

Because the Due Process Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution has been interpreted as protecting the rights of persons held in criminal detention facilities, officers and staff can no longer be just a keeper of keys and people. Emphasis must now be given to the protection of the rights of persons in custody and certain services made available to them such a medical and emergency dental care, clothing, laundry and food under various degrees of confinement.

### **Basic Minimum Standards for Personnel**

(Chapter 4 section 4-1001 - 4-1002 Jail Standards)

A. When personnel are being selected, special inquiry shall be made into the character, morals and standing in the community of each applicant, giving special attention to details provided from the application background investigation and verbal responses to questioning of the applicant. The background investigation form required by Law Enforcement Minimum Standards or its equivalent shall be used and kept on file. A high school education or equivalent shall be required of all new employees. The attributes of physical fitness, experience, demonstrated aptitude and previous training and experience should be the prevailing factors in the selection process.

B. Criminal Detention Facility personnel shall be at least 18 years of age on the date of hiring.

C. All new Criminal Detention Facility personnel whose duties bring them into contact with inmates shall be required to meet the medical standards required by Law Enforcement Minimum Standards and evidence of each employee's ability to meet the medical standards shall be kept on file in the facility.

D. Health examinations which include, at a minimum, an examination of communicable disease, shall be required of all Criminal Detention Facility personnel at the time of hiring and should be required on at least an annual basis. Evidence of the examination shall be kept on file in the facility.

E. All Criminal Detention Facility personnel shall successfully complete training equivalent to the basic ail course which is offered by the Arkansas Law Enforcement Training Academy or the Department of Correction within one year of being hired. Certified law enforcement officers are exempt as long as the Chief Executive certifies that the officer is knowledgeable of these Standards. For the first 24 months after the effective date of these Standards, the following shall apply: if training cannot be obtained within one year from date of hire, the Chief Executive shall document in writing the attempts made to obtain training. In no case shall training be deferred beyond two years. Each new employee should be required to undergo at least 15 days of on-the-job training and orientation prior to being assigned to work alone. The Chief Executive may waive on-the-job training for those whom he believes to be qualified, but a record shall be made of the waiver and the reason for

the waiver and placed in the personnel file of the individual concerned. Each new employee shall work on a probationary status for a minimum of one year from the date of hire.

F. The Chief Executive should encourage all employees to take the self- taught course offered at no cost by the U.S. Bureau of Prisons and Jail Inspection.

G. A personnel file shall be maintained for each employee by the Chief Executive or the Administration of each Criminal Detention Facility and the file shall include all data relative to the training, health and job qualifications of each person.

H. The Chief Executive shall be responsible for budgeting for sufficient personnel. The governing body shall be held responsible for sufficient funding to carry out in total all of the requirements contained in Chapter IX, Section 9-1101, AC. These three standards shall be met. A lack of funds shall not be considered in mitigation because the safety of the facility and personnel therein rests to a great degree on these standards.

The Chief Executive shall, when necessary to correct any lack of personnel which prevents implementation of those standards, request in writing immediate intervention and assistance from the governing body of the county or municipality and, if the request is denied, shall request immediately in writing the necessary intervention and assistance from the Criminal Detention Facility Review Committee.

## **3. Rules and Regulations for Personnel**

(Chapter 7 Section 7-1001 - 7-1002 Jail Standards)

### **Guidelines**

Chief Executive and/or Administrator shall be responsible for seeing that each new employee of the Facility is briefed on the care, treatment, custody and control of inmates. Prior to assuming duties that require care and control of the inmate, the employee must be familiarized with rules of conduct that are published in a regulation manual provided to all employees and acknowledged as received. (Section 7-1001.)

### **Rules and Regulations**

A. Each employee shall be responsible for knowing and complying with these rules of conduct.

B. The personnel shall orient their personal conduct toward professionalism. When on duty, they should be properly groomed, neat and clean, mentally alert, and at all times should strive to present a high level of physical fitness. Personnel off-duty are encouraged to maintain a professional image.

C. All personnel must perform their duties in a polite and professional manner when dealing with prisoners. They shall not use profane and/or abusive language, nor shall they in any manner abuse a prisoner.

D. All personnel who are qualified to use defensive equipment shall know the location of any such equipment on hand, and shall be fully knowledgeable of the procedures and justification for its use against an inmate.

E. If an emergency squad has been established by the Chief Executive, all personnel assigned to that squad will

be fully trained for the prescribed duties within that body and shall be expected to be fully familiar with all facets of the operation.

F. Personnel shall be constantly alert for unusual incidents among the inmates, escape plots and attempts to smuggle contraband or prohibited items into the facility.

G. For security purposes, unless authorized by the appropriate authority such as a public relations officer of the facility, personnel shall not discuss the management and operations of the facility with anyone except co-workers and superiors, and then discussions shall be conducted in a discrete manner.

H. Personnel shall not buy from, sell to, or barter or trade in any manner with inmates, family or friends of an inmate or a representative of any of these persons. Personnel shall not accept gifts of any kind, regardless of value, from an inmate or their representative, family members or friends.

I. Personnel shall not engage in distracting activities while on duty.

J. Personnel shall not recommend a specific bondsman or attorney nor other services of this nature to an inmate. Personnel should have reference material (such as yellow pages) from which an inmate may seek services, and that material should be made available to inmates and their counselors on request.

K. Personnel should use physical force against an inmate only to the extent that it is necessary in self-defense, to prevent injury or death to himself or another person; to quell an inmate who might grievously harm or injure himself; to end a disturbance or to prevent a riot or escape; to prevent destruction of public property; and to enforce a lawful command to which an inmate is reacting with physical resistance.

L. In the event of an incident involving the use of force, as in paragraph K. above, the involved personnel shall make an immediate written report of all details to their immediate supervisor who will forward the report in accordance with the department's established administrative policies.

#### **4. Records and Commitment Receiving Procedure Guidelines**

An accurate record system in a criminal detention facility is of utmost importance. Factual information concerning persons held in custody is necessary for effective classification and control. A professional atmosphere in which a procedure is utilized for booking a prisoner into the Criminal Detention Facility in a smooth, fast and courteous manner shall be planned by the Chief Executive and implemented as Criminal Detention Facility routine. (Section 5-1001 Jail Standards)

#### **Record Keeping**

Proper legal authority shall be the basis of committing a person to confinement in the Criminal Detention Facility. The Chief Executive shall establish procedures to ensure that all warrants, court orders of confinement, arrest reports, etc. are checked for completeness to include an authorized signature, and to identify the detainee as the subject in question as fully as circumstances permit. (Section 5-1002

Jail Standards)

#### **Admission Information**

"Jail log" or other detention record which would provide accurate facility population records shall be kept in which all pertinent information on every detainee is recorded. This log should contain:

- A. Characteristic and demographic data on the detainee.
- B. Time/Date of arrest.
- C. Time/Date of confinement.
- D. Time/ Date release.
- E. Cause of confinement.
- F. Classification of offense.
- G. Arresting/ confining officers.
- H. Warrant or commitment data and all other data common to such action.

Fingerprints should be obtained and furnished to the Arkansas State Police, or as required by law, on subjects who meet the criteria established by Arkansas law and who have not previously undergone that procedure by the arresting agency. (Section 5-1003 Jail Standards)

In all cases where a person is being confined within the Criminal Detention Facility, the following information shall be obtained and maintained within the facility except that in those cases where the person being confined in the Detention Facility within the previous 30 days, requirements A, B, C, E, and F. are optional:

- A. Previous criminal record.
- B. Known habitat and habits of the subject.
- C. Names and other identifying data of person(s) to be contacted in the event of an emergency.
- D. Known or stated illnesses to include name of medication or special diet, if any, prescribed.
- E. Names and identifying data of person(s) to visit or correspond with the inmate, including attorney(s), clergy or other professionals if the inmate freely provides that data.
- F. Social security and/or driver's license numbers or car license number if obtained.
- G. Detailed descriptions of bruises, cuts, needle marks and/or apparent deformities of any type. (Section 5-1004 jail Standards)

All personal property from a prisoner shall be properly accounted for on a written receipt, placed in an envelope or other container which clearly identifies by appropriate markings that the inmate is the owner of that particular property. (Section 5-1005 jail Standards)

At the time a prisoner is being searched, he should be checked for vermin, cuts, bruises, needle marks or any bodily injury and all findings shall be entered in the prisoner's personal record. Any claims of illness or injury should be entered on the record and checked by professional medical personnel for accuracy if warranted. If a prisoner appears to be ill, or is comatose or in a stupor, a medical doctor shall determine the condition of confinement. A vermin-infested

prisoner should be deloused by methods that have been recommended by Arkansas Department of Health. (Section 5-1006 jail Standards)

Strip searches shall be conducted in private by a person of the same gender as the person being searched except when circumstances make the presence of additional personnel necessary. The Chief Executive shall have a written strip search policy. (Section 5-1007 jail Standards) After the booking procedure is completed, the prisoner should be briefed by permitting him to read plainly printed Facility Rules or by furnishing the prisoner a copy of the same. (Section 5-1008 jail Standards)

At the conclusion of the admittance procedures the prisoner shall be assigned suitable quarters, clean and adequate bedding and other items necessary for sanitation and proper hygiene. (Section 5-1009 Jail Standards)

### **Disciplinary Action Records**

Disciplinary actions taken against a prisoner for any cause shall be reported in writing and kept in the prisoner's file. (Section 5-1010 jail Standards)

A written record of any unusual occurrence including, but not necessarily limited to, incidents of violence, force used against the prisoner, injury to another person by the prisoner, medical and/or dental treatment to include the result of such medical/ dental treatment, disciplinary, and any other incident not named but of such importance that questions could later rise, shall be recorded in the private record file of the prisoner concerned. (Section 5-1011 jail Standards)

### **5. Inmate Rights and Disciplinary Procedures**

The Chief Executive shall publish inmate rights and rules of conduct specifying disciplinary action and penalties which may result from infractions. This will be made available to all inmates through posting, having the inmate read from a copy of the same. Provisions shall be made for those inmates who cannot read, and in every instance there should be a clear understanding of the rights and rules. The receiving of this information shall be noted in writing by the inmate, or if refused, by the officer providing the information. (Section 6-1001 Jail Standards)

#### **Published Inmate Rights Shall Include The Following:**

A. All inmates of a Criminal Detention facility shall have reasonable access to the courts through counsel whether appointed or retained, and in the event counsel has not been retained or appointed, the inmate should have reasonable access to law library materials.

B. All inmates have a right to have access to their attorney. Legal consultation(s) shall be permitted in private, unmonitored and at the place of detention on a reasonable basis.

C. Inmates shall not be segregated solely because of race, creed or color.

D. Inmates shall be permitted to worship or meditate at a reasonable time as prescribed by their faith; to have

access to clergy of their faith, if available; to adhere to dietary laws of their faith where possible. (Section 6-1002 Jail Standards)

E. All inmates have a right to humane treatment which provides for nourishing food, access to medical and dental care when indicated, clean living quarters and a healthy, safe and secure environment. In no way shall denial of regular meal service be used as a disciplinary measure.

F. Inmates have a right to be secure from self-incrimination and shall not be subjected to unlawful attempts to obtain statements and/or confessions while they are incarcerated.

G. At the time of intake, the inmate shall be afforded an opportunity to make a reasonable number of unmonitored phone calls, at the inmate's expense, in which he may contact an attorney of choice, and a member of his family.

### **6. Separation of Persons in Custody Guidelines (8-1001 - 8-1002, Jail Standards)**

The following types of persons shall be separated from each other:

A. Female and male inmates.

B. juveniles not under the protection of the juvenile and Delinquency Prevention Act of the Arkansas juvenile Code.

C. Witnesses and civil prisoners.

The Criminal Detention Facility shall provide for physical separation of the following categories of inmates:

A. Inmates with special problems (alcoholics, narcotic addicts, mentally disturbed persons, physically ill or handicapped persons, persons with communicable disease.)

B. Inmates requiring administration segregation.

C. Pre-trial detainees and post-trial detainees.

D. Misdemeanants and felons.

E. Work release and trustee prisoners should be separated from other prisoners to the greatest extent possible.

### **7. Security**

Every Criminal Detention Facility shall, and absolutely must, have personnel sufficient in number to ensure that the facility is never, under any condition, left unattended while a person is confined therein.

A. There must be paid personnel on duty twenty-four hours per day who are awake, alert and responsive to all situations that might arise. Staffing patterns must be approved by the

Criminal Detention Facility Review Committee to ensure that an adequate number of personnel are on duty at all times. If both male and female inmates are confined, both male and female jail personnel shall be on duty. Personnel must have audio contact with all prisoners, either in person or by means of electronic monitoring devices, at all times. They shall visually check at no more than sixty-minute intervals on an irregular basis, all security features of the cell area, make a count of the prisoners, watching for any unusual factors, and the results of this check shall be

mechanically recorded or manually recorded and initialed or signed, in ink, by the person making the check. In existing facilities where the jailer performs a dual function such as booking officer and dispatcher, the Criminal Detention Facility Review Committee shall assess whether the physical structure of the facility permits him to adequately perform both functions. (Section 9-1001 A. jail Standards)

B. For those inmates who are under the age of 18 or for whom there exists known mental or behavior problems, detention personnel shall check at no more than thirty-minute intervals and the check shall be documented as in paragraph A. above. (Section 9-1001 B. jail Standards)

C. A female officer shall be on duty full time when females are confined, and she shall be required to make all the checks of the cells with female inmates as described in paragraph A. above. Outside of an emergency situation, no male officer will enter the cell where female inmates are being held unless accompanied by a female officer. Outside of an emergency situation, no female officer will enter the cell where male inmates are being held unless accompanied by a male officer. (Section 9-1001 C. Jail Standards)

D. The Chief Executive shall publish a search procedure policy for control of contraband. The responsibility for the proper execution of that search procedure policy shall rest upon the Administrator, or the senior officer present. (Section 91 001 D. Jail Standards)

E. The Chief Executive shall publish a policy to include guidance for all detention personnel in emergency situations. The plan shall establish a procedure to be followed in the event of escapes, riots, fire or smoke situations within the facility, inmate disturbances, assaults against officers or inmates, and should include any other circumstances that the Chief Executive believes to be of a threatening nature. All personnel shall familiarize themselves with the emergency plan and have a very clear understanding of their response and contribution to successfully implementing the plan. (Section 9-1001. D Jail Standards)

F. No inmate shall exercise any authority over other inmates, be given access to records of other inmates, nor be permitted to have access to, or use of, keys that control facility security. (Section 9-1001 F Jail Standards)

G. No person shall be permitted to enter the secure area of the Criminal Detention Facility while armed, except in the event of an emergency. (Section 91001 G Jail Standards)

H. The Chief Executive shall establish a written policy to govern the control and use of fire anus/ammunition, chemical agents and any other security devices. Emergency equipment shall be kept on hand and all detention personnel will be trained in the use of such equipment with the training noted in their personnel file before being permitted access to, or use of, those items. (Section 9-1001 H Jail Standards)

I. The Chief Executive shall establish a written policy to govern key control in the Detention Facility. (Section 9-1001 I Jail Standards)

J. The Chief Executive shall establish a written policy addressing security measures for trustee status inmates. (Section 9-1001 Jail Standards)

## **8. Health**

The Chief Executive shall establish a written plan for making all medical, dental and mental health services

available for inmates. The plan shall include the designation of a health authority. For health care delivered in the facility, adequate space, equipment, supplies and materials shall be provided as determined by the health authority. A private examination room (which can serve other purposes when not used for medical/ dental consultation) should be provided in intermediate term facilities. (Section 10-1002 Jail Standards) A written record shall be made and retained in the file of the facility of all inmate medical and dental complaints and the prescribed medication or treatment. Place, date, time and nature of the health encounter shall be documented. Arkansas Department of Correction medical forms are recommended for use. (Section 101004 Jail Standards)

All medication prescribed for an inmate shall be given in accordance with instructions of the prescribing authority. A complete record shall be retained in the inmate's file of all medication prescribed. A complete record of all medications - given to inmate shall be kept, and, where possible, the inmate shall acknowledge the receipt of medication by signature or initial. All medication shall be kept in a locked storage area. Drug administration will be the responsibility of the Chief Executive or his designee. No inmate shall be allowed to administer medications to another inmate, nor shall any inmate have access to the medical records of another inmate. (Section 10- 1005 jail Standards)

## **9. Food and Food Services**

Inmates shall be offered three meals a day. The menus for these meals will be reviewed once or more annually by a Registered or Certified dietitian using both recommended dietary allowances and the basic four food groups for guidance. The minimum daily calorie level offered for sedentary inmates shall be 2300 calories, and the minimum calories for active inmates shall be 2700 calories. Meals should be served at specified planned times, with a designated person responsible for service. Food should be served promptly after it is prepared to insure that hot food is served hot and cold food is served cold. Coffee, tea or milk or a suitable substitute as well as the appropriate condiments will be served with each meal. (Section 12-1001 Jail Standards)

### **Records**

Records of the food actually served in the Criminal Detention Facility should be preserved for at least twelve months, and shall be checked by a Registered or Certified Dietitian once or more annually to insure that the food actually served makes the calories and other nutrients (protein, iron, vitamins A and C) available to inmates. (Section 12- 1002 jail Standards)

### **Kitchen facilities and personnel**

When provided, kitchen facilities and/or any other entity providing food service to the facility shall conform to the Arkansas Department of Health rules and regulations pertaining to food service establishments. (Section 12-1003 jail Standards)

Food handlers must meet current requirements of the Arkansas Department of Health. (Section 12-1004 Jail

Standards)

Food may be fed to inmates in their cells, day room, corridors, or in a dining room, but wherever served, the area shall be cleaned immediately afterwards and trash removed to an outside dumpster or a garbage collection area. (Section 12-1005 Jail Standards)

Twenty-four Hour/Overnight Facilities are exempt from section 12-1001- 12-1002, and 12-1003; but shall provide three meals at regular intervals and maintain records of the foods actually served for at least 12 months. (Section 12-1007 jail Standards)

## **10. Safety**

While the following sections deal with specific fire and safety measures, this chapter is not intended to be all inclusive in regard to the safety and welfare of the individual inmate. Because potential hazards are too numerous to detail, it is the responsibility of the Chief Executive to establish rules, regulations and inspection procedures for the facility to insure, to the greatest degree possible, the health, safety and well being of the detainee.

The Chief Executive shall have the Criminal Detention Facility inspected at least annually by the state or local fire marshal for the fire prevention and safety measures, and a record of such inspections will be kept on file within the Facility. (Section 14- 1002 Jail Standards)

A written fire plan concerning fire prevention shall be maintained to insure the safety of the inmates, staff and visitors. The plan should detail staff responsibilities, cover evacuation procedures, and through a posted map or drawing show locations of exits, breathing apparatus, fire hoses or fire extinguishers, evacuation routes, and any other features pertinent to fire safety. All personnel will be briefed as to location and use of emergency keys. (Section 14-1003 Jail Standards)

A written emergency plan which covers all emergencies other than fire shall be maintained and all personnel shall be trained and knowledgeable of their duties should an emergency occur. Evacuation procedures shall be detailed and duties assigned to all personnel and shall include the location of keys to emergency exits and instructions for usage. (Section 14-1004 jail Standards)

Facility exits must be plainly and permanently marked. All corridors and walkways leading to or from an exit shall be kept free of refuse, litter and obstacles of all types which might cause problems under emergency conditions. (Section 141005 jail Standards)

Storage of flammable, toxic and caustic materials must conform to local, state and national law regulations. House cleaning supplies shall be kept in a secure and uncluttered closet or locker provided for those materials and shall not be permitted in cells or hallways except when being used. (Section 14-1006 Jail Standards)

When an inmate is permitted to use any tool, all safety rules shall be observed, and any safety equipment recommended, such as goggles and guards for machines, shall be available and used. (Section 14-1007 jail Standards)

Basic fire fighting equipment, to include at least chemical and dry type fire extinguishers, plus emergency compressed air breathing apparatus, shall be maintained in a secure but accessible storage area. (Section 14-1008 Jail

Standards)

## **11. Visiting, Communication and Mail**

The Chief Executive shall establish rules for prisoner visitation by attorney, clergy and other visitors. The timing and conditions are at the convenience of the facility routine and the Chief Executive may set those conditions that best fit into the scheme of orderly operations. (Section 11-1001 Jail Standards)

A. A visitor's log shall be maintained. The Chief Executive shall determine what data should be gathered on visitors and may deny visitation if said data is not provided.

B. Visiting is a privilege that can be revoked by the Chief Executive when he believes it is in the best interest of the security and safety of the Criminal Detention Facility.

C. The Chief Executive shall formulate rules for searching visitors, inmates and visitation areas.

D. The Chief Executive shall establish a written policy governing correspondence by inmates, making provision for inmate's postage allowance of a minimum of two first class stamps per week for those who are indigent.

E. The Chief Executive shall establish a written policy for inspection of incoming mail and packages, to intercept cash, checks, money orders and contraband items. Items seized shall be properly receipted and copy of same furnished to the inmate.

F. The Chief Executive shall establish a written policy to provide for an inmate to send sealed letters to courts, officials of the confining authority, counsel, government officials, administrators of grievance organizations and parole or probation authorities. Letters to and from such cited persons or agencies may be opened for contraband inspection but only in the presence of the inmate.

G. The written policy shall provide that mail will not be held for more than 24 hours, excluding holidays and weekends.

H. Letters or packages to or from inmates shall be opened and inspected for contraband but may not be censored. Letters may be read if there is reasonable suspicion that there is a threat to order and security, or that the letter or package is being used to further illegal activity. If a letter or package is rejected for delivery, the inmate should so be notified unless notification would infringe on security or law enforcement activity.

I. A telephone shall be made available for inmate usage to notify family and legal counsel at time of incarceration. The Chief Executive shall establish policy for other telephone usage.

J. If commissary items are provided, they shall be made available at locally established retail prices. (Sections 11-1001 - 11-1011 Jail Standards)

## **12. Guidelines for Persons Held In Confinement Guidelines**

The Chief Executive of each detention facility shall develop and provide to each person held in confinement a clear set of rules to be followed during his/her period of confinement. The rules should include what is expected of each person being confined. Provisions will be made to insure that those persons unable to read will understand the



rules.

### **Guidelines in developing your policy:**

A. No person in confinement will have control, supervision or assign work to any other person held in confinement.

B. Property receipts shall be kept in the possession of the person held in confinement at all times.

C. All materials assigned to persons held in custody shall be returned in good condition. Persons held in confinement can be punished for destruction of facility property.

D. All persons held in confinement are required to clean the area in which they live.

E. Baths are required as often as necessary to maintain personal cleanliness or a minimum of (2) a week.

F. Failure of persons held in confinement to conduct themselves in an orderly manner can result in a loss of privileges or disciplinary actions.

G. Visits: Regular visiting hours are from - to - on the following days.- A confined person may have visits from members of their immediate family, a minister of their choice, an attorney, and other persons as may be approved by the officials in charge.

H. The rules and regulations of mail correspondence shall be disclosed.

I. Rules regarding packages shall be disclosed to the confined persons.

J. All persons held in confinement must be informed about the commissary, items that are available there and how to purchase them.

K. Religious services are permitted in the facility.

L. A confined person may discuss their problems with the staff officer and state any complaints they may have. Also, the person who is the responsible authority for the facility (sheriff) can, as time permits, visit with a confined person at their request.

M. Persons held in confinement shall be informed that medical and dental services are available when needed.

N. Persons held in confinement may be prosecuted if they escape, attempt to escape, aid others to escape or are responsible for bringing weapons or contraband into the facility.

\* Overnight Lockup Exempt.

### **13. Activities and Services Guidelines**

Idleness of criminal population is one of the most serious problems facing criminal detention facilities today. Idleness can lead to security and discipline problems within the facility. In order to combat this problem, every effort should be made to eliminate idleness.

#### **Classification**

All persons admitted into a facility should be evaluated by trained personnel in terms of criminal, medical and social history. Cases concerning mental and drug related problems should be referred to allied services such as

mental health, alcoholics anonymous, etc. to classify persons for proper separation in the facility; to provide counseling to persons and family when needed.

### **Recreation and Leisure Time**

A. Books, games and crafts should be provided to reduce idleness.

B. Persons held in confinement shall be afforded the opportunity to participate in religious and counseling programs.

### **Employment**

A. Unsentenced persons awaiting trial are not required to work except to keep their living quarters clean. Volunteer work programs shall be made available.

B. Sentenced person may be assigned a variety of jobs in the area of maintenance and housekeeping.

C. Work release programs allow, under certain conditions, the persons in confinement the opportunity to leave the facility for work, school, medical treatment, personal business, or to seek employment. Any person may petition the court for a work release program. The work release must be expressly granted by the court. Work release programs may be revoked at any time with or without notice.

### **Grievances**

Unless it is frivolous or groundless, every detention facility shall hear requests or grievances of persons in confinement. One (1) or more persons shall be designated to hear such requests.

\* Overnight Lockup Exempt.

### **14. General Requirements for Construction and Remodeling Guidelines**

The Criminal Review Coordinator and the Criminal Detention Review Committees are responsible under Act 741 of 1983, as amended, for the construction and remodeling of all criminal detention facilities located in the State. The agency will assist in the planning of new and the remodeling of existing facilities. Schematic and design development drawings shall be submitted for preliminary approval. Building standards and requirements are available through the office of the Review Coordinator.

### **JUVENILE DETENTION**

The following information has been supplied by the Juvenile Detention Facilities Review Commission.

### **DEFINITIONS AND TERMS**

#### **Section 2-1001. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**A. JUVENILE DETENTION STAFF** - one whose primary responsibility is the supervision of the daily activities of detained children. Administrative, food services, janitorial, and other auxiliary staff are not considered to be juvenile detention staff.

**B JUVENILE DETENTION FACILITY** means any facility for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, or charged or convicted of a criminal offense, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff.

**C. FULL SERVICE DETENTION FACILITIES** are programs that detain juveniles for up to 45 days and offer complete residential services such as education and recreational opportunities. The time limit does not apply to juveniles charged in adult court and detained in the facility.

**D. HOLD OVER DETENTION FACILITY (72 HOURS EXCLUDING WEEKENDS AND HOLIDAYS)** - a secure area separate from an adult jail that is used to hold an accused juvenile offender only, prior to a detention hearing.

**E. CHIEF EXECUTIVE** - the elected or appointed person on whom rests the ultimate authority and responsibility for the administration and operation of the juvenile detention facility and for the care and confinement of the detainees confined therein, and for all facility personnel.

**F. HEALTH AUTHORITY** means a licensed physician, health administrator or agency. When this authority is other @ a licensed physician, final medical judgment rests with a single responsible physician who is licensed in Arkansas, who has been so designated by the chief executive.

**G. The use of the term HE and HIM within these standards shall also mean SHE or HER.** Use of the word SHALL within these standards denotes a mandatory standard. Use of the word SHOULD within these standards denotes a recommended standard.

**H. REGISTERED/LICENSED DIETITIAN** means a person registered/licensed by the Commission on dietetic registration after passing a national certification examination.

**I. FAMILY IN NEED OF SERVICES** - means any family whose juvenile evidences behavior which included, but is not limited to, the following:

1. Being habitually and without justification absent from school while subject to compulsory school attendance;
2. Being habitually disobedient to the reasonable and lawful commands of his parent, guardian, or custodian; or
3. Having absented himself from his home without sufficient cause, permission, or justification.

**J. JUVENILE** - means an individual who is under eighteen (18) years, whether married or single.

**K. STATUS OFFENDER** - means a juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

**L. NON-OFFENDER** - means a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

**M. DIRECTOR** - means the individual, employed, either salaried, hourly or by contract, who is charged with the direct, day-to-day responsibilities for administration, operation, supervision of staff and/or juveniles, and maintenance of the juvenile Detention Facility and/or the Hold Over Detention Facility (72 hours).

## **ADMINISTRATION, ORGANIZATION AND MANAGEMENT**

**Section 3-1001. Governing Authority.** (Not applicable to holdover facilities) The governing authority will hold meetings at least semi-annually with the facility administrator to facilitate communication, establish policy, explore problems, ensure conformity to legal and fiscal requirements and implement programs.

### **Section 3-1002. Non-Offenders.**

Abused, neglected, or dependent juveniles shall not be held in the facility.

### **Section 3-1003. Maintenance.**

Service personnel, other than facility staff, shall perform work in the facility only under direct and continuous supervision of facility staff in those areas permitting contact with juveniles.

### **Section 3-1004. Policies & Procedures.**

The facility shall adopt and enforce written policies and procedures which:

- A. Provide for a communications system within the facility that requires at a minimum that the facility administrator meet at least monthly with all staff members;
- B. Specify that the facility administrator participates in the formulation of goals for the facility and establishes policies and priorities related to them;
- C. Provides that the facility administrator report at least quarterly to its governing authority regarding major problems and plans for resolving them;
- D. Provides a policy/ procedures manual that specifically describes the facility's purpose, programs and services offered, which is reviewed at least annually and updated as necessary;
- E. Provides an operations manual that delineates written policies and procedures for operating and maintaining the facility. The manual shall be explained and made available to all employees at the time of their employment;
- F. Describes the roles and functions of employees of other public or private agencies that provide a service to the facility as they relate to the authority and responsibility of the facility administrator;
- G. Provide that legal assistance is available to the facility administrator;

H Require that the juvenile Court served by the facility is advised at least annually of the extent and availability of services and programs for juveniles.

**Section 3-1005. Organizational Chart. (Not applicable to holdover facilities)**

There is an organizational chart for the facility staff that accurately reflects the structure of authority, responsibility and accountability within the facility.

**Section 3-1006. Rules for Private Facility Operation.**

If not a governmental entity, the facility has by-laws approved by the governing authority which are filed with the local and state body and include a minimum:

- A. Membership (types, qualifications, community representation, rights, duties);
- B. Size of the governing authority; Method of selection;
- C. Terms of office;
- D. Duties and responsibilities of officers;
- E. Times authority will meet;
- F. Committees;
- G. Quorums;
- H. Parliamentary procedures;
- I. Recording of minutes;
- J. Method of amending the by-laws;
- K. Conflict of interest provisions;
- L. Specification of the relationship of the facility administrator to the governing authority chief executive.

**FISCAL MANAGEMENT**

**Section 5-1001. Budget.**

The facility budget shall include provisions for:

- A. Salaries and fringe benefits;
- B. Cost of food;
- C. Cost of clothing;
- D. Cost of medical and related services;
- E. Cost of psychological and psychiatric services; if applicable;
- F. Adequate physical facilities and equipment and maintenance of same;
- G. Cost of indoor and outdoor recreational materials and/or services;
- H. Cost of special services as may be required.

**SECURITY AND CONTROL**

**Section 6-1001. Juvenile Detention Staff.**

Sufficient staff must be available so that juveniles are not left unsupervised at any time. During daylight hours, there shall be a ratio that provides a minimum of one (1) staff per twelve (12) juveniles; during sleeping hours there may be one (1) staff per sixteen (16) juveniles. When both male and female juveniles are present and housed in the facility, there shall be a minimum of one (1) male and one (1) female staff person present. At no time shall there be less than two staff

members on duty.

**Section 6-1002. Security Devices.**

Written policies and procedures govern the availability control and use of chemical agents and related security devices. Chemical agents and related security devices are used only at the direction of the facility administrator or designee. A written report is prepared following all use of force and is submitted to the facility administrator.

**Section 6-1003. Facility Security.**

Written policies and procedures require that all security perimeter entrances, exterior doors and all doors the facility administrator determines should be locked are kept locked except when used for admission or exit of employees, detained juveniles or visitors, and in emergencies.

**Section 6-1004. Population Accountability.**

The facility has a system to physically county juveniles that includes strict accountability for juveniles assigned to work and education release, furloughs and other approved, temporary absences.

**Section 6-1005. Daily Logs.**

Written policies and procedures require that supervisory staff maintain a permanent log and prepare shift reports that record routine and emergency situations.

**Section 6-1006. Security Device Maintenance.**

Written policies and procedures provide for weekly inspection and maintenance of security devices, corrective action is initiated when necessary.

**Section 6-1007. Weapons Control.**

No weapons are permitted in the secure section of the facility except in emergency situations. Secure weapon's lockers will be provided within the facility for storage of weapons.

**Section 6-1008. Equipment Control.**

Written policies and procedures govern the control and use of keys, tools, medical and culinary equipment.

**Section 6-1009. Shift Assignments.**

There are written operational shift assignments that state the duties and responsibilities for each assigned position in the facility; these shift assignments are reviewed at least annually and updated as necessary.

**Section 6-1010. Unlawful Flight.**

There are written procedures for handling escapes, runaways and unauthorized absences; these are reviewed at least annually and updated as necessary.

**Section 6-1011. Emergency Procedures.**

There are written plans that specify procedures, including evacuation route(s) from or within facility, staff in charge and areas of responsibility, which must be followed in emergency situations, e.g., natural disasters including fire, earthquake, tornado or similar severe weather disturbances, man-made disasters or other, similar extreme disturbances, or taking of hostages. These plans are made available to all applicable personnel and they are reviewed and updated at least annually.

**Section 6-1012. Restraints.**

Written policies and procedures provide that instruments of restraint are never applied as punishment and are applied only with the approval of the facility administrator or designee.

**Section 6-1013. Use of Force.**

Written policies and procedures limit the use of physical force to instances of self-protection, protection of the juvenile or others, prevention of property damage, prevention of escapes and in accordance with appropriate statutory authority. A written report is prepared following all use of force and is submitted to the facility administrator.

**Section 6-1014. Vehicle Security.**

Written policies and procedures govern safety and security precautions pertaining to facility and staff vehicles.

**Section 6-1015. Policies Governing Transportation.**

Written policies and procedures govern the emergency and non-emergency transportation of juveniles outside the facility and from one jurisdiction to another.

**Section 6-1016. Security Checks.**

For those juveniles for whom there exist known mental or behavioral problems, detention personnel shall check at 5 minute intervals and a check shall be documented. All other juveniles will be checked at 15 minute intervals.

**Section 6-1017. Juvenile Authority.**

No juvenile shall exercise any authority over other juveniles, be given access to records of other juveniles, nor be permitted to have access to, or use of, keys that control facility security.

**Section 6-1018. Search Procedures.**

Searches are conducted in these circumstances only:

A. A juvenile may be required to surrender his clothing and submit to a search only if there is probable cause to believe he is concealing contraband.

B A juvenile may be required to undergo an anal or

genital bodily cavity search only if there is probable cause to believe the juvenile is concealing contraband.

C. A body cavity search may be conducted only by a physician.

D. All special incidents including, but not limited to, the taking of hostages, escapes, assaults, staff use of restraint devices, and physical force are reported in writing to the Director. The report is also placed in the file of the juvenile concerned.

**PERSONNEL**

**Section 7-1001. Hiring Requirements.**

The facility has written policies and procedures that describes:

A. That the facility is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to age, religion, handicap, sex, race, color or national origin;

B. The selection, retention and promotion of all personnel based on merit and specified qualifications;

C. The requirement for a criminal records check for all new employees;

D. The requirement for a physical examination of all employees by a physician at the time of employment;

E. The requirement for a psychological evaluation of all Juvenile Detention Staff as defined in Chapter 2. (See Addendum A).

F. A written grievance procedure available to all employees;

G. A written annual performance evaluation of each employee based on defined criteria which is reviewed and discussed with the employee;

H. The personnel benefits, including at a minimum, the number of holidays, other leave allowances, and expectations concerning work hours, including flextime;

I. The requirements regarding staff-juvenile relationships;

J. The requirements regarding physical fitness requirements;

K. The availability of and requirements regarding in-service training.

**TRAINING AND STAFF DEVELOPMENT**

**Section 8-1001. Training Requirements.**

Written policies and procedures provide that all training programs are presented by persons who are qualified in the areas in which they are conducting training.

**Section 8-1002. Training Curriculum.**

The training curriculum is developed, evaluated, and updated based on an annual assessment that identifies current job-related training needs.

**Section 8-1003. In-Service Training.**

Written policies and procedures provide that all new full-time employees receive juvenile orientation/ training before being independently assigned to a particular job. This orientation/training shall include, at a minimum:

- A. Discussion of the purpose, goals, policies and procedures of the institution and parent agency.
- B. Working conditions and regulations.
- C. Responsibilities and rights of employees.
- D. An overview of the juvenile justice and correctional field.
- E. The following additional areas are specific requirements for staff who supervise juveniles:
  - 1. Security procedures.
  - 2. Supervision of juveniles.
  - 3. Use of force regulation.
  - 4. Report writing.
  - 5. juvenile rules and regulations.
  - 6. Rights and responsibilities of juveniles.
  - 7. Fire and emergency procedures.
  - 8. Key control.
  - 9. Interpersonal relations.
  - 10. Social/cultural lifestyles of the juvenile population.
  - 11. Child growth and development.
  - 12. Communication skills.
  - 13. First aid.

#### **ADMISSION, PROCEDURE AND CRITERIA Section 9-1001.**

##### **Admission Procedure.**

No juvenile may be placed in secure detention in a jail, adult lockup or other adult or juvenile detention facility except as authorized by Act 273 of 1989, Sections 12, 21 and 35.

Written procedures for admitting new juveniles shall include, but are not limited to:

- A. Verification of legal authority to detain.
- B. Search of the juvenile and possessions.
- C. Disposition of clothing and personal possessions and required inventory documentation.
- D. Distribution of personal hygiene items.
- E. Provision for shower and hair care.
- F. Issuance of clean, laundered clothing, if necessary.
- G. Notification of family, custodian or guardian.
- H. Assistance to juvenile in notifying their families of their admission.
- I. Intake interview by a detention worker.
- J. Completion of medical history questionnaire at time of admission.
- K. Provision of written orientation materials.
- L. Recording of basic personal data.
- M. Procedures for handling mail and visiting.
- N. Assignment to a sleeping room.
- O. Notification of the appropriate intake officer.
- P. Medical screening should be conducted within 48 hours, excluding weekends or holidays, by a licensed medical worker, unless the juvenile exhibits illness or injury, then the juvenile shall be referred for immediate medical care.

#### **Section 9-1002. Documentation of Orientation.**

Written policies and procedures shall provide that new juveniles receive an orientation in a manner and method which is understandable to the juvenile. Completion of orientation is documented by a statement that is signed and dated by the juvenile.

#### **Section 9-1003. Admission Telephone Use.**

Written policies and procedures shall grant all juveniles the right to make at least two completed local or collect long distance telephone calls to family members, attorneys, or other approved individuals during the admission process.

### **INTAKE**

#### **Section 10-1001. Detention of Runaways.**

Written policies and procedures prohibit the placement in the facility of children who do not have delinquent or criminal charges filed against them except when they are runaways, living beyond the fifty (50) mile driving distance or out-of state and have absented themselves from their home for more than twenty-four (24) hours. If the juvenile is a runaway and whose parent, guardian or other person resides in this state, the Center may hold this youth for no more than six (6) hours; if the juvenile's parent, guardian or other person lives out-of-state, this youth may be held for twenty-four (24) hours, excluding weekends and holidays. A juvenile held under this paragraph must be separated from the detained juveniles charged or held for delinquent or criminal violations.

### **RELEASE PREPARATION AND TRANSFER PROGRAMS**

#### **Section 11-1001. Procedures for release.**

Written procedures for releasing juveniles include be are not limited to:

- A. Verification of identity.
- B. Verification of release papers.
- C. Completion of release arrangements, including the person or agency to whom the juvenile is to be released.
- D. Return of personal effects.
- E. Completion of any pending action, such as grievances, claims for damages or lost possessions.
- F. Transportation arrangements.
- G. Instructions on forwarding mail.
- H. Written policies and procedures specify that the presence of a detainer is not an automatic bar to release. The basis of any such detainer is to be investigated to determine the status of the detainee and when appropriate, the juvenile is to be released to the detainer.

### **JUVENILE RECORDS**

#### **Section 12-1001. Record Management.**

Written policies and procedures govern record management and include but are not limited to the establishment, utilization, content, privacy, security, and preservation of

records, and a schedule for the retirement or destruction of inactive case records. These policies and procedures are reviewed annually.

### **Section 12-1002. Intake Form.**

An intake form is completed for every juvenile admitted to the facility and contains at least the following information:

- A. Date and time of admission and release;
- B. Name and nicknames;
- C. Last known address;
- D. Legal status (authority for admission);
- E. Name of attorney, if any;
- F. Name, title and signature of delivering officer;
- G. Specific charge(s);
- H. Sex, date of birth, place of birth, race/nationality;
- I. Education and school attended;
- J. Employment, if any;
- K. Religion/ denomination preference;
- L. Health status;
- M. Medical consent forms;
- N. Name, relationship, address and telephone number of the parent(s), guardian(s), or person(s) the juvenile resides with at time of admission;
- O. Driver's license number, social security number and Medicaid number if applicable;
- P. Court and disposition, if any;
- Q. Space for remarks (to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, tattoos, etc.);
- R. Person recording data;
- S. Inventory of property; and
- T. Emergency contact person(s).

### **Section 12-1005. Release of Information Consent Form.**

Information, other than authorized by law, can be released only with a consent form signed by parents, guardian(s), legal custodian(s) and juvenile. The "Release of Information Consent Form" shall be signed before the release of information as required by statute or regulation. The consent form must comply with applicable federal and state statute or regulation and a copy of the form shall be maintained in the juvenile's record.

### **Section 12-1006. Access to Records.**

Consistent with statute and regulation, written policies and procedures provide that individuals and agencies may have access to records for the purposes of research, evaluation and statistical analysis in accordance with a formal written agreement that authorizes access, specific uses of data and ensures confidentiality and security.

## **JUVENILE RIGHTS**

### **Section 13-1001. Rights of Juveniles.**

While being detained, the rights of juveniles shall be preserved. The rights of juveniles while in detention are not diminished or denied for disciplinary reasons. Written policies

and procedures shall provide that juveniles are assured their rights, subject only to the limitations necessary to maintain order and security in the facility. Included are the following juvenile rights:

- A. Freedom from discrimination because of race, national origin, color, creed, sex or physical handicap.
- B. Equal access for male and female juveniles to all programs and services offered at a facility housing both sexes.
- C. A written grievance procedure, which is explained and made available to juveniles, and allows for at least one level of appeal.
- D. Participation in religious services and religious counseling on a volunteer basis.
- E. Access to recreational opportunities and equipment, including, when the climate permits, outdoor exercise.
- F. Access to the courts and confidential contact with attorneys and their authorized representatives; such contact includes, but is not limited to, telephone conversations, uncensored correspondence and visits.
- G. Not to be subject to corporal or unusual punishment, humiliation, mental abuse or punitive interference with the daily functions of living such as eating or sleeping.
- H. To receive visitors as per the facility's policies as outlined in the policies and procedures manual.
- I. To communicate or correspond with persons or organizations.
- J. Reasonable access to the general public through communication's media subject only to the limitations necessary to protect the juvenile's rights.
- K. Media request for interviews shall be in writing.
- L. To determine the length and style of their hair, except in individual cases where such restrictions are necessary for reasons of health and safety.
- M. To keep facial hair, if desired, except in individual cases where such restrictions are necessary for reasons of health and safety.
- N. To wear personal clothing or combinations of their own and facility clothing consistent with the facility guidelines.
- O. To have supervision and control exercised by staff and/or trained volunteers while at the facility.
- P. To not participate in work assignments, unless the work is related to housekeeping, maintenance of the facility grounds, or personal hygiene needs, or the work is part of an approved vocational training program.

## **RULES AND DISCIPLINE**

### **Section 14-1001. Rules of Conduct.**

Written rules of juvenile conduct specify acts prohibited within the institution and penalties that may be imposed for various degrees of violation; the written rules are reviewed annually and updated if necessary.

### **Section 14-1002. Rule Book.**

A rulebook that contains all chargeable offenses, ranges of

penalties and disciplinary procedures is posted in a conspicuous area; a copy is given to each juvenile and staff member, and is translated into those languages spoken by significant numbers of juveniles. When a literacy or language program prevents juveniles from understanding the rulebook, a staff member or translator shall assist the juvenile in understanding the rules.

## **MEDICAL AND HEALTH CARE SERVICES**

### **Section 15-1001. Health Care Plan.**

Written policies and procedures provide for the delivery of health care services, including medical, dental and mental health care services, under the control of a designated health authority.

### **Section 15-1002. Medical Authority.**

Medical, including psychiatric, and dental matters involving medical judgment are the sole province of the responsible physician and dentist, respectively; security regulations that are applicable to facility personnel also apply to health personnel.

### **Section 15-1003. Approval of Health Care Policies.**

Written health care policies and procedures are approved by the responsible physician and/or medical administrator.

### **Section 15-1004. Who May Provide Health Care.**

Treatment by health care personnel other than a physician, dentist, psychologist, optometrist, podiatrist or other independent providers is performed pursuant to written standing or direct order by personnel authorized by law to give such orders. Nurse practitioners and physician assistants may practice within the limits of applicable laws and regulations.

### **Section 15-1005. Certification.**

Appropriate state and federal certification or registration requirements and restrictions apply to personnel who provide health care services to juveniles.

### **Section 15-1006. Medical Screening.**

Written policies and procedures require medical screening for all juveniles, including intrasystem transfers, upon arrival at the facility; all findings are recorded on a printed screening form approved by the health authority.

### **Section 15-1007. Emergency Health Care Plan.**

The facility administration provides 24-hour emergency medical and dental care availability as outlined in a written plan which includes:

- A. Arrangements for the emergency evaluation of the juvenile from the facility;
- B. Arrangements for the use of an emergency

medical vehicle;

C. Arrangements for the use of one or more designated hospital emergency rooms or other appropriate health facilities; and

D. Arrangements for emergency on-call physician and dental services when the emergency health facility is not located in a nearby community.

## **SANITATION AND HYGIENE**

### **Section 16-1001. Health Codes.**

The facility administration complies with applicable federal, state and local sanitation and health codes.

### **Section 16-1002. Weekly Sanitation Inspection.**

Written policies and procedures require weekly sanitation inspections of all facility areas.

### **Section 16-1007. Personal Hygiene.**

Written policies and procedures require that articles necessary for maintaining proper personal hygiene are provided to all juveniles.

## **COMMUNICATIONS, MAIL, VISITATION AND TELEPHONE**

### **Section 17-1001. Correspondence.**

Written policies and procedures governing correspondence of juveniles are made available to all staff and juveniles, and are reviewed annually and updated as needed.

### **Section 17-1007. Visitation.**

Written policies and procedures should schedule regular and reasonable visitation hours and be reviewed annually and updated if needed.

### **Section 17-1010. Access to Telephone.**

Written policies and procedures provide for juvenile's access to the telephone to make and receive personal calls.

## **FOOD SERVICES**

### **Section 18-1001. Menus Approved by Dietitian. (not applicable to holdover facilities)**

The facility's administration and management system shall provide for and documentation shall be maintained which confirms that the facility's system of dietary allowance is reviewed at least annually by a dietitian or physician to ensure compliance with nationally recommended food allowances.

### **Section 18-1002. Quarterly Evaluations. (not applicable to holdover facilities)**

Quarterly evaluations shall be conducted to verify adherence to the nationally recommended basic daily servings as

defined by the United States Department of Agriculture. Facilities which participate in the child care Food and Nutrition Services program are exempt from this provision.

**Section 18-1003. Meal Schedules. (not applicable to holdover facilities)**

Written policies and procedures provide that food service staff develop, in advance, weekly, planned meal schedules and substantially follow such schedules; planning for meals shall take into consideration food flavor, texture, temperature, appearance, palatability and individual nutritional needs.

**Section 18-1004. Single Menu for Staff and juveniles. (not applicable to holdover facilities)**

The food service plan shall provide for a single menu for staff and juveniles.

**SAFETY Section 19-1001. General.**

While the following sections deal with specific fire and safety measures, this chapter is not intended to be all inclusive in regard to the safety and welfare of the individual juvenile. Because potential hazards are too numerous to detail, it is the responsibility of the chief executive to establish rules, regulations, and inspection procedures for the facility to insure, to the greatest degree possible, the health, safety and well being of the juvenile.

**PROGRAMS Section 20-1001. Minimum Services.**

The facility shall provide or make available the following minimum services and programs:

- A. An education program (Not applicable to holdover facilities)
- B. Visiting with parents and guardians.
- C. Private communications with visitors and staff.
- D. Counseling. (not applicable to holdover facilities)
- E. Continuous supervision of living units.
- F. Medical service.
- G. Food service.
- H. Recreation and exercise.
- I. Reading materials.

**CITIZEN AND VOLUNTEER INVOLVEMENT**

**Section 21-1001. Citizen Involvement.**

Written policies and procedures provide for securing citizen involvement in programs.

**Section 21-1002. Volunteer Services Program.**

Written policies and procedures specify the lines of authority, responsibility and accountability for the volunteer services program.

**EXISTING FACILITIES Section 22-1001. Definitions.**

For the purpose of this chapter an existing facility shall be defined as a facility which is in operation on or before the adoption of these standards.

**Section 22-1002. Compliance Deadline.**

All facilities defined as existing facilities under this chapter shall comply with requirements of Chapter 23, New Construction, by January 1, 1996.

**Section 22-1003. Inspections.**

On-site inspections of detention facilities shall be the duty of the Criminal Detention Facilities Review Committee and they shall use these standards to determine compliance.

**Section 22-1004. Documentation.**

Copies of all reports and documents pertaining to detention facilities shall be sent to the office of the Coordinator. A master file of inspection reports on each facility shall be maintained by the Criminal Detention Facility Review Committee at the county clerk's office in the county in which the facility is located. All reporting requirements shall be as set forth by Act 515 of 1989 or as amended.

**Section 22-1005. Environmental Systems, General.**

Lighting will be appropriate to the activity for the area in question. Air circulation shall be provided and temperature shall be maintained between 65 degrees and 85 degrees Fahrenheit. All mechanical, plumbing, electrical, life safety and security control equipment and systems shall be secure from unsupervised juvenile access. An automatic cut-in generator shall be provided of adequate capacity to operate electrical locking devices in facilities so equipped. Automatic cut-in battery backup emergency lighting to provide minimum illumination inside and outside the facility is acceptable.

**Section 22-1006. Fire Alarm.**

Fire, smoke and products of combustion detection equipment shall be provided in accordance with the latest adopted state fire code. Said equipment will be battery operated or part of the emergency power system.

**Section 22-1007. Handicapped Accessibility.**

There shall be facilities available in which to house and care for handicapped juveniles. Readily available alternative facilities may be used to meet this requirement.

**Section 22-1008. Exits.**

There shall be at least two identifiable directions to travel from the door of the sleeping room or rooms to permit the prompt evacuation of juveniles and staff under emergency conditions. Required exits should lead directly to a hazard-free area where adequate supervision can be provided. The two exits must be as remote from each other as possible.

**Section 22-1009. Intake, Booking and Release Areas.**



The intake/booking and release area should be located inside the security perimeter, and have the following components.

- A. Booking area.
- B. Access to drinking water, toilet and wash basin.
- C. Secure storage for juveniles' personal property.
- D. Temporary holding area(s) with seating.

Provisions should be made to insure the safety of juveniles and personnel and the security of the facility. The intake area may also be used to process juveniles for release.

#### **Section 22-1010. General Housing Requirements.**

All rooms or cells have, at a minimum, access to the following facilities:

- A. A toilet above floor level, a wash basin and shower facilities, both with hot and cold running water.
- B. A bed above floor level.

#### **Section 22-1011. Single Occupancy Housing.**

The minimum square foot area of single sleeping or observation rooms will be 50 square feet per juvenile. If confinement exceeds 12 consecutive hours per day, 70 square feet per room will be provided. Space is measure from interior to interior wall less the space occupied by plumbing chases and columns. The space includes the area occupied by bed and plumbing fixtures.

#### **Section 22-1012. Multiple Occupancy Housing.**

Where used, multiple occupancy sleeping rooms shall house no more than four (4) juveniles. This area shall provide:

- A. The ability for observation by staff.
- B. A minimum floor area of 35-square feet per juvenile.
- C. Beds above floor level.

#### **Section 22-1013. Special Housing. (not applicable to holdover facilities)**

There shall be at least one room for administrative segregation of juveniles which provides for staff observation. Readily available alternative facilities may be used to meet this requirement.

#### **Section 22-1014. Activity Rooms. (not applicable to holdover facilities)**

Activity rooms in the facility must have sufficient air circulation, temperature and lighting for the activities being performed and access to toilets and wash basins within the area. These areas include multipurpose rooms, recreation areas or program areas for juveniles and/or work areas for staff. Where practical, activity rooms should have natural light provided by skylight or windows.

#### **Section 22-1015. Linen Storage.**

Space shall be provided to store and issue facility clothing and bedding, and to provide for the exchange of personal and facility clothing when juveniles appear in court or are to be released. Storage space for clean bedding and facility clothing shall be convenient to juvenile housing areas.

#### **Section 22-1016. Exercise Spaces. (not applicable to holdover facilities)**

Juveniles detained in excess of 72 hours shall have access to outdoor or indoor exercise areas. Indoor exercise programs may be conducted in a multipurpose room or room specifically set aside for indoor exercise, in spaces in which lighting, temperature and ventilation are appropriate for the activity to be conducted. Hallway areas will not be considered exercise space.

#### **Section 22-1017. Secure Storage.**

Space shall be provided for the secure storage of chemical agents, restraining devices and related security equipment. The equipment shall be located in an area which is accessible to authorized personnel only. Separate and secure space will be provided for evidence and contraband. Cleaning equipment and supplies shall be stored in a supervised area.

#### **Section 22-1018. Administrative Space.**

Adequate space will be provided for general administrative and staff functions.

#### **Section 22-1019. Food Service.**

Adequate space and equipment will be provided for food preparation and/or handling.

#### **Section 22-1020. Visitation and Consultation Area.**

The area for approved visitors shall be inside the security perimeter of the facility.

#### **NEW CONSTRUCTION Section 23-1001. Definitions.**

For purposes of this chapter "new construction" shall be defined as:

- A. Any new facility.
- B. Any area of construction added beyond outside walls and/or roof of an existing facility.
- C. Any area of construction within an existing facility affecting more than 50% of the existing facility's overall floor area.

(For purposes of this chapter, "remodeling" is defined as construction within the existing facility's structure affecting 50% or less of the existing facility's overall floor area.)

The intention is to have all new areas of construction or remodeling either inside or outside an existing facility meet

the specifically applicable section or sections as outlined in this chapter.

**Section 23-1002. Plan Review.**

All design plans shall be presented in person by the agency requesting approval to the Criminal Detention Facility Review Committee of the local judicial district and will be accompanied by a written narrative explaining detailed compliance with these standards. The state coordinator will make himself available to assist the requesting agency with review of plans for standard conformity, but the coordinator has no official approval capacity.

**Section 23-1003. Plan Approval.**

As described in Act 515 of 1989 or as amended, the Criminal Detention Facility Review Committee shall have final approving authority of plans relating to compliance with standards for the construction of detainee facilities. The Committee will issue written approval and final approval will be withheld until Committee requested changes have been incorporated and resubmitted.

**Section 23-1004. Documentation.**

Copies of all reports and documents pertaining to detention facilities shall be sent to the office of the Coordinator. A master file of inspection reports on each facility shall be maintained by the Criminal Detention Facility Review Committee at the county clerk's office in the county in which the facility is located. All recording requirements shall be as set forth by Act 515 of 1989 or as amended.

**JUVENILE DETENTION FACILITIES OR JUVENILE HOLDOVER FACILITIES WITHIN ADULT JAILS Section 24-1001. Juvenile Detention Facilities or Juvenile Holdover Facilities Within Adult jails.**

A juvenile Detention Facility falls under this category when it exists within the same building or on the same grounds as the adult jail. Application of this section does not preclude compliance with regulations of the state standards as defined in Chapter XXII "Existing Facilities" or Chapter XXIII "New Construction".

**Section 24-1002. Separate Spatial Areas.**

Total separation between juvenile and adult facility spatial areas is required such that there could be no haphazard or accidental contact between juvenile and adult detainees in the respective facilities, including:

- A. Entrance
- B. Intake/Processing
- C. Dining
- D. Indoor Recreation
- E. Outdoor Recreation
- F. Education
- G. Counseling
- H. Other Programs
- I. Living Units

- J. Visitation
- K. Day Rooms

**Section 24-1003. Separate Program Activities.**

Total separation in all juvenile and adult program activities within the facilities is required, including:

- A. Recreation
- B. Education
- C. Counseling
- D. Health Care
- E. Dining
- F. Sleeping
- G. General Living Activities

**Section 24-1004. Time-Phasing.**

Time-phasing spatial areas and activities between juvenile and adult detainees shall not occur.

**Section 24-1005. Separate Staff.**

Separate juvenile and adult staff is required, including:

- A. Management
- B. Juvenile Detention Staff

**Section 24-1006. Specialized Services Staff.**

Specialized services staff who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both. Such staff includes the following:

- A. Cooks
- B. Bookkeepers
- C. Medical Professionals

**Section 24-1007. Staff Rotation.**

Juvenile facility staff and adult facility staff shall not be rotated between facilities based on the occupancy in either facility.

**Section 24-1008. Relief Workers.**

Adult facility staff shall not serve as relief workers for the juvenile facility on their regular scheduled workdays in the jail, and may only enter the juvenile facility in emergency, life-threatening situations.

**Section 24-1009. Adult Resident Trustees.**

Adult detainees (trustees) shall never be permitted to supervise or direct services for juvenile detainees, such as serving meals, dispensing reading materials, etc.

**PSYCHOLOGICAL EXAMINATION REPORT**

Chapter VII, Section 7-1001, E., of the juvenile Standards requires that applicants be examined for emotional stability

by an individual licensed to practice psychiatry or psychology and qualified to perform such evaluations in the State of Arkansas. The emotion stability to withstand the pressures of modern law enforcement work 's an essential qualification for applicants for law enforcement service and although

psychological tests and interviews have recognized limitations, many personality defects can and are detected through screening by training professionals.

## **Failure to Train, Hire or Supervise**

**A Sheriff has an affirmative duty to provide necessary training, hiring or supervision. A Sheriff can not be deliberately indifferent to training needs, hiring needs, and supervision needs.**

**TRAINING:** If a training need is so obvious and the inadequacy is likely to result in violation of constitutional rights, then policymakers may reasonably be said to have been deliberately indifferent to training needs. *City of Canton v. Harris*, 489 U.S. 378 (1989).

**HIRING:** Where adequate scrutiny of an applicant's background would lead a reasonable policymaker to conclude that the plainly obvious consequence of the decision to hire the applicant would be to deprive a third party of federally protected rights, than a county may be deemed deliberately indifferent to hiring needs. *Board of County Commissioners of Bryan County v. Brown*, 520 U.S. 397 (1997).

**SUPERVISION:** Where it is obvious that the offending officer was highly likely to inflict the particular injury suffered by plaintiff, there may be sufficient evidence to conclude that it was obvious that the sheriff made a policy decision not to train the particular deputy in question and this would result in a constitutional deprivation. *Brown v. Bryan County*, 219 F. 3<sup>rd</sup> (5<sup>th</sup> Cir. 2000).

The information above on "Failure to Train, Hire or Supervise" was provided by courtesy of Mike Rainwater, Attorney at Law.

# Chapter 7 -CONTRACT LAW ENFORCEMENT

This chapter on Contract Law Enforcement was included to familiarize Sheriffs and deputies with all aspects of that service delivery. What can and cannot be expected of that contractor. Planning and implementing the delivery of law enforcement services under contract. How department resources can best be managed to make contract programs work.

Cities are contracting more with counties for countywide law enforcement and counties/ states are contracting more for the operation of county jails/ state correctional facilities.

Contract law enforcement programs are gaining popularity nation-wide because of limited resources available to local governments.

<b>CONTENTS</b>	<b>Page</b>
I. Introduction to Contract Law Enforcement	64
A. Delivery Systems	
B. Growth of Contract Law Enforcement	
II. Essential Considerations in Delivery Contract Law Enforcement Services	65
A. Legal Authorization	
B. Service Area	
III. Costing and Financing Contract Law Enforcement Services	65
IV. Managing Manpower, Facilities and Equipment For Contract Programs	66
A. Manpower	
B. Facilities and Equipment	
V. The Contract Process 7-122	66
A. Feasibility Study	
B. Developing the Proposal	
C. Interlocal Cooperation Act	

## CONTRACT LAW ENFORCEMENT

### I. Introduction to Contract Law Enforcement

Contract law enforcement is one of the most promising developments in the criminal justice system. As its growing popularity demonstrates, contracting for law enforcement services is attractive to the law enforcement manager and local officials alike. Versatile and practical, contract law enforcement programs share many standard characteristics, yet with careful planning, each can be adapted to meet a wide variety of situations and needs.

Contract law enforcement is a voluntary program in which one government enters into a formal, legally binding agreement to provide law enforcement services to another government for a fee and without altering the fundamental powers and responsibilities of either government. In the context of this discussion, an agreement to provide law enforcement services is:

-Voluntary: - It is established, modified and renewed by contract

-Formal: - It is accomplished according to obligations, conditions, and standards of performance stipulated in a written document

-Legally Binding: - It creates a legal relationship among the participants that guarantees their rights and duties

-Involves a Fee: - It requires the payment of fees for services rendered -Does Not Alter Fundamental Governmental Powers and Responsibilities: It involves only a limited transfer of authority to enable one government to become the paid agent of another for the purpose and duration of the agreement.

### A. Delivery Systems

Contracting for law enforcement services permits great flexibility in service delivery. A contract for law enforcement services may range from the purchase of a single service to the procurement of a complete law enforcement protection package of primary, auxiliary, and technical services. To better understand how contract law enforcement services are purchased and delivered, it is helpful to view contracting as consisting of either general service or selective service programs.

General service contract programs involve a provider government, its producer agency, and the recipient government. This involves three participants:

-Provider Government: - The state, county or municipal government that agrees to provide law enforcement services.

-Producer Agency: - The provider government's law enforcement agency that actually produces and delivers these services.

-Recipient Government: - The government that purchases and receives these services.

Four of the most common general service delivery systems in operation today include:

-Standard Patrol Beat Delivery: - In this delivery system, the recipient government purchases a desired level of patrol coverage and the producer agency treats the contract service as a new beat.

-Resident Deputy or Trooper: - This is one of the oldest delivery systems for general contract services and one that remains popular in rural areas and small towns. A resident program involves one, or possibly two, designated officers assigned to a contract service area for extended

tours of duty ranging from several months to several years. These officers usually live in or near the community they serve.

-Regional or Shared Patrol Beat Delivery: This system is of growing popularity among contiguous jurisdictions. In regional or shared beat delivery, artificial political boundaries are ignored and two or more contract service areas are treated as a single entity.

-Mixed Delivery: In some instance where general law enforcement services are delivered within a regional or shared beat delivery system, a recipient government may determine that it has particular law enforcement needs not shared by other recipients. These needs might include a community relations officer, a school safety officer, increased traffic control, -and so forth. If this recipient government chooses to purchase supplemental or specialized services in addition to its general coverage from the regional delivery system, a mixed delivery of services results. In selective service contracting, the recipient government purchases one or more services separately to supplement the general law enforcement services provided by its own department. Thus, there is a forth participant in selective service contracting; the recipient agency, which remains the primary deliverer of law enforcement, services throughout its jurisdiction.

## **B. Growth of Contract Law Enforcement**

Like most other manifestations of modern government, contract law enforcement is the product of evolution. In Los Angeles County, California, generally considered the birthplace of contract law enforcement, contracting for law enforcement services came about as part of the "Lakewood Plan". The Lakewood Plan called for most municipal services, including law enforcement, to be purchased from and provided by the county. Although law enforcement was only one of the many services purchased together as a single package under contract, it proved to be one of the most successful services obtained in this manner.

## **II. Essential Considerations in Delivery Contract Law Enforcement Services**

Law enforcement managers, contracting for the first time, soon discover that there isn't an "black magic" to the delivery of contract services, and that the application of familiar law enforcement techniques and proven expertise can be relied upon to result in effective contract field operations. But they also quickly discover that delivering services within the context of a negotiated agreement to a new contract service area often requires special attention to perspectives, potentials and problems that are seldom encountered to the same degree or in the same form when conducting law enforcement within a more traditional framework. An informed understanding of these considerations is essential to developing a successful contract program.

### **A. Legal Authorization**

A unit of local government usually is limited to contracts authorized expressly by state legislative acts or

constitutional provisions, or as may be necessarily implied from such an express authorization. For more than fifty years, state legislatures have been providing broader and more general grants of contracting authority to their political subdivisions. Today, contracting for law enforcement services is permitted in almost every state. Still, grants of authority vary, and not all state legislation is equally broad either as to the types of services that may be contracted for or the units of government permitted to contract. Occasionally, questions arise regarding the impact of home rule grants upon the authority to contract, the scope of contracting authorizations, and the relationship between general and specific grants of contracting authority.

### **B. Service Area**

Service areas can range from the corporate entities of governmental units to bodies of water, parks and forests and other topographic features. The boundaries of the service area must be precisely determined to fix the jurisdictional limits of local enforcement authority that may be delegated by the recipient government and to define the geographic basis for estimating service requirements and planning service delivery. Basic information should be collected and processed to assess crime rates and patterns and the frequency and distribution of calls for service. Specific enforcement hazards, patrol barriers, patterns of use, and other characteristics of the service area that are important to field operations should also be surveyed and evaluated.

### **III. Costing and Financing Contract Law Enforcement Services**

Costing and financing contract law enforcement services are sometimes difficult and are always highly dependent upon the specific circumstances and needs of the contract participants. The challenge of costing and financing contract services has been in many different ways, using widely varied techniques and criteria.

The least complicated way to determine costs and fees for contract law enforcement services, and on that is compatible with the line item budgets of most producer agencies, is to calculate the hourly cost of a one-person patrol unit. The following is a list of various cost categories to which expenses can be assigned when developing a program budget.

#### **Personnel**

- Base Salary - Fringe Benefits
- Overtime - Uniform
- Training

#### **Field Equipment**

- Vehicle - Weapons
- Personal Gear - Expendable Supplies

#### **Indirect Support**

- Administration - Auxiliary/Technical Services
- Planning - Dispatch and

#### Communications

- Budgeting - Crime Laboratory
- Fiscal & Personal - Records and Identification

#### Management

- Secretarial - Facilities
- Public Information and - Fixtures

#### Community Relations

- Office Space and Equipment
- Utilities
- Physical Plant

As a rule, municipal provider governments, which bear no constitutional responsibilities or statutory obligation to provide law enforcement protection beyond their boundaries of incorporation, charge the full costs of contract services delivered by their producer agencies.

Estimating costs for these contract programs is usually a straightforward process: divide the law enforcement budget of the producer agency by the number of patrol officers, supervisors, and investigators assigned to field operations. This yields the average annual direct personnel, field equipment, and indirect support costs of maintaining a single patrol officer and his vehicle in the field.

Because recipient governments frequently purchase contract law enforcement services in blocks of patrol time, it may be useful to further breakdown annual cost estimates to an hourly basis. This requires an accurate determination of the number of hours that an officer actually is available for work. A basic work year consists of 2,080 hours, however, due to holidays, vacation, sick leave, and training, an officer will not be available to service a contract for all of these hours.

### **IV. Managing, Manpower, Facilities and Equipment for Contract Programs**

Optimum effectiveness in the delivery of contract law enforcement services is very much dependent on the management of the programs resources: its manpower, facilities, and equipment. These are the raw materials of a contract program that, when coupled with sound decision-making and planning, result in a successful contract law enforcement program.

#### **A. Manpower**

If a new contract law enforcement program is to succeed, the personnel of the producer agency must be induced in a positive way to work for its successes. The most productive motivation involves appealing to the individual's self-interest, loyalty and pride.

Whether it is better to rotate contract personnel or make their positions fixed largely remains an open question.

Most producer agency managers, however, tend to favor periodic rotation for general contract assignments, whereas, specialized assignments are more commonly fixed.

As a general rule, the final say in the selection and assignment of personnel qualified to deliver law enforcement services under contract is the responsibility of the producer agency. This is because, as the employer, and because of its expertise in law enforcement, the producer agency is in the best position to assure that minimum professional qualifications, including those for training and experience, have been met and that the officer is committed to program success.

#### **B. Facilities**

Expanded headquarters or field facilities are sometimes needed for contract law enforcement programs requiring substantial increases in manpower and equipment or more decentralized field operations. Producer agencies contracting for the first time occasionally fail to forecast their needs for additional space and fixtures. Sometimes these agencies have discovered that the offices, storage, parking lot, or garage and gas tank of their department are not adequate to support the new contract program.

Estimates of extra personnel and equipment necessary for the delivery of contract services should be matched against existing facilities. The housing requirements of "process" activities such as booking, records, and evidence should not be overlooked. Potential deficiencies should be identified and corrective action taken. This is a good time to assess facility management practices. It is possible that the present physical plant can be made to service through improved scheduling of workflow and a more productive use of available space.

#### **C. Equipment**

Depending upon the quantity and type of service delivery, contract programs frequently require additional items of standard field equipment and, upon occasion, special equipment items must be procured. For example, if a state police department that usually emphasizes statewide traffic enforcement develops a resident trooper to provide general law enforcement services to a small community, it could be forced to acquire additional vehicles to serve as take-home cars and walkie-talkies to support foot patrol and community relations work requiring contract officers to be away from their vehicles. On the other hand, a sheriffs' department accustomed to concentrating upon preventative patrol, may have to acquire radar units and traffic investigation kits should it become obligated to provide traffic enforcement according to the terms of a selective service contract.

#### **V. The Contract Process**

There are many ways to develop a contract program. A few producer agencies have first designed detailed framework for contract programs and then initiated negotiations with potential recipient governments. Many other times, however, potential recipient governments have taken the lead and proposed contracting to producer agencies that may have never considered establishing a contract law enforcement program. The majority of

successful producer agencies await contact by potential governments and utilize their existing programs as real world examples of what services are available and how they are delivered. Regardless of who first approaches whom, it is recommended that a standard contact process or "procurement cycle" be followed to structure program development as efficiently as possible.

The contract process consists of six steps. These steps may overlap in practice but they are interlinked, and each step should be largely completed before work is begun on the next. The six steps of the contract process are:

1) Conducting a feasibility study: The potential recipient government assesses what the local needs for better law enforcement actually are and determines if contracting is the most feasible means to satisfy those needs.

2) Requesting proposals: If the potential recipient government's determination is in favor of contracting, it adopts a resolution of intent to contract and requests proposals from producer agencies.

3) Developing the proposal: In response to the request for a proposal, the producer agency provides a statement of its contracting capabilities and a concrete plan for a contract program tailored to the requirements of the potential recipient government; after presenting its proposal, the producer agency stands ready to follow-up with additional information and assistance as requested.

4) Gaining acceptance: The prospect of contracting may meet active opposition from some groups within the community; even if it doesn't, the average citizen should be informed of what contract law enforcement means to him; to accomplish these tasks, the potential recipient government reaches out to persuade opponents of contracting, if any, and designates information to the public.

5) Negotiating the contract: The producer agency and potential recipient government decide exactly what type of contract configuration can best get the job done and draw up the contract - a functional statement of the major components of the contract program serving as a fixed reference point for final program development and implementation.

6) Implementing the contract program: The producer agency and recipient government collaborate to put the contract program into operation.

## **Interlocal Cooperation Act**

### **Section.**

**25-20-101.** Title.

**25-20-102.** Purpose.

**25-20-103.** Definitions.

**25-20-104.** Agreements for joint or cooperative action - Authority to make - requirements generally.

**25-20-105.** Agreements for joint or cooperative action - Filing - Interstate. compacts - Liability for damages.

**25-20-106.** Agreements for joint or cooperative action

- Submission to and approval by state officer or agency controlling services or facilities

**25-20-107.** Appropriation of funds -Supplying of personnel or services

**25-20-108.** Contract for services from another agency Requirements - Limitations

### **25-20-101. Title.**

This chapter may be cited as the "Interlocal Cooperation Act."

### **25-20-102. Purpose.**

It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

### **25-20-103. Definitions**

As used in this chapter, unless the context otherwise requires:

(1) "Public agency" means any school district, any political subdivision of this state, any agency of the state government or of the United States, any political subdivision of another state, water districts created under the provisions of 14- 116101 et seq., and fire departments organized under the laws of this state if the fire departments offer fire protection services to unincorporated areas and have received approval by their quorum courts for participation in an interlocal cooperation agreement.

(2) "State means a state of the United States and the District of Columbia.

### **25-20-104. Agreements for joint action - Authority to make - Requirements generally**

(a) Any governmental powers, privileges, or authority exercised or capable of exercise by a public agency of this state alone may be exercised and enjoyed jointly with any other public agency of this state which has the same powers, privileges, or authority under the law and jointly with any public agency of any other state of the United States which has the same powers, privileges, or authority, but only to the extent that laws of the other state or of the United States permit the joint exercise or enjoyment.

(b) Any two (2) or more public agencies may enter into agreements with one another for joint cooperative action pursuant to the provisions of this chapter. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before the agreement may enter into force.

(c) Any agreement for joint or cooperative action shall specify the following:

(1) Its duration;

(2) The precise organization, composition, and nature of any separate legal or administrative entity created

thereby, together with the powers delegated to it, provided that the entity may be legally created;

(3) Its purposes;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefore;

(5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon the partial or complete termination; and

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, in addition to the items enumerated in subdivisions (c)(1) and (c)(3)-(6) of this section, the agreement shall contain the following:

(1) Provisions for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented; and

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(e) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, performance may be offered in satisfaction of the obligation or responsibility.

(f)(1) Every agreement made under this section prior to and as a condition precedent to its entry into force shall be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of this state.

(2) The Attorney General shall approve any agreement submitted to him or her under this section unless he or she shall find that it does not meet the conditions set forth in this section and shall detail, in writing addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law.

(3) Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.

(g) Financing of joint projects by agreement shall be as provided by law.

(h) In addition to other specific grants of authority as provided in the Arkansas Constitution and statutes and in addition to the formal cooperation authorized by this chapter, cities, towns, counties, and other units of government are authorized to associate and cooperate with one another on an informal basis without complying with the detailed procedure set out in this section.

(i) In addition to the legal or administrative entities which may otherwise be legally created under Arkansas statutes, public agencies may create a separate legal entity in the form of a public body corporate and politic pursuant to:

(1) Section 25-20-201 et seq. for the purpose of constructing, operating, and maintaining a public library system;

(2) Section 25-20-301 et seq. for the purpose of constructing, owning, operating, financing, and maintaining a consolidated waterworks system; or

(3) Section 25-20-501 et seq. for the purpose of constructing, operating, financing, and maintaining a consolidated wastewater system.

#### **25-20-105. Agreements for joint cooperative action – Filing – Interstate compacts – Liability for damages.**

(a) Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county clerk and with the Secretary of State.

(b)(1) In the event that an agreement entered into pursuant to this chapter is between or among one (1) or more public agencies of this state and one (1) or more public agencies of another state or the United States, the agreement shall have the status of an interstate compact but, in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest. The state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein.

(2) The action shall be maintained against any public agencies whose default, failure of performance, or their conduct caused or contributed to the incurring of damage or liability by the state.

#### **25-20-106. Agreements for joint or cooperative action - submission to and approval by state officer or agency controlling services or facilities.**

(a) In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or an agency of the state government has constitutional or statutory powers of control, the agreement, as a condition precedent to its entry into force, shall be submitted to the state officer or agency having the powers of control, the agreement, as a condition of precedent to its entry into force, shall be submitted to the state officer or agency having the power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the Attorney General pursuant to 25-20-104.

(b) This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the Attorney General.

#### **25-20-107. Appropriation of funds - Supplying of personnel or services.**

Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing personnel or services therefore which may be within its legal power to furnish.



**25-20-108. Contract for services from another agency - Requirements -Limitations**

(a) Any one (1) or more public agencies may contract with any one (1) or more other public agencies to perform any governmental service, activity, or undertaking which each of the public agencies entering into the contract is authorized by law to perform alone, provided that the contract shall be authorized by the governing body of each par to the contract. The contract shall set forth fully the purpose, powers, rights, objectives, and responsibilities of the contracting parties.

(b) However, nothing in this chapter authorizes, or shall be construed to authorize, any public agency to enter into any contract, agreement, or undertaking with any other public agency to purchase, condemn, or otherwise acquire any plant, property, facilities, or business owned or operated by any regulated public utility or pipeline company or to jointly construct or operate any such plant, property, or facility.

**14-14-910. Interlocal agreements.**

(a) GENERALLY. The county court of each county may contract, cooperate, or join with any one (1) or more other governments or public agencies, including any other county, or with any other political subdivisions of the state or any other states, or their political subdivisions, or with the United States to perform any administrative service, activity, or undertaking which any contracting party is authorized by law to perform.

(b)(1) DEFINITIONS. "county interlocal agreement" means any service contract entered into by the county court which establishes a permanent or perpetual relationship thereby obligating the financial resources of a county. Grant-in-aid agreements enacted through an appropriation ordinance shall not be considered an interlocal agreement.

(2) "Permanent or perpetual relationship" means for purposes of this section any agreement exhibiting an effective duration greater than one (1) year, twelve (12) calendar months, or an agreement exhibiting no fixed duration but where the apparent intent of the agreement is to establish a permanent or perpetual relationship. Such interlocal agreements shall be authorized by ordinance of the quorum court. Any interlocal agreement enacted by ordinance may provide for the county to;

(A) Cooperate in the exercise of any function, power, or responsibility;

(B) Share the services of any officer, department, board, employee, or facility; and

(C) Transfer or delegate any function, power, responsibility, or duty.

(c) CONTENTS. An interlocal agreement shall:

(1) Be authorized and approved by the governing body of each party to the agreement.

(2) Set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties; and

(3) Specify the following:

(A) Its duration;

(B) The precise organization, composition, and nature of any separate legal entity created;

(C) The purposes of the interlocal agreement;

(D) The manner of financing the joint or cooperative undertaking and establishing and maintaining a budget;

(E) The permissible methods to be employed in accomplishing the partial or complete termination of an agreement and for disposing of property upon partial or complete termination. The methods for termination shall include a requirement of six (6) months written notification of the intent to withdraw by the governing body of the public agency wishing to withdraw;

(F) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking including representation of the contracting parties on the joint board;

(G) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking; and

(H) Any other necessary and proper matters.

(d) SUBMISSION TO LEGAL COUNSEL. Every agreement shall, prior to and as a condition precedent to its final adoption and performance, be submitted to legal counsel who shall determine whether the agreement is in proper form and compatible with all applicable laws. The legal counsel shall approve any agreement submitted to him unless he finds it does not meet the conditions set forth in this section. Then he shall detail in writing addressed to the governing bodies of the public agencies concerned the specific reasons in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement within thirty (30) days of its submission shall constitute approval....

## Chapter 8 – SHERIFF FEES AND FUNDS

**Sheriff’s Communication & Equipment Fund:**

**21-6-307. Sheriffs.**

<b>Description of the Service</b>	<b>Fees</b>
(a) The following fees shall be charged by each of the sheriffs of the several counties of the State of Arkansas:	
(1) For serving every summons, capias, scire facias, attachment, writ of garnishment, writ of injunction, or subpoena .....	\$ 30.00
(2) For serving a writ of execution.....	100.00
(3) For commission for receiving and paying money on execution or process when lands or goods have been taken into custody, advertised, or sold .....	10%
(4) For every return of a writ, summons, or subpoena, original or judicial .....	20.00
(5) For executing a writ of inquiry .....	20.00
(6) For executing a certificate of purchase for real estate under execution .....	20.00
(7) For making, executing, and subscribing a sheriff's deed to be paid by purchaser .....	30.00
(8) For serving each order, notice, or rule of any court .....	30.00
(9) For serving each notice to vacate .....	30.00
(10) For advertising goods or lands for sale.....	30.00
(11) For returning each execution or attachment.....	20.00
(12) For advertising elections in each voting precinct .....	20.00
(13) For delivering voter registration books for each voting precinct .....	20.00
(14) For serving warrant or order of arrest from any court.....	50.00
(15) For taking and entering every bail or delivery bond.....	20.00
(16) For attending every trial of a criminal or civil case of confession in open court.....	20.00
(17) For serving subpoena for special jurors .....	20.00

(b)(1) Seventy-five percent (75%) of all fees collected by the sheriff shall be paid into the county treasury in the manner provided by law, or to the person entitled to receive the money, or to his or her order, or to his or her attorney of record.

(2)(A) The remaining twenty-five percent (25%) of all fees collected by the sheriff shall be used by the sheriff to establish a special fund to be known as the communications facility and equipment fund.

(B) All funds so designated shall be invested by the sheriff in an interest-bearing account or certificate of deposit in one (1) or more banking institutions domiciled within the State of Arkansas and insured by the Federal Deposit Insurance Corporation.

(C) All sums paid into the communications facility and equipment fund by the sheriff may accumulate as to principal and interest until such time as the deposits or a portion thereof are needed by the sheriff to:

- (i) Train operations staff;
- (ii) Operate, equip, repair, or replace existing communications equipment;
- (iii) Purchase additional communications equipment; or
- (iv) Otherwise improve a communications facility or system for the sheriff's department.

(D) At the discretion of the sheriff, any funds not needed by the sheriff for any of the purposes under this subdivision (b)(2) may be transferred to the county general fund.

(c) The court clerk shall on or before the fifteenth day of each month transmit to the sheriff the fees collected under this section, and the sheriff shall dispose of the fees as provided in this section.

(d) If more persons than one are named in a writ, process, or subpoena, fees shall be charged for each named, unless parties reside or are employed in the same location.

(e) The fees provided shall be for serving of process from any of the several courts of the county.

(f) The fees set forth in this section shall be the sole and exclusive fees to be charged by the sheriffs of the several counties of this state for each of the services enumerated in this section.

#### **12-41-105. Commissions from prisoner telephone services.**

(a) Commissions derived from prisoner telephone services provided in the various county and regional detention facilities in the state shall be deposited in the county treasury of the county in which the detention facility is located and shall be credited to the sheriff's office fund.

(b)(1) Of the commissions deposited in the sheriff's office fund in each county pursuant to subsection (a) of this section, one hundred percent (100%) shall be credited to the sheriff's office communications facility and equipment fund.

(2) Each sheriff's office may allocate for the maintenance and operation of the county jail up to fifty percent (50%) of the commissions deposited to the sheriff's office communications facility and equipment fund.

(c) The provisions of this section do not apply to funds derived from prisoner telephone services provided in Department of Correction facilities or Department of Community Correction facilities or in municipally owned detention facilities or in county detention facilities in counties with a population of one hundred seventy-five thousand (175,000) or more according to the latest federal decennial census.

**AG OPINION NO. 2002-008:** The Commissions from the prisoner telephone services authorized under ACA 12-41-105 are to be placed into the Sheriff's Communications Facility and Equipment Fund which is created under ACA 21-6-307. The law authorizes up to 50% to be used for the maintenance and operation of the jail, the remainder is to be used as provided by ACA 21-6-307(b)(2)(C): to operate, repair, purchase, equip or replace communication equipment, etc.

**AG OPINION NO. 2003-074:** The 25% used to establish the communication facility and equipment fund under ACA 21-6-307 must be placed in an interest bearing account and may not simply be placed into the budget a line item and used by the Quorum Court. An illegal exaction case may exist where funds that were supposed to be available to a sheriff under ACA 21-6-307 are misappropriated or misdirected.

**AG OPINION NO. 2004-277:** Phone cards may be sold to prisoners using commissary funds. ACA 12-41-105 requires the commissions on telephone services, including profits, be credited to the sheriff's facility equipment and communication fund in the county treasury. These commissions must be placed in the fund and may not be transferred to the county general fund.

**AG OPINION NO. 2006-124:** A Sheriff may not enter into a binding contract for telephone service without authorization of the county judge. The commissions must be submitted to the county treasurer and placed into the sheriff's facility equipment and communication fund.

#### **Sheriff's Booking and Administration Fee & Jail Fund:**

**12-41-505. Expenses and support.** (a)(1) Every person who may be committed to the common jail of the county by lawful authority for any criminal offense or misdemeanor, if he or she shall be convicted, shall pay the expenses in carrying him or her to jail and also for his or her support from the day of his or her initial incarceration for the whole time he or she remains there. (2) The expenses which accrue shall be paid as directed in the act regulating criminal proceedings.

(b)(1) A person convicted of a felony or a Class A misdemeanor shall be assessed a booking and administration fee of twenty dollars (\$20.00).

(2)(A) The booking and administration fee described in subdivision (b)(1) of this section shall be assessed upon the conviction of a defendant and included in the judgment of conviction entered by the court.

(B) If a court suspends imposition of sentence on a defendant or places him or her on probation and does not enter a judgment of conviction, the court shall impose the booking and administration fee as a cost.

(3) The booking and administration fee assessed under subdivision (b)(1) of this section shall be deposited into a special fund within the county treasury to be used exclusively for the maintenance, operation, and capital expenditures of a county jail or regional detention facility.

(c) The property of the person shall be subject to the payment of the expenses and the booking and administration fee.

**AG OPINION NO. 2007-304:** Under current law, 12-41-505 a county that does not operate or maintain a jail or regional jail and pays another detention to house their prisoners must reserve the booking and administration fee until such time as the county does operate or maintain a jail or participates in a regional jail facility.

**AG OPINION NO. 2008-088:** ACA 12-41-505 sets a mandatory fee for booking and administration. The AG says that: "In the absence of a statutorily set fee or the delegation to allow for a fee for expenses of carrying a prisoner to jail, uncertainty exists on the manner in which to impose such a fee. Expenses for feeding and supporting prisoners is not set by law, daily housing fee may be set and imposed by the Quorum Court by ordinance requiring convicted prisoners to

pay for his or her support from the day of initial incarceration for the whole time the prisoner remains there. The imposition and recovery of actual medical costs may be problematic {to the extent it is not an amount imposed by the judgment of conviction; and it not for an amount established by law such as the booking and administration fee}.

### **Sheriff's Fine & Jail Fund:**

#### **16-17-129. Levy to defray cost of incarcerating city and county prisoners.**

(a)(1)(A) In addition to all fines now or as may hereafter be provided by law, the governing body of each town or city in which a district court is located may by ordinance levy and collect an additional fine not to exceed twenty dollars (\$20.00) from each defendant upon each conviction, each plea of guilty or nolo contendere, or each bond forfeiture in all cases in the first class of accounting records as described in § 16-17-707.

(B) Except as provided in subdivision (a)(1)(C) of this section, all sums collected from the additional fine described in subdivision (a)(1)(A) of this section shall be paid into the town or city treasury to be deposited into a fund to be used exclusively to help defray the cost of incarcerating town or city prisoners, including the construction and maintenance of the town or city jail and payments to other entities for incarcerating town or city prisoners.

(C) All sums collected from the additional fine described in subdivision (a)(1)(A) of this section in any district court that is funded solely by the county shall be paid into the county treasury to be deposited into a fund to be used exclusively to help defray the cost of incarcerating county prisoners, including the construction and maintenance of the county jail.

(2)(A) In addition to all fines now or as may hereafter be provided by law, the governing body of each town or city in which a city court is located may by ordinance levy and collect an additional fine not to exceed twenty dollars (\$20.00) from each defendant upon each conviction, each plea of guilty or nolo contendere, or each bond forfeiture for any misdemeanor or traffic violation in the city court of the city or town.

(B) All sums collected from the additional fine described in subdivision (a)(2)(A) of this section shall be paid into the town or city treasury to be deposited into a fund to be used exclusively to help defray the cost of incarcerating town or city prisoners, including the construction and maintenance of the town or city jail and payments to other entities for incarcerating town or city prisoners.

(b)(1) In addition to all fines now or as may hereafter be provided by law, the quorum court of each county may by ordinance levy an additional fine not to exceed twenty dollars (\$20.00) to be collected from each defendant upon each conviction, each plea of guilty or nolo contendere, or each bond forfeiture in all cases in the first and second class of accounting records as described in § 16-17-707. A county ordinance enacted under this subdivision (b)(1) applies to all district courts in the county.

(2) All sums collected from the additional fine described in subdivision (b)(1) of this section as to cases in the first class shall be paid into the county treasury to be deposited into a fund to be used exclusively to help defray the cost of:

(A) The construction, maintenance, and operation of the city, county, or regional jail;

(B) Deferring the costs of incarcerating county prisoners held by a county, a city, or any entity;

(C) The transportation and incarceration of city or county prisoners;

(D) The purchase and maintenance of equipment for the city, county, or regional jail; and

(E) Training, salaries, and certificate pay for jail personnel.

(3) All sums collected from the additional fine described in subdivision (b)(1) of this section as to cases of the second class shall be paid into the county treasury to be deposited into a fund to be used exclusively to help defray the cost of:

(A) The construction, maintenance, and operation of the city, county, or regional jail;

(B) Deferring the costs of incarcerating county prisoners held by a county, a city, or any entity;

(C) The transportation and incarceration of city or county prisoners;

(D) The purchase and maintenance of equipment for the city, county, or regional jail; and

(E) Training, salaries, and certificate pay for jailers and deputy sheriff's.

(c)(1) In counties having a county regional detention facility, the additional fine levied by the county under this section shall be deposited into a special fund within the county treasury.

(2) The revenues generated by the additional fine shall be used exclusively for maintenance, operation, and capital expenditures of the regional detention facility.

(d) It is the intention of the General Assembly that the revenues derived from the additional fines levied under this section shall not offset or reduce funding from other sources for the maintenance, operation, and capital expenditures of the regional detention facilities.

(e)(1) The additional fine authorized in subsection (a) of this section shall apply to each charge, count, violation, or offense that a defendant pleads guilty or nolo contendere to, is found guilty of, or forfeits bond for, including each misdemeanor or traffic violation.

(2) The fine may be imposed: (A) By all courts within a city of the first class, city of the second class, incorporated town, or county in this state that has by ordinance levied the fine; and (B) In all cases classified as county cases or city cases.

**AG OPINION NO. 2009-172:** An ordinance by the Quorum Court establishing an additional fine, not to exceed \$20 for the jail under 16-17-129 applies to call cases in the district court, the county docket and the city docket. An ordinance of a city establishing an additional fine, not to exceed \$20 for the jail under 16-17-129 applies to only the city docket. These are separate fines.

**AG OPINION NO. 2009-059:** If a county does not charge a city for keeping prisoners, the fine imposed by city ordinance under 16-17-129 is not required to be paid to the county, rather the fund shall exclusively be used to help defray the costs of incarcerating city prisoners, including the costs of construction, maintenance of a city jail or payment to other

entities for incarcerating city prisoners. A county may assess a daily fee for prisoners under 12-41-506 or county and city officials may enter into an agreement under 12-41-503, including assignment of the fines under 16-17-129 collected by the city. If a county solely funds the district court, the funds collected by the city must be paid unto the county treasury.

**AG OPINION NO. 2009-148:** ACA 27-37-706 prohibits the imposition of additional fees or court costs for seat belt violations. However, 27-37-706 does not prohibit the imposition of additional fines, such as may be established by the Quorum Court or City Council under 16-17-129. If the county and/or city have enacted an additional fine, not to exceed \$20, for each violation in district court under 16-17-129, it shall be assessed for seat belt violations.

**AG OPINION NO. 2003-288:** The fines established by the Quorum Court or City Council under 16-17-129 are mandatory. The district court judge must impose these fines just like all other fines under statute. Pursuant to ACA 16-17-132, 16-13-709 and 16-17-132 all fines, penalties and costs received shall continue to be collected and distributed in the manner provided by current laws affecting the district courts, unless and until the General Assembly establishes a new method of distribution. ACA 16-17-132. The governing body of a political subdivision that contributes to the expenses of a district court shall designate a county or city official, agency or department who shall be primarily responsible for the collection of all fines assessed in the district courts.

**Sheriff's Hot Check Fee:**

**21-6-411. Prosecuting attorneys — Certain checks, orders, drafts, or other forms of presentment involving the transmission of account information**

(a) A prosecuting attorney may collect a fee if his or her office collects and processes a check, order, draft, or other form of presentment involving the transmission of account information if the check, order, draft, or other form of presentment involving the transmission of account information has been issued or passed in a manner which makes the issuance or passing an offense under:

- (1) The Arkansas Criminal Code;
- (2) The Arkansas Hot Check Law, §§ 5-37-301 – 5-37-306; or
- (3) Section 5-37-307.

(b) A prosecuting attorney may collect a fee from any person issuing a bad check as described in subsection (a) of this section. The amount of the fee shall not exceed:

- (1) Twenty-five dollars (\$25.00) if the face amount of the check, order, draft, or other form of presentment involving the transmission of account information does not exceed one hundred dollars (\$100);
- (2) Forty-five dollars (\$45.00) if the face amount of the check, order, draft, or other form of presentment involving the transmission of account information is greater than one hundred dollars (\$100) but does not exceed three hundred dollars (\$300);
- (3) Sixty-five dollars (\$65.00) if the face amount of the check, order, draft, or other form of presentment involving the transmission of account information is greater

than three hundred dollars (\$300) but does not exceed five hundred dollars (\$500); and

(4) Ninety dollars (\$90.00) if the face amount of the check, order, draft, or other form of presentment involving the transmission of account information is greater than five hundred dollars (\$500).

(c) If the person from whom the fee is collected was a party to the offense of forgery, under §§ 5-37-101 and 5-37-201 – 5-37-214, by altering the face amount of the check, order, draft, or other form of presentment involving the transmission of account information, the face amount as altered governs for purposes of determining the amount of the fee.

(d) Fees collected under this section shall be deposited into a special fund to be administered by the prosecuting attorney.

(e) (1) In those counties in which the sheriff is operating a hot check program and the prosecuting attorney is not operating such a program on September 20, 1985, the sheriff shall be entitled to continue the program as long as he or she elects to do so and the prosecuting attorney shall not initiate any such program in the county unless the sheriff in the county discontinues his or her program.

(2) In those counties in which the sheriff operates a hot check program, the sheriff's office shall be entitled to the same fees as provided in this section, but all fees shall be paid into an account for the sheriff's office and shall be subject to appropriation by the quorum court to be used to defray the cost of the hot check program and other costs of the sheriff's office.

(f) This section is cumulative to all other acts and shall not repeal any other act.

**COUNTY ADMINISTRATION OF JUSTICE AND COUNTY JAIL FUND:**

**16-10-307. County administration of justice fund.** (a) There is hereby created in each county a fund in the office of the county treasurer to be known as the "county administration of justice fund".

(b) The county administration of justice fund shall be used to defray a part of the expenses of the administration of justice in the county. From the fund, the county shall continue to finance the following county agencies and programs which are currently funded, in whole or in part, by filing fees and court costs, at a funding level equal to not less than the greater of the amount which was collected by the county from filing fees and court costs for the agency or program in the calendar year ending December 31, 1994, or the amount appropriated by ordinance enacted prior to December 31, 1994, or on February 13, 1995, or on February 14, 1995, or by resolution dated February 9, 1995, to the agency or program for the calendar year ending December 31, 1995:

- (1) The prosecuting attorney fund, including all grant funds awarded and appropriated for the calendar year ending December 31, 1995;
- (2) The prosecuting attorney's victim-witness program fund;
- (3) The public defender/indigent defense fund and public defender investigator fund, including all grant

funds awarded and appropriated for the calendar year ending December 31, 1995;

- (4) The county law library fund;
- (5) The county jail fund; and
- (6) The intoxication detection equipment fund.

(c)(1)(A) The county administration of justice fund of each county may retain an amount equal to the amount which was collected by the county from court costs and filing fees for county administration of justice expense in the calendar year ending December 31, 1994, or the amount appropriated from court costs and filing fees by ordinance enacted prior to December 31, 1994, or on February 13, 1995, or on February 14, 1995, or by resolution dated February 9, 1995, for county administration of justice expense from court costs and filing fees for the calendar year ending December 31, 1995, plus, for calendar years 1995 – 2001, an additional amount based upon the average percentage increase in the Consumer Price Index for All Urban Consumers or its successor, as published by the United States Department of Labor for the two (2) years immediately preceding.

(B)(i) The amount retained during calendar years 2002, 2003, 2004, and 2005 shall be the amount retained during calendar year 2001.

(ii) Except as provided in subdivision (c)(1)(B)(iii) of this section, for calendar years beginning 2006 and each calendar year thereafter, an additional amount shall be added to the amount to be retained based upon the average percentage increase in the Consumer Price Index for All Urban Consumers or its successor, as published by the United States Department of Labor for the two (2) years immediately preceding.

(iii) The provisions of subdivision (c)(1)(B)(ii) of this section shall not be effective if the Chief Fiscal Officer of the State determines that the additional amount retained under subdivision (c)(1)(B)(ii) of this section has exceeded one million dollars (\$1,000,000) in a calendar year, and any additional amount to be retained must be authorized by the General Assembly.

(C) All local ordinances of the counties and cities authorized and adopted under § 24-8-318 shall remain in full force and effect.

(2) For the calendar year beginning January 1, 1998, the base amount to be retained shall be:

(A) Increased by any increase in the Consumer Price Index for All Urban Consumers as provided for in subdivision (c)(1) of this section; and

(B) Decreased by eighty-five percent (85%) of the total dollar amount which was certified by the county as having been collected during calendar year 1994 and for the purpose of funding the office and operation of the public defender and public defender investigator.

(d) Nothing in this section shall prevent the county from funding any additional costs for the administration of justice from these or other county funds.

(e) The county shall remit on or before the fifteenth day of each month all sums received in excess of the amounts necessary to fund the expenses enumerated in subsections (b) and (c) of this section during the previous month from the uniform filing fees provided for in § 21-6-403 and the uniform court costs provided for in § 16-10-305 to the Department of Finance and Administration,

Administration of Justice Funds Section, for deposit in the State Administration of Justice Fund.

### **Sheriff Boating Safety & Enforcement Fund:**

**27-101-111. Distribution of funds.** (a) On or before the fifth of the month next following the month during which the funds shall have been received by him or her, the Treasurer of State shall distribute the funds in the manner provided in this section:

(1) Three percent (3%) of the amount to the Constitutional Officers Fund and the State Central Services Fund to be used for defraying the necessary expenses of the state government; and

(2) Ninety-seven percent (97%) of the amount as follows:

(A) Eight percent (8%) to the Constitutional Officers Fund and the State Central Services Fund;

(B) Thirty-four percent (34%) to the Game Protection Fund for use by the Arkansas State Game and Fish Commission as provided by law;

(C) Thirty-four percent (34%) to the County Aid Fund, which, on or before the tenth of the month following the end of each calendar quarter, shall be remitted by state warrants to the various county treasurers in the proportions thereof as between the respective counties that the total of the fees produced from each county bears to the total of the fees produced from all counties as certified by the Director of the Department of Finance and Administration to the Treasurer of State; and

(D) Twenty-four percent (24%) to the Marine Sanitation Fund for use by the Department of Health to administer a marine sanitation program.

(b) Upon receipt of any fees, each county treasurer shall deposit them into the county treasury to the credit of the boating safety and enforcement fund, if the county sheriff of that county has established a patrol on the waterways within the county.

(c)(1) In the event the county sheriff has not established a patrol on the waterways within the county and if either the county or any city or town within a county, or both, has established an emergency rescue service, each county treasurer shall deposit his county's share of the total fees collected into the county emergency rescue fund for use exclusively by either the county or the cities within the county, or both, for operating and maintaining emergency rescue services within the county and cities within the county. After the treasurer receives the funds, he shall divide the funds in the county emergency rescue fund equally among the county and the cities within the county, if any, having emergency rescue services.

(2) Otherwise, the fees shall be deposited into the Game Protection Fund for use by the Arkansas State Game and Fish Commission.

### **Sheriff Drug Enforcement Funds:**

**14-21-201. Establishment of drug enforcement fund.** (a) Ordinance. Each quorum court may by ordinance establish a drug enforcement fund. The ordinance shall set a maximum amount for the fund, not to exceed ten thousand dollars (\$10,000). The drug enforcement fund shall be administered

by the county sheriff in accordance with the provisions and procedures of this subchapter. All funds shall initially be deposited in a drug enforcement fund bank account. The bank account shall be established at a bank located in the State of Arkansas and authorized by law to receive the deposit of public funds.

(b) Source of funds. The source of all funds deposited in the drug enforcement fund shall be funds appropriated by the quorum court. The initial funding and any subsequent reimbursements to the drug enforcement fund shall be appropriated by the quorum court and subject to the normal disbursement procedures required by law. No funds from other sources, including seized property, shall be deposited into the drug enforcement fund.

**14-21-202. Restrictions on use of funds.** (a) Drug enforcement funds may only be used for direct expenses associated with the investigation of the criminal drug laws of this state, such as, but not limited to, the purchase of evidence, payment of informants, relocation and/or security of witnesses, emergency supply purchases, and emergency travel expenses.

(b) Drug enforcement funds may not be used for equipment purchases or leasing, salaries or wages, professional services, training, or any other purpose not directly related to a criminal drug investigation. In addition, these funds may not be used for administrative costs associated with the sheriff's office.

**14-21-203. Approval of claims by county judge.** (a) After a quorum court has approved a proper ordinance establishing a drug enforcement fund, set the maximum amount of the fund, and appropriated funds for the fund, the county judge may approve a county claim for the initial establishment of the drug enforcement fund.

(b) If adequate appropriations and funds are available, the drug enforcement fund may be replenished upon presentation and approval of a claim as provided in the normal county disbursement procedures. The total amount of funds held in the drug enforcement fund bank account and cash funds held by the sheriff's office shall not exceed the maximum amount established by the quorum court.

#### **Sheriff's Drug Control Fund:**

**29-30-160. Disposition of property and contraband seized by a drug task force which has been disbanded.** (a) Any drug task force which has been disbanded or is otherwise no longer in operation, as certified by the State Drug Director, is authorized to utilize the following provisions regarding the disposition of seized property in addition to any other currently authorized by law.

(b) Property seized, which is still being held after the conclusion of criminal proceedings, may be disposed of by any participating agency in the drug task force in compliance with this act.

(c) For purposes of this act, participating agency shall be defined to include any law enforcement or prosecutorial agency and their successors which served on the board of directors of the drug task force.

(d) All seized property shall be returned to the rightful owner or possessor thereof except abandoned property or contraband.

(1) Abandoned property, for the purposes of this section, includes all property which has not been claimed by its rightful owner within three (3) years of its seizure or within thirty (30) days of a published notice to treat the property as abandoned.

(A) Claimed property is that property which the rightful owner has provided some proof of ownership which reasonably satisfies the participating agency regarding ownership. Claimed property may be returned to the rightful owner immediately.

(B) Published notice is notice which provides a description of the unclaimed property, lists the agency seizing the property, lists the time the seizing agency was in operation, and is published in a newspaper or newspapers, with general circulation in the counties in which the drug task force was in operation, no less than once a week for three (3) consecutive weeks.

(2) Contraband includes all property defined in Arkansas Code 5-5-101(b).

(e) The participating agency seeking disposition of property pursuant to this act may commence a civil action with the circuit clerk in any county in which the seized property is located. The petition shall set out the property to be disposed, classify the property as abandoned or contraband, list the efforts made by the petitioner to comply with the provisions of this act, and directing all individuals claiming an interest in the property to file a claim with the circuit clerk within twenty (20) days of publication of the petition as set forth in subsection (f). The claim filed with the clerk must list the property claimed, verify ownership of the property by a signed affidavit, and the claimant's address and telephone number.

(f) The circuit court in the county where the petition is filed and the property is located shall have jurisdiction over all the property.

(g) Service by a warning order shall constitute valid service under this act.

(h) The circuit court may enter an order classifying all property that has not been claimed as abandoned or as contraband.

(i) The circuit court shall consider evidence presented by any claimant regarding ownership of any property which is seized. After hearing the evidence presented, the court shall enter an order directing the return of the property to any rightful owner, classifying the property as abandoned or classifying the property as contraband.

(j) Contraband shall be destroyed, except any article of contraband with a lawful use may in the discretion of the court be retained for use by a participating law enforcement agency or sold at a public auction to the highest bidder.

(k) Abandoned property may in the discretion of the court be retained for use by a participating law enforcement agency or sold at a public auction to the highest bidder.

(l) A public auction shall be held by the sheriff, without bond, in the county where the seized property is located in the manner provided in Arkansas Code 5-5-101(e) and (f).

(m) Proceeds from the sale shall be first distributed for payment of all reasonable attorneys' fees and other proper expenses incurred by the participating agency in prosecuting any civil proceedings, complying with this act, and the costs of the sale. Proceeds shall then be paid to satisfy bona fide security interests or liens on the property sold. Remaining proceeds shall be shared equally between the participating agencies and paid into their respective drug control funds.

(n) Any participating agency or persons making a good faith effort to follow the provisions of this act shall have absolute immunity from all civil claims made against them.



## Chapter 9 - GLOSSARY OF TERMS

Prefatory Note: The definitions which follow are intended as everyday statements of the meanings of the terms listed below, in alphabetic order. These definitions are not intended to be profound legal definitions, but are, instead, made everyday definitions for working use by the members of the staff in the Sheriff's office. Where the same term has different uses in different connections, it is so indicated.

**Abandon** - To give up with the intent of never again claiming a right or interest in.

**Abrogate** - To annul, repeal, or destroy; to annul or repeal an order or rule issued by a subordinate authority; to repeal a former law by legislative act.

**Accused** - One charged with an offense.

**Acquit** - To discharge completely from an accusation.

**Affiant** - The person who makes or swears out a warrant.

**Affidavit** - A statement in writing made under oath or an affirmation before an authorized magistrate or official.

**After the fact** - Occurring after something as already happened.

**Agent** - Person authorized to act for another.

**Amended** - Changed, revised by removing defects.

**Amercement** - Pecuniary (monetary) penalty imposed upon a person for some fault or misconduct. The amount is not set by statute but is arbitrarily chosen.

**Answer** - In a civil court action the answer is a party's reply to accusations against him.

**Appeal** - The process of having a case reviewed in a higher court.

**Appellate court** - A court with the power to review the judgment of a lower court.

**Appropriate** - To take exclusive possession of; to set apart for a particular use.

**Appropriation** - Money set aside by a formal action for a specific use.

**Assignment** - A transfer to another of any property or right.

**Attachment** - Act of seizing property, by virtue of a judicial order, and bringing into custody of the law.

**Attest** - To authenticate by signing as a witness.

**Audit** - Examine with intent to verify; a methodical

examination and review.

**Authorized** - Invested with legal authority; empowered.

**Aye** - Affirmative; yes.

**Bail bond** - Security to assure the appearance of a prisoner in court, given in order to obtain release from jail.

**Balliff** - A court officer who ushers witnesses to witness box, who may help judge in keeping order in court or act as a messenger.

**Body politic** - The people collectively of a politically organized state.

**Bona fide** - Honestly, openly, sincerely, with good faith, without deceit or fraud.

**Bond** - An obligation made binding by a money forfeit if the obligation is not met.

**Capias** - A legal writ or process commanding the officer to arrest the person named in it.

**Certificate** - Document confirming that one has fulfilled the requirements for practice in a profession or occupation.

**Certified copy** - A copy of a document or record signed and certified as a true copy by the officer who has custody of the original.

**Civil action** - A court action instituted to compel payment, based on civil rather than criminal law.

**Clerk of court** - Person responsible for keeping records of the court, for setting cases on the docket, and for handling the court's paperwork.

**Commissioned** - Having a formal written warrant granting the power to perform various acts or duties.

**Commitment order** - The warrant by which a court directs an officer to take a person to prison or to a mental or other institution.

**Compliance** - The process of conforming to requirements.

**Confiscate** - To seize property by authority.

**Consideration** - An act or promise by one party of an agreement offered as an inducement for the other party's act or promise.

**Conspicuous** - Obvious to the eye or mind.

**Constitutional officer** - One whose term of office is fixed and defined by a constitution.

**Continuance** - The postponement of an action pending in court.

**Controlled substances** - Narcotics and dangerous drugs referred to in the Uniform Controlled Substances Act of 1972 as modified and adopted in Arkansas.

**Convicted** - to be found guilty in a court of law.

**Corporate surety** - One who pledges to pay money or to do an act in the event that the principal (in this case a corporation) fails to perform.

**Consignees** - Two or more signers, jointly liable.

**Criminal action** - Judicial proceeding by which a party charged with a violation of a criminal offense is accused, brought to trial, and if convicted, punished.

**Criminal warrant** - A warrant issued in a criminal action; see Warrant.

**Cross action** - A suit brought by a defendant against a plaintiff who is suing him.

**Cross declaration** - Similar to a cross action accusation of a defendant against the plaintiff in a civil suit.

**Decree** - A written decision of a trial court giving the courts' findings in a particular case.

**De facto** - In fact, as a result of, in reality.

**Default judgment** - A court decision against a defendant who does not appear in court when ordered to do so.

**Defendant** - In a criminal case, the person who is accused of committing a crime. 2. In a civil action, the person who is being sued or called to answer a complaint against him or her.

**Deficiency** - A lack or shortage; the amount by which what is owed exceeds what is paid, etc.

**Delinquent** - Any juvenile who has committed an act other than a traffic offense which if such act had been committed by an adult, would subject that adult to prosecution for a felony or a misdemeanor. (AS 45-403)

**De novo** - Anew, over again. If a trial de novo is ordered, a new trial occurs and the record is thrown out. When a person appeals to a higher trial court, he is given a trial de novo.

**Deposit** - To place money, property, or any other thing in someone's care for safekeeping or as a pledge.

**Deposition** - A sworn statement of a witness taken down out of court. Admissible as evidence in court sometimes.

**Detain** - To arrest, to check, to delay, to hinder, to hold.

**Detainer** - The act of withholding land or goods from the rightful owner; the restraint of one's personal liberty against his or her will; detention.

**Detention home** - A facility for the safekeeping of delinquent or neglected juveniles.

**Disbursement** - Funds paid out.

**Discretionary** - The right to use one's own wisdom and judgment in deciding what to do.

**Distrain** - To take property as a pledge and hold it until pledgor performs his obligations or until the property is replevied by the sheriff (returned to a person who claims it was wrongfully taken, after that person has given security that he will surrender the property if defeated in a court action).

**Distress warrant** - A warrant authorizing an officer to seize personal property of a person for nonpayment of taxes, rent due, etc.

**Docket** - (1) Court docket is the schedule of cases to be heard by the court. (2). Jail docket is the list of prisoners held in the jail with the necessary information about each one.

**Endorse** - (1) To sign one's name on the back of a document to show evidence of a legal transfer of ownership. (2). To acknowledge receipt of a document by signing it.

**Equitable estate** - The amount or value of real or personal property over and above the total of all liens or charges against it.

**Execute** - To carry out some duty; to do something that is required.

**Execution** - (1) The act of carrying out one's duty. (2). Writ commanding sheriff to obtain satisfaction of a judgment in debt or damages from the defendant's property.

**Exempt** - To be free from a duty or service; immune from a burden, tax or charge.

**Exhumation** - Disinterment; the removal from the earth of anything previously buried, (especially a human corpse).

**Exigence or Exigency** - Emergency; a pressing necessity; an event calling for sudden action.

**Ex officio** - Because of the office; as a result of an office.

**Exonerate** - To clear from accusation or blame; exculpate.

**Ex parte** - From a one-sided point of view.

**Expenditure** - The process of paying out money.

**Expiration** - The end of an allowed period of time; to breathe one's last; termination.

**Extradition** - The surrender of one state or nation to another of a person accused or convicted of a crime.

**Eyewitness** - A person who testifies about what he has seen.

**Feasance** - The doing or performing of an act. See Malfeasance, Misfeasance, and Nonfeasance.

**Feasible** - Capable of being carried out; possible.

**Felony** - A crime punishable by a term of one year or more in the penitentiary.

**Fidelity** - Strict and continuing faithfulness to an obligation, trust, or duty.

**Fiduciary** - One who holds money for, or owes a duty to, another. The sheriff acts in a fiduciary capacity for the people of the county in collecting fines and enforcing the law.

**Fi fa (fierl facias)** - A writ of execution commanding the sheriff to obtain satisfaction of a judgment in debt or damages from the defendant's property.

**Filed** - A paper or document which has been placed in the official custody of the court clerk for its safekeeping is "filed".

**Fine** - A sum of money imposed as a penalty. Amount is set by statute and can be imposed only by a court.

**Firearm** - Usually refers to a handgun, rifle, or some similar weapon from which a shot can be fired.

**First offender act** - Arkansas law which prescribes probation for certain crimes committed by one who has no prior criminal record.

**Flee from justice** - Removing one's self from, or secreting one's self within, jurisdiction wherein an offense was committed in order to avoid prosecution.

**Fraud** - An intentional misrepresentation of matter of fact with the aim of illegally depriving a person of his or her Property or legal right.

**Fugitive from justice** - A person who is wanted in a criminal action and who has fled or is avoiding capture.

**Functions** - Purposes which something or someone serves; duties.

**Gaming house** - Building, place, or room kept as a place to gamble.

**Garnishee** - One who is served with a garnishment.

**Garnishment** - (1) A warning to a person who is holding money, property, etc., of another not to pay that money, etc., to the owner until further notice. (2) More commonly, a statutory proceeding whereby a person's property, money, or credits in possession of another are paid to a third person to

satisfy a debt or judgment.

**Good faith** - Belief that one's conduct is honest and lawful.

**Grand jury** - A jury of inquiry summoned to examine accusations against persons accused of committing crimes. It decides if the evidence warrants making formal charges (an indictment) against the defendant who would later be brought to trial. In Arkansas, the grand jury also has certain civil investigatory powers.

**Grants** - Money given to a particular person, organization, etc., for a specified purpose. Usually from federal agencies.

**Gratuity** - Gift, something voluntarily given in return for a favor or especially a service.

**Guaranty** - One who agrees to pay debt of another if the principal party defaults. Usually one who is guaranty on a bond.

**Guardian ad litem** - Someone appointed by a court to prosecute or defend an action for an infant or mental incompetent in any suit to which he or she may be a party.

**Guilty** - (1) The word used by a defendant in pleading to an information when confessing the crime with which was charged. (2) One whom a trial of fact finds to have violated the criminal law.

**Habeas corpus**, writ of - A court order which brings a person before a judge to determine whether he or she has been restrained of liberty by due process of law. The sole function of this writ is to release one who is unlawfully imprisoned.

**Hallucinogens** - Types of drugs or other substance which cause the user to have imaginary visions and distorted mental images, i.e., hallucinations.

**Head of household** - Whoever has the financial responsibility of managing the home and family.

**Hearing** - A proceeding in which arguments, witnesses, or evidence is heard by a judge or administrative body.

**Hearsay** - Evidence not proceeding from the witness's personal knowledge but is merely a repetition of what the witness has heard from others.

**Home rule** - The powers granted local governments by the state to manage their own affairs and operations.

**Homestead** - The fixed residence of the head of a family, including the land and buildings surrounding the named house.

**Homicide** - Killing of a human being. Homicide is not always a crime (self-defense, capital punishment, etc.)

**Hot pursuit** - Chase of a fleeing offender by a law enforcement officer.

**Illeviable** - That which cannot be levied on.

**Illicit** - Unlawful, not permitted or allowed.

**Illusory** - Deceiving by false appearances.

**Immunity** - Exempt from duty or service imposed on others, e.g. protection from arrest.

**Imprison** - See Incarcerate.

**Incarcerate** - To confine in a jail or penitentiary.

**Incident** - As a part of; connected to and not separate from; dependent on.

**Incite** - To arouse, urge, and provoke - as to incite a riot.

**Indebtedness** - State of being in debt. It does not mean a debtor cannot discharge his debts, but merely that he has not paid them yet.

**Indictment** - A written accusation by the grand jury stating there is enough evidence to bring the defendant to trial.

**Indigent** - One who is needy and poor. Persons who cannot support themselves or do not have anyone who can support them.

**Informant** - One who gives information about a crime or other activity.

**Information** - A written accusation by a prosecuting attorney stating there is enough evidence to bring the defendant to trial and charge him with a crime.

**Injunction** - Court order to cease or not begin an act.

**Inmate** - One who is incarcerated.

**Innocent** - One who is not adjudged to be guilty.

**In rem** - A judicial proceeding designating an action or judgment against property as distinguished from one against a person (in personam).

**Insolvency** - Having more liabilities than assets; being unable to pay one's debts.

**Instigate** - Incite, stimulate, or goad into action.

**Interim** - In the meantime. An appointment made to fill an office during a temporary vacancy.

**Intestate** - One who dies without making a will.

**Jail** - Prison; place where sheriff keeps prisoners.

**Jeopardy** - The danger that an accused person is subjected to when on trial for a criminal offense.

**Journal** - A day-by-day record of transactions.

**Judgment** - The decision of the court

**Judgment debtor** - A person against whom judgment has been rendered and who now owes something to the other party.

**Judicial** - Relating to the administration of justice

**Judicial Act** - An act which involves exercise of discretion or judgment.

**Jurisdiction** - The limits or territory within which authority may be exercised.

**Jury** - A group of persons sworn to inquire into the facts of a matter and to give a verdict based on the evidence.

**Justify** - To show a sufficient lawful reason for an act done.

**Kleptomania** - An irresistible propensity to steal.

**Laches** - Undue delay in asserting a legal right, making a claim or judgment unenforceable.

**Larceny** - Theft of another person's personal property.

**Lease** - Rental agreement.

**Leasehold** - The interest of the tenant in the property he rents.

**Legal process** - A writ, warrant, or order issued by a court.

**Legitimate** - Within the law.

**Levy** - To impose or collect by legal authority; to raise or assess, as to levy a tax, to levy a fine. Also, to seize as to levy on a debtor's property.

**Lewd** - Obscene or indecent.

**Liable** - Obligated according to law or equity.

**Libel** - Any statement, written or oral, that unjustly injures someone's reputation.

**License** - Certification or document that gives permission to do something.

**License fee or License tax** - Charge imposed by city, county or state for a privilege.

**Lie detector** - A pathometer or polygraph. A machine which records changes in blood pressure, pulse, and respiration - information that can be interpreted to measure emotional changes and indicate truth or falsity of a person's answers.

**Lien** - A charge upon real or personal property for the satisfaction of some debt or duty ordinarily arising by operation of law.

**Loiter** - To delay aimlessly; to stay in an area for no apparent reason.

**Liquidation** - The act or process of settling or making clear. In bankruptcy, a winding up of affairs.

**Magistrate** - An official entrusted with administration of the laws in special or limited jurisdictions.

**Malfeasance** - An act that is illegal.

**Malice** - Intent to commit a wrongful act without just cause or excuse and with intent to inflict harm.

**Mandatory** - Imperative, something which must be done.

**Material witness** - One who testifies with regard to substantial matters in a dispute.

**Minimum standards** - The lowest requirements which must be met.

**Ministerial act** - An act performed in obedience to legal authority without the exercise of one's own judgment.

**Minutes** - The official record of the proceedings of a meeting.

**Misdemeanor** - Offense less serious than a felony and generally punishable by fine or imprisonment in a facility other than a penitentiary.

**Misfeasance** - Improper performance of a lawful act.

**Mittimus** - Court order directing the sheriff to commit or release a prisoner.

**Nolle prosequi** - Formal entry on the court record by the prosecutor that declares he will prosecute no further.

**Nolo contendere** - Latin for "I will not contest it." Plea in a criminal case having same legal effect as a plea of guilty except that it cannot be used as an admission of guilt in a collateral civil suit.

**Nonfeasance** - Nonperformance of an act or duty that should be performed.

**Notary public** - Public officer whose function it is to attest and certify by his or her hand and seal.

**Oath** - A solemn attestation of the truth of one's word.

**Obligation** - Something that one is bound to do or refrain from doing.

**Obstructing an officer** - Forcible resistance to a law enforcement officer who is performing his or her duties.

**Obstructing justice** - Impeding those who seek justice in a court, or those who have duties or powers of administering justice.

**Occupant** - Resident.

**Offender** - Person implicated in commission of crime.

**Offense** - Any breach of the criminal law, either a felony, misdemeanor, or violation.

**Office of profit or trust** - An office for which the holder is paid or for which he or she receives some honor or privilege.

**Official capacity** - Coming within the scope of one's duties in office.

**Official notice** - Notice of a proceeding given to someone in the manner set out by law.

**Option** - A person's right to do or not to do something as he or she chooses.

**Pact** - Bargain, contract, or agreement.

**Pardon** - A release from punishment by the governor or president. It blots out all existence of guilt. All rights are restored to the person and in the eyes of the law, he or she never committed a crime.

**Parole** - Conditional release of a prisoner before expiration of his term, requiring that he or she remain under supervision and be returned to prison upon violation of the condition of parole.

**Party** - A person who is either a plaintiff or a defendant in a legal action.

**Peers** - Equals; those who are a person's equal in rank or station. A "trial by a jury of peers" means a trial by jury of citizens.

**Penal offense** - Punishable crime.

**Penitentiary** - A state or federal prison.

**Personal property** - Those things that a person owns other than land, such as car, clothing, furniture, etc.

**Personal service** - The method of delivering court papers that requires the sheriff or deputy to personally hand the papers to the person who is supposed to get them.

**Personalty** - Personal property.

**Personnel** - The people employed in an organization or one of its subdivisions such as an office or department.

**Petit jury** - jury of twelve persons for trial in a civil or criminal action. Also, called a traverse or trial jury.

**Petty cash fund** - A small amount of money kept on hand for emergencies and minor expenses.

**Plaintiff** - The complaining party in a lawsuit; the person who begins the suit in a civil action.

**Polygraph** - See Lie detector.

**Posse comitatus** - The power of the county, as exercised by the sheriff, to summon anyone to help in carrying out the duties of office (for example, to aid in keeping the peace, or in pursuing and arresting felons).

**Possession** - Control or occupancy of property, but not necessarily ownership; person in possession has legal rights to assert interests in the property.

**Post** - To put a notice, or other paper, up on a wall, door, etc., where it is in plain view of the public and where any person may easily read it.

**Postmortem** - After death. Usually used to apply to an autopsy or examination of a dead body to determine cause of death.

**Potable** - Drinkable. In reference to water supplies, a nonpermanent supply.

**Precept** - An order from an authority to an officer (sheriff, for example) commanding him to do some act within the scope of his powers.

**Premises** - A building, or part of a building, and the land it is on.

**Premiums** - Fees paid for insurance or other services.

**Preside** - To direct or guide some event or function. A judge presides over a trial.

**Principal** - The employer of an agent; the person who gives authority to an agent or attorney to act for him. In a debtor relationship, the person primarily responsible for paying - the borrower.

**Probable cause** - Enough reliable information to give a reasonable basis for believing something to be true.

**Probation** - A suspended sentence, conditional on good behavior, allowing a convicted person to go at large under supervision of a probation officer.

**Promissor** - One who makes a promise.

**Proportionate** - Regulated or determined in size or amount by the size or amount of something else.

**Prosecute** - To bring criminal charges against a person.

**Prosecuting attorney** - The public officer who conducts criminal prosecutions and functions as the trial lawyer for the state or the people. Also called District attorney, Prosecutor, Solicitor.

**Proxy** - One who acts for another. For example, a deputy sheriff acts as proxy for the sheriff.

**Prudent** - Careful, responsible and cautious

**Public conveyances** - Transportation available to and used by the general public, such as a city bus, a train, a public airplane, a public ferry, etc., but not a private automobile or a person's own private airplane, etc.

**Purloin** - To steal or commit larceny.

**Pursuant** - Following closely behind; closely related.

**Putative** - Alleged or reputed. For example, a putative father is one who is commonly believed to be the father.

**Quarantine** - Isolate because of illness or disease.

**Quash** - To overthrow, make void. When a judge quashes an indictment, he or she dismisses the case against the defendant.

**Quasi** - As if; used to indicate that something closely resembles something else but that there are distinct legal or factual differences.

**Quorum** - The presence of sufficient number of members of an organization to conduct business.

**Ratify** - To approve, validate, confirm, sanction.

**Real property, Realty** - Land, and generally whatever is erected or growing on it.

**Receipts** - Money or other property that is received.

**Records** - Documents, papers, files, etc., kept to preserve something or prove its existence.

**Recruit** - A new member of an organization.

**Registration fee** - Amount charged by a clerk, etc., for recording a document or other papers.

**Reimburse** - To pay back, to repay that expended.

**Remainderman** - Person who holds a remaining interest in an estate. One who is entitled to the remainder of an estate after a particular estate carved out of the original has expired.

**Remit** - To send back; to give up or relinquish.

**Remittitur of record** - Returning by the court of appeal of the record and proceedings in a case, after its decision thereon, to the court whence the appeal came in order that the case may be tried anew, or that judgment may be entered in accordance with the decision.

**Render** - To pronounce, state, or declare a court's verdict or judgment.

**Replevy** - To return property to a person who claims it was

wrongfully taken from him or her, upon that person's pledging to try the matter in court and return the goods if defeated in the court action.

**Resolution** - A formal expression, adopted by vote, of the opinion or will of an official body.

**Restore** - Return to normal or previous condition; return to person from whom something was taken.

**Return of process** - The act by a sheriff or other officer of delivering back to the court a writ, notice, or other paper which the officer was required to serve or execute, with a brief statement of what he did, the time and way of service or execution, or his failure to accomplish it and why, as the case may be. False return: A return in which the sheriff, etc., says he served it when he really did not; or one in which he gives untrue reasons for his failure to serve it, or otherwise makes false or incorrect statements.

**Reversioner** - The grantor or his heirs who are entitled to the estate by some operation of law at some time in the future. It is a future interest in an estate left by the grantor as a fixed right to future enjoyment.

**Scire facias** - A judicial writ requiring the defendant in a civil action to show cause why the plaintiff should not be able to use facts from a judicial record, such as judgment, for his own benefit.

**Seize** - Take hold of, take possession of.

**Session of court** - Often used to mean "term" of court although not, strictly speaking, the same. The session is the time during which the court is actually sitting for the transaction of business and, hence, ends each day when the court adjourns. See also Term of court. Open session: A session of court which the public is allowed to watch and attend. Closed session: A court session to which the public is not admitted, and only those persons necessary for the matter at hand are allowed to attend.

**Show cause** - A requirement that a person present good reasons why something should or should not be done.

**Single unit** - A building composed of only one residence or one office, such as a private home, as opposed to a building containing several residences or offices, such as an apartment building.

**Solemnly swear** - To make a formal oath or affirmation.

**Special deputy** - A deputy hired for a particular purpose apart from the regular day-to-day work of the sheriff's office.

**Statement of expenses** - Written report giving a record of all money spent, all debts incurred, and their purposes.

**Subpoena** - A court order requiring a person to appear in court and testify as a witness.

**Successor** - One who follows another in office.

**Summon** - To call to court; to require a defendant to appear in court to answer complaints against him.

**Supreme court** - The highest court. The U. S. Supreme Court is the highest court of the United States; the Arkansas Supreme Court is the highest court in Arkansas.

**Sureties** - Persons who are bound to make payment to do some act if the person responsible does not do so.

**Surety company** - A company which, for a fee, will assume responsibility of a surety on bonds for officers and others. See Sureties.

**Suspension from office** - Temporary removal from the rights, responsibilities, and privileges of an office.

**Sworn petition** - A written application to a court made under oath giving certain facts and asking for the court to take certain action.

**Tax liens** - Restrictions on the use and especially the sale of property, placed because of the owner's failure to pay his or her taxes.

**Term of court** - The period prescribed by law during which the court may hold sessions. It may last several days, weeks, or months, depending on what the law requires. Regular term: The normal time when the court is scheduled to meet. Special term: A period when the court meets which is not regularly scheduled but is called for a particular reason.

**Tort** - A legal wrong committed upon a person or property.

**Transaction** - A business deal or other negotiation.

**Traverse** - To formally deny an allegation set forth in a previous pleading.

**Treasury** - A place where public revenues are kept and from which they are disbursed.

**Under color of** - Acting under the authority of a law or position of responsibility whether truthfully or fraudulently.

**Vacate** - To move out, to leave the premises.

**Valid** - Having legal strength or force; executed properly and legally binding.

**Venire** - To appear in court.

**Venire facias** - A writ commanding the sheriff to call the persons listed in the writ as jurors for jury duty.

**Venireman** - juror, member of panel of jurors.

**Violation** - A criminal offense which provides for no sentence other than a fine.

**Virtute officii** - By virtue of office. By authority vested in one

as incumbent of office.

**Void** - Having no legal effect.

**Voucher** - A written record of a business transaction.

**Waive** - To voluntarily give up a right.

**Warrant** - An order of a court or other competent authority commanding a sheriff or other officer to do something.

**Writ** - A written court order addressed to a named person.

**Writ of execution** - A writ to put in force the judgment or decree of a court.

**Writ of possession** - The writ of execution used to enforce a judgment giving possession of a piece of land or personal property compelling the sheriff to give possession to the person named herein.