

FLORIDA HIGHWAY PATROL POLICY MANUAL

	SUBJECT LEGAL PROCESS	POLICY NUMBER 22.07
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22.07.01 PURPOSE

To provide guidelines and limitations for Florida Highway Patrol (FHP) members in serving legal process.

22.07.02 AUTHORITY

Section 48.011, Florida Statutes, provides in part, "All process except subpoenas shall be directed to all and singular the sheriffs of the state." The chapter further provides that any person authorized by the rules of procedure may serve witness subpoenas. Section 48.021(1) The Florida Highway Patrol has the "authority to apply for, serve, and execute search warrants, arrest warrants, capias, AND OTHER PROCESS OF THE COURT in those matters in which patrol officers have primary responsibility. Section 321.05, Florida Statutes. Florida Rules of Civil Procedure 1.410(d), provides that any person authorized by law to serve process may serve a witness subpoena.

Rule 28-106.212, Florida Administrative Code, provides in part, "A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is 18 years of age or older." The FHP may serve departmental witness subpoenas in administrative proceedings.

22.07.03 POLICY

The FHP recognizes that, while the serving of process is not one of its primary functions, its members may be called upon to serve civil or criminal process. The serving of process by members of the FHP will be done in accordance with the provisions of law and procedural rules. Only sworn members will serve criminal process.

22.07.04 DEFINITIONS

PROCESS - Any means used by a court to exercise jurisdiction over persons or property, to compel appearance before it, or compliance with its orders.

22.07.05 OBJECTIVES

- A. To provide guidance to members on what types of process they are authorized to serve.

- B. To provide guidelines and procedures for members when serving subpoenas and warrants.

22.07.06 PROCEDURES

A. SUBPOENAS

1. Witness Subpoenas in Civil and Criminal Cases, Chapter 48, F.S., Florida Statutes are defined hereafter in matters associated with the FHP. Witness subpoenas will normally be served through the Sheriff's Department or a certified process server. However, when specifically requested by the Office of General Counsel in a case involving the Department, members may serve subpoenas for depositions or testimony before the court in civil cases (county or circuit court) or in administrative hearing cases. These procedures shall also govern if a member is directed to serve a subpoena by the State Attorney. Service of witness subpoenas shall be accomplished as follows:
 - a. Deliver and hand a copy to the person to whom the subpoena is directed; or
 - b. Leave copies at the person's usual place of residence with any person residing therein who is 15 years of age or older and inform them of the contents; or
 - c. Service of process on a minor, defined as any person under 18 years of age who is not married or who has never been married, shall be made as follows:
 - (1) Serve on parent or guardian as provided above; or
 - (2) Serve on Court Appointed Guardian, Guardian ad Litem, or any other person appointed by the court to represent the child.
 - d. Service of process on an incompetent person, defined as persons adjudicated incompetent by a court, shall be made as follows:
 - (1) Serve two copies to the person who has care or custody of the person; or
 - (2) Serve as outlined in "A.1" above, upon a legal guardian when one has been appointed.
 - e. Service of process on state prisoners shall be made as follows:
 - (1) Serve upon the prisoner.
 - (2) A criminal summons shall be served in the same manner as in a civil action, pursuant to Section 901.07, Florida Statutes.
 - f. Service of a "witness subpoena" for misdemeanor offenses, criminal traffic offenses or a second or third degree felony may be

made by U.S. certified mail to the last known address of the witness no later than seven days prior to the date of appearance pursuant to Section 48.031(3), Florida Statutes.

g. Upon serving the subpoena, the following information must be noted thereon:

- (1) Date and time the server received the subpoena;
- (2) Date and time of execution shall be placed on original and all copies;
- (3) Examples of the manner of execution are as follows:
 - (a) To the party personally.
 - (b) To the party's attorney.
 - (c) With a third party over 15 years of age at the person's usual residence.
- (4) Name of person on whom served, if person was a representative; indicate the person's position or title.

h. After the subpoena has been served:

- (1) The original must be returned to the appropriate Clerk of the Court.
- (2) One copy must be returned to the person who requested the service.
- (3) One copy must be placed in the local FHP file.

2. Service of criminal witness subpoenas on law enforcement officers or federal, state, or municipal employees called to testify in their official capacity in a criminal case shall be made as follows, pursuant to Section 48.031(4)(a) & (b), Florida Statutes:

- a. Deliver and hand a copy to the person to whom the subpoena is directed; or
- b. Leave copies at the person's usual place of residence with any person residing therein who is 15 years of age or older and inform them of the contents; or
- c. Deliver to a designated supervisory or administrative employee at the witness' place of employment, if the agency head or highest ranking official at the witness' place of employment has designated such employee to accept such service.

THE SUBPOENA SHOULD NOT BE SERVED IN THIS MANNER IF:

- (1) The witness is no longer working at that place of employment.
- (2) The witness is not scheduled to work prior to the date to appear.
- (3) The appearance date is less than five days from date of service.

NOTE: The member serving the subpoena should determine if there are specific times or days set-aside for service by the employee.

3. Service of administrative subpoenas and complaints must be served by delivering a copy thereof to the person named in the subpoena. A return of service will be completed as previously mentioned in A.1(g) and (h) above.

B. TYPES OF PROCESS NOT TO BE SERVED BY FHP MEMBERS

1. The FHP is specifically not authorized to serve:
 - a. Injunctions against domestic violence/repeat domestic violence, pursuant to Section 784.046(8)(a), Florida Statutes.
 - b. Writs of Possession, pursuant to Section 723.062(1), Florida Statutes. Service of civil process by the Division is not authorized in matters in which the Division does not have primary responsibility, unless a particular member is appointed by the court or sheriff to do so. The Division may continue to serve administrative subpoenas in actions in which the Department is involved.
2. Members should **not** serve CIVIL process in the form of a summons and complaint. There are limited exceptions for the service of administrative complaints. However, members are authorized to serve witness subpoenas.
3. All service of process required by FHP, civil or administrative, will be coordinated through the Office of General Counsel.

C. WARRANTS

1. Search Warrants; Chapter 933, Florida Statutes:
 - a. Anytime that a member determines that an investigation requires a search warrant, the member will notify a supervisor. The supervisor will be provided with an outline of the probable cause upon which the search warrant will be requested, the anticipated time that the search warrant will be executed and any other information relevant to the search warrant. Upon approval from the supervisor, the member will proceed with requesting the search warrant. Members are to document that the supervisor

was notified and approved the search warrant in the investigative report.

- b. The lead investigator or other member actively involved in the investigation will draft the search warrant affidavit and any other accompanying reports or forms. The local State Attorney's Office should be contacted for assistance in preparing search warrant documents. If the search warrant involves the possible seizing of forensic or other unique evidence, such as computers, an expert in that field should be contacted to assist in preparing search warrant documents.
- c. Shall be served by any member when the FHP is mentioned in its direction. FHP may assist in aid of others performing execution, at the others' request, and in their presence. **In no case shall persons unnecessary to execute the warrant be invited or allowed to participate**, i.e: the media.
- d. A search warrant must be executed within 10 days of issuance. It shall also be returned within 10 days of issuance.
- e. Notice of authority and purpose of presence (Knock and Announce Rule) of members is required before forcefully entering a house to execute a search warrant thereon. The determination of necessity can only be made on a case by case basis, at the time of execution, in light of the knowledge known at the time by the executing agency. Considerations include the following:
 - (1) Operational plumbing which could reasonably be utilized to dispose of illegal drugs, together with obvious barriers to entry.
 - (2) Known weaponry available to occupants and/or reputation of occupants for use or display of firearms.
- f. Execution may be made in the daytime or nighttime, when expressly authorized in the warrant.
- g. If execution is to be made on Sunday, express authorization must be requested and authorized in the warrant by the Judge or issuing magistrate. Further, probable cause must be shown and indicated on the warrant before execution can take place after sunset or before sunrise.
- h. Entry may be made upon communication that the warrant has been signed, but those who enter may only secure the premises until the warrant is physically present.
- i. The member with the original warrant will ensure that a duplicate is in hand upon service of the warrant. The copy shall be given to the person named in the warrant, or some other person in charge of, or living on the premises.

- j. Evidence sought must be specifically listed in both the affidavit and warrant. Any property taken shall be inventoried in detail. A copy of the inventory and a receipt shall be provided to the person described in (i) above or left on the premises if no person is present. Property not named in the warrant may only be seized if incriminating on its face.
- k. When the warrant is returned, the original inventory shall be attached. The member who completed the inventory shall swear by witnessed affidavit to the verification of the inventory. That member shall ensure that a copy is kept in FHP records.
- l. If any claimant or other person from whom property was seized, requests a copy of the property inventory, the member shall deliver it to that person.
- m. All search warrants should be coordinated through the State Attorney's Office, except when working at the request of and in conjunction with another law enforcement agency.
- n. If a search warrant is not going to be served immediately after being issued, the member obtaining the warrant will notify the appropriate assistant chief investigator/district commander and the warrant will be maintained in a secure location. After the warrant has been executed the Return of Service and accompanying inventory will be maintained in a secure location until delivered to the court.

2. Arrest Warrants; Chapter 901, Florida Statutes.

- a. In the complaint submitted for an arrest warrant the member must:
 - (1) Submit the complaint in writing.
 - (2) Swear to complaint.
 - (3) Include facts that show that a crime was committed **and** that the crime occurred in the jurisdiction of the official signing the warrant.
- b. Before executing an arrest warrant the member should confirm that the warrant is in compliance with the following, pursuant to Florida Rules of Criminal Procedure 3.121:
 - (1) Be in writing and in the name of the State of Florida.
 - (2) Set forth substantially the nature of the offense.
 - (3) Command that the person against whom the complaint was made be arrested and brought before a magistrate.

- (4) Specify the name of the person to be arrested or, if the name is unknown to the magistrate, designate the person by any name or description by which the person can be identified with reasonable certainty.
 - (5) State the date the warrant was issued and the county where issued.
 - (6) Be signed by the magistrate with the title of the office.
 - (7) In all offenses where bail is allowed the warrant must be endorsed with the amount of bail and the return date specified.
- c. A member must inform the person to be arrested of the reason of the arrest, and that a warrant has been issued. This information is not required where a person flees or forcibly resists before the member can inform him, OR where informing in advance would imperil the safety of the member.
- d. A member may command any person he deems necessary to assist the member in making an arrest. That person will assume the same arrest authority as the member, and will not be civilly liable for reasonable steps taken in aid of the member or the arrest (Section 901.18, Florida Statutes).
- e. Method of Warrant Execution:
- (1) Proceed to location with appropriate backup.
 - (2) Notify dispatch just prior to arrival.
 - (3) Identify self as law enforcement officer.
 - (4) Inform suspect of the reason for arrest and the fact that the warrant has been issued (except with circumstances of c above), law enforcement need not have warrant in hand, but on request of suspect must display as soon as practicable.
 - (5) Arrest suspect.
 - (6) Read Miranda/Advice of Rights.
 - (7) Handcuff, search, and transport to jail.
 - (8) Complete return section of warrant and sign.
 - (9) Return warrant to magistrate/judge and explain execution of warrant.
- f. An arrest warrant is to be executed or turned over to the Sheriff's Office for entry into FCIC/NCIC prior to the end of the obtaining member's shift. One 24 hour extension may be granted by the

appropriate assistant chief investigator/district commander. If an extension is granted, the warrant will be placed in a secure location with 24 hour access.

D. PROCESS SERVICE LOG

Each station will maintain a Process Service Log (HSMV 61086), available on SafetyNet forms page). The following information must be included and documented, if applicable, in the Process Service Log:

1. Date/Time Received;
2. Document Type
3. Nature
4. Source
5. Name of Defendant/Plaintiff/Complainant
6. Court Docket #
7. Officer Assigned & Date
8. Service Due Date
9. Name of Person Served
10. Address of Service
11. Date & Time Executed/Attempted
12. Officer Executing Service
13. Method of Service

DO NOT USE LEGAL PROCESS SERVICE LOG AS A SUBPOENA LOG

E. NOTICE TO APPEAR (NTA) - A WRITTEN ORDER TO APPEAR ISSUED IN LIEU OF MAKING A PHYSICAL ARREST.

1. May be issued any time when a physical arrest would be proper.
2. Only issue a NTA when the offense is a misdemeanor, except DUI, or an ordinance violation.
3. Issuance is discretionary with member, but no NTA shall be issued unless the member is reasonably assured of the identity of the violator FHP Policy 17.06, Section 17.06.06 (A) (4).
4. Decision to issue NTA does not affect the right of the member to conduct an otherwise lawful search.
5. A NTA may be issued unless, pursuant to Florida Rules of Criminal Procedure 3.125(b):

- (a) The accused fails or refuses to sufficiently identify him or herself or supply the required information.
- (b) The accused refuses to sign the notice to appear.
- (c) The officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others.
- (d) The accused does not have sufficient ties within the jurisdiction to assure appearance or there is substantial risk that the accused will refuse to respond to the notice.
- (e) The officer has any suspicion that the accused may be wanted in any jurisdiction.
- (f) It appears that the accused has previously failed to respond to a notice or a summons, or has violated the conditions of any pretrial release program.

6. Uniform Traffic Citations

See FHP Policy Section 17.06.06(A)(3).