

Handbook for Alabama Sheriffs

Eighth Edition

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Contents.*



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To: The Sheriffs of the Great State of Alabama
 January 2023

The Alabama Sheriffs Association is pleased to make available the 8th Edition of the *Handbook for Alabama Sheriffs* to all Sheriffs of Alabama. This is a quick reference guide to matters that affect you in your everyday operations as Sheriff of your county.

Sheriffs should use this book as a reference only. You should always seek legal advice when specific questions arise.

As your Association's Executive Director, I always stand ready to assist you in whatever way possible.

Thank you all for serving as Sheriff.

Respectfully,

James E. "Jimmy" Lambert
 Executive Director

"No Sheriff Shall Stand Alone."

PREFACE

At the request of the Alabama Sheriffs Association, the Alabama Law Institute developed this handbook for Alabama Sheriffs. The first edition was written in 1992 with a subsequent second edition in 1999, a third edition in 2003, a fourth edition in 2007, a fifth edition in 2011, a sixth edition in 2015, a seventh edition in 2019, and this current edition in 2023.

The Alabama Law Institute began its association with the sheriffs by conducting an orientation for newly elected sheriffs first in 1979. Subsequently in 1983, 1987, 1991, 1995, 1999, 2003, 2007, 2011, 2015, 2019, and 2023, the Institute, in conjunction with the Alabama Sheriffs Association, has conducted training conferences for newly elected sheriffs on their legal and administrative duties.

This Handbook for Alabama Sheriffs does not serve as legal advice to the sheriff but only to alert the sheriff as to items that come within the office of the sheriff's supervision and control.

Although the Alabama Law Institute is a state agency, no conclusions concerning the policies of the State of Alabama are to be drawn from this volume.

Honorable David A. Kimberley
Deputy Director
Alabama Law Institute

January 2023

ACKNOWLEDGMENTS

The Institute wishes to acknowledge the assistance, guidance, and support given by Mr. Jimmy Lambert Executive Director of the Alabama Sheriffs Association. Through his cooperation and the financial support of the Association, this handbooks for sheriffs have been possible.

For the development of the first edition in 1992, the Institute wishes to express appreciation to the following law students who assisted in the initial research and drafting of the first edition: John McCulley, Ed Sanders, Tim Milam, and Jonathan Taylor. The chief research assistant for this project was Ms. Wendy Harvey who was also a law student at the University of Alabama.

For the second edition in 1999, the Institute wishes to acknowledge and thank Eric Johnson, Eric Roberts, and Othni Lathram for their research and suggested changes from the first edition to the second edition while they were law students at the University of Alabama. Further, we acknowledge that Justin Hayes, a University of Alabama student, assisted in the proof reading of this edition.

The third edition in 2003 was researched by chief research assistant Bryan Paul. Assisting him were Bill Lindsey and Stephanie Blackburn, all being law students at the University of Alabama School of Law

The fourth edition in 2007 was revised principally by Bill Lindsey, Assistant to the Director of the Institute.

Assisting him was Chris Sanders, a law student at the University of Alabama.

The fifth edition was edited by Penny Davis, Associate Director of the Alabama Law Institute and Othni Lathram, Assistant Director of the Alabama Law Institute. The chief research assistant for the fifth edition was Stacie Vitello, a law student at the University of Alabama.

The sixth edition was researched by Daniel Harris and James Walters, law students at the University of Alabama.

The seventh edition was researched and edited by Robert Hannah, Adele Mantiply, and Andrew Toler, law students at the University of Alabama, under the direction of Buddy Rushing, Staff Attorney at the Alabama Law Institute. Expert review was provided by Sheriff Dave Sutton of Coffee County, Sheriff Heath Taylor of Russell County, Sheriff Derrick Cunningham of Montgomery County, Sheriff Huey "Hoss" Mack of Baldwin County, Sheriff Kevin Williams of Marion County. Invaluable assistance concerning the Alabama Ethics Act was provided by Thomas B. Albritton, Executive Director, and Cynthia Raulston, Assistant General Counsel of the Alabama Ethics Commission.

In addition, we wish to thank the following for their advice and review of various sections throughout the previous editions of this book: Bobby Timmons, former Executive Director, Alabama Sheriffs Association; Sheriff Blake Dorning, Madison County; Sheriff Dennis Meeks,

Covington County; Sheriff Jimmy Abbett, Tallapoosa County; Sheriff Huey “Hoss” Mack, Baldwin County; retired Sheriff Ted Sexton, Tuscaloosa County; Sheriff Kevin Williams, Marion County; Lieutenant George Ponder, Jefferson County; retired Sheriff Tyler Roden, Cullman County; Sheriff Todd Entrekin, Etowah County; Sheriff Sid Lockhart, Chambers County; Sheriff Mike Blakely, Limestone County; Sheriff Grover Smith, Escambia County; Sheriff Keith Hannah, Bibb County; Attorney Don Rhea, Rhea, Boyd, & Rhea; and Jim Sumner, retired Director, Alabama Ethics Commission.

The eighth edition was edited by Honorable David A. Kimberley, Deputy Director of the Alabama Law Institute. Also assisting were Michael Hill (Senior Attorney), and Jackson Colburn (Staff Attorney). Citation updates were conducted by Rachel Evans, a law student at The University of Alabama School of Law. Expert review was provided by ASA Executive Director Jimmy Lambert and other Alabama Sheriffs including Sheriff John Samaniego and Sheriff Jeff Shaver.

Honorable David A. Kimberley
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TABLE OF CONTENTS

	<u>Page</u>
I. Historical Background	1
II. The Legal Background	3
1. Constitutional Base	3
2. Powers	3
3. Qualifications for the Office	3
4. Term of Office	5
5. Oath of Office.....	5
6. Sheriff's Bond.....	6
7. Compensation.....	7
8. Location of the Sheriff's Office.....	8
9. Staffing the Sheriff's Office	9
10. Funding	11
11. Use of Vehicles	11
12. Disqualification and Removal from Office.....	12
13. Retirement.....	15
14. Supernumerary Sheriffs	16
A. In General.....	16
B. Eligibility requirements.....	17
C. Widow's allowance.....	18
15. Responsibility Upon Leaving Office	18
16. Disability or Death.....	19
III. The Sheriff's Administrative Responsibilities	21
1. In General.....	21
2. Peace Officers Standards and Training.....	21
A. Purpose	21
B. Composition and Selection	22
C. Organization and Operation	22
3. Budget.....	22

	<u>Page</u>
4. Records – Access	24
A. Auditing	24
B. Public Inspection	24
C. Use in Court	25
D. Record Keeping	25
5. Records – Prisoners.....	25
A. Incarcerated.....	25
1. Daily	25
2. Prisoner Records	26
B. Registration.....	26
1. Felons	26
2. Sex Offenses – Community Notification	27
C. Reimbursement for Phones	43
D. Reimbursement State Inmates.....	44
E. Bail Bonds.....	44
6. Licensing of Pistols	45
A. In General.....	45
B. The Issuance of Pistol Permits.....	45
C. Handgun Reciprocity	47
D. Regulated Handgun Sales Repealed	47
E. License for the Retail Sale of Pistols	48
7. Alabama Criminal Justice Information System	49
A. In General.....	49
B. Fingerprints and Photographic Records....	50
C. Outstanding Arrest Warrants	51
D. Alabama Uniform Crime Report	51
E. Records Concerning Vehicles and Stolen Property	52
8. Physicians' Reports Regarding Physical Abuse ...	52
9. Sexual Harassment Policy.....	53

	<u>Page</u>
10. Off-Duty Security Work.....	53
11. Bailiff	54
IV. Criminal Law	55
1. Criminal Procedure.....	55
A. Arrest, Summons, and Search Warrants.....	55
B. Arrest and Initial Appearance.....	58
C. Release	60
D. Bail Schedule.....	61
E. Discovery.....	62
F. Trial	63
G. Release From Mental Commitment.....	64
H. Presence of the Defendant During Sentencing.....	65
I. Initial Appearance After Probation Violation	65
2. Criminal Code	66
Chapter 1 - General Provisions	66
Chapter 2 - Principals of Criminal Liability	66
Chapter 3 - Defenses	67
A. Legal Presumptions	67
B. Duty to Retreat	69
C. Immunity.....	69
Chapter 4 - Inchoate Crimes.....	73
Chapter 5 - Punishments and Sentences.....	74
Chapter 6 - Offenses Involving Danger to the Person	79
Chapter 7 - Offenses Involving Damage and Intrusion Upon Property.....	80
Chapter 8 - Offenses Involving Theft.....	81
Chapter 9 - Forgery and Fraudulent Practices.....	82

	<u>Page</u>
Chapter 10 - Offenses Against Public Administration	83
Chapter 11 - Offenses Against Public Order and Safety	84
Chapter 12 - Offenses Against Public Health and Morals	84
Chapter 13 - Offenses Against the Family	84
Chapter 14 - Miscellaneous Offenses	84
3. Evidence	85
A. Competency	85
B. "Personal Knowledge of the Matter"	85
C. Hearsay Evidence.....	85
D. Police Reports	86
E. Privileges.....	86
4. Vehicular Stops	87
A. Restricted Driver's License	87
B. Insurance	87
C. Seat Belts.....	88
5. Domestic Violence.....	88
6. Arrest	90
A. In General.....	90
B. Without Warrant.....	90
C. With a Warrant.....	94
D. Boundaries of Sheriff's Authority to Arrest.....	95
E. Informing the Arrested Person of His Rights	96
F. Using Force in Making Arrests	97
G. Resisting Arrest and Hindering Prosecution.....	98
H. Enlisting Civilian Assistance	99

	<u>Page</u>
I. Procedures After Arrest	100
7. Juror Responsibilities.....	102
A. Juror Selection.....	102
B. Failure of a Person Summoned as a Juror to Obey a Summons.....	105
8. Extradition.....	105
9. Toxicology and DNA.....	106
10. Sentencing Commission.....	108
V. Jails	111
1. In General.....	111
2. Facilities.....	112
3. Regional Jail	113
4. Health of Prisoners	114
5. Meals of Prisoners.....	115
6. Visitation	117
7. Records	118
8. Sentences	119
9. Release, Removal, and Transfers	120
10. Probation, Pardon, and Paroles	121
11. Escape	122
12. Death of an Inmate in Sheriff's custody.....	123
13. State and Federal Prisoners	124
14. Department of Corrections	124
A. Creation and Authority.....	124
B. Purpose.....	125
C. Composition.....	125
D. Duties.....	125
15. Work Release	126
A. State Inmates.....	126
B. Work Release for County Inmates.....	126

	<u>Page</u>
16. Probation	128
17. Split Sentence.....	129
VI. Juveniles and Incompetents.....	133
1. Juveniles	133
A. In General.....	133
B. Taking a Juvenile Into Custody	133
C. Law Enforcement Records.....	137
D. Youthful Offender's Act	140
2. Civil Commitments.....	141
3. Criminal Commitments	142
4. County Juvenile Council.....	143
VII. Civil Process.....	145
1. Service of Civil Process Generally	145
A. Duty to Execute or Serve Process	145
B. Inspection of the Process.....	146
C. Serving Process.....	147
D. Identifying the Proper Party to be Served	147
E. Claim of Immunity From Service of Process	149
F. Refusal of the Party to Accept Service	149
G. Returning the Process to the Court	150
2. Subpoenas	151
3. Repossessions	151
4. Evictions	152
A. Sheriff's Duty to Execute Process	152
B. Failure of the Sheriff to Execute Process.....	153
C. Sheriff's Duty to Execute the Judgment of the District Court.....	153

	<u>Page</u>
5. Garnishments.....	154
6. Execution on Judgments	155
A. In General.....	155
B. Sheriff’s Duty to Execute.....	155
C. Debtor’s Right to Exemption.....	156
D. Return of the Writ of Execution	157
E. Liability of Sheriff for Failure to Return Execution.....	158
F. Bonds	158
G. Liability Arising Out of Collection, Custody, or Disposition of Money	158
H. Records Pertaining to Execution of Judgments.....	159
7. Sheriff’s Sale.....	160
A. In General.....	160
B. Perishable Property.....	160
C. Personal Property.....	160
D. Real Property	161
E. Liabilities Arising Out of the Sale of Property	161
F. Invalid or Irregular Sale	162
G. Levying on Jointly Owned Property	163
H. Levying on Landlord/Tenant Property.....	163
8. Holding Money and Property	164
A. In General.....	164
B. Funds Received From Executing Writs of Levy	164
C. Fiduciary Funds Held by an Attorney	164
D. Funds Payable to the Department of Revenue	165

	<u>Page</u>
9. Eminent Domain	165
10. State Agency Writs.....	166
VIII. Elections	169
1. Office of Sheriff.....	169
2. Appointment of Poll Workers.....	169
3. Precincts.....	169
4. Election Supplies	169
A. Paper Ballot Locations.....	170
B. Electronic Voting Equipment Locations	170
C. Voter Information	170
5. Voting Place Administration.....	171
6. Absentee Balloting.....	172
7. Canvassing.....	172
A. Delivering Returns.....	172
B. Voting Containers	173
C. Provisional Ballots	173
D. Maintaining Records	174
E. Serving on the Canvassing Board.....	175
F. Resolving Ties.....	175
IX. Rules of the Road	177
1. In General.....	177
2. Motor Vehicle Licenses	177
3. Drivers Under the Influence (DUI).....	177
4. Traffic Accidents	181
5. Safety Belts	181
6. Child Safety Restrains	181
7. Criminal Littering	182

	<u>Page</u>
8. Vehicular Stops.....	183
A. Restricted Driver’s License -- Generally	183
B. Motorcycles.....	183
C. Restrictions on Under Age 18 Drivers	183
D. Insurance	185
9. Abandoned Vehicles.....	186
10. Waterways	186
X. Health, Environment, and Public Safety	189
1. Conservation.....	189
A. In General.....	189
B. Hunting Laws.....	189
C. Fishing Laws.....	190
2. Public Health	190
A. In General.....	190
B. Quarantine	191
C. Rabies Control	191
D. Alcoholic Beverages.....	192
3. Fire Marshal	192
4. Military Authorities	193
5. Municipal Courts	193
A. In General.....	193
B. Sheriff’s Duty to Obey Municipal Judge	193
C. General Duties of Municipal Court.....	194
6. Consumer Protection.....	195
A. In General.....	195
B. Seizure of Misbranded or Condemned Produce.....	195
C. Livestock.....	196
D. Registration of Livestock	197

	<u>Page</u>
E. Illegal Possession of Fighting Dogs and Cockfighting	197
F. Dangerous Dog Investigations.....	198
XI. Liability.....	201
1. Introduction	201
2. Official Capacity v. Individual Capacity Claims Against Alabama Sheriffs.....	202
3. Immunities Generally Available to State Law Claims.....	203
4. Immunities Generally Available to Federal Law Claims	205
5. Liability for Acts or Omissions of Deputies	207
6. Defaults and Wrongful Acts in Execution of Process.....	208
A. In General.....	208
B. Availability of Property for Levy.....	209
C. Defaults of Party Issuing Process	209
D. Wrongful Acts Committed in Execution of Process.....	210
E. Wrongful Acts of Deputies Concerning Service of Process.....	211
F. Measure of Damages and Elements of Recovery	212
G. Liabilities Arising Out of Duty to Return Process	212
7. Liabilities Arising Out of Custody of Property	213
A. Loss or Injury to Property.....	213
B. Particular Matters Affecting Liability	213
C. Release of Property Subject to Levy	214

	<u>Page</u>
D. Extent of Liability.....	214
8. Liabilities Arising Out of the Sale of Property....	214
A. In General.....	214
B. Invalid or Irregular Sale.....	215
C. Levying on Jointly Owned Property.....	216
D. Levying on Landlord/Tenant Property.....	216
9. Liabilities Arising Out of Collection, Custody, or Disposition of Money.....	216
A. Sheriff’s Fiduciary Duty.....	216
B. Accrual of Interest on Money Held by Sheriff.....	217
10. Liabilities Arising Out of Taking Bond or Security.....	217
XII. Ethics.....	219
1. Purpose.....	219
2. Training.....	219
3. Key Definitions.....	220
A. Public Official.....	220
B. Public Employee.....	221
C. Family Member of the Public Official.....	221
D. Family Member of the Public Employee.....	221
E. Conflict of Interest.....	221
F. Thing of Value.....	222
G. Lobbying.....	222
4. Pertinent Law.....	222
5. Persons That Must File a Statement of Economic Interest.....	228
6. Filing Deadline.....	230
7. Information to Be Included.....	230

	<u>Page</u>
8. Penalties for Non-compliance	231
9. Statute of Limitations	232
XIII. State and Federal Agencies	235
1. Alabama Law Enforcement Agency	235
2. Emergency Management	235
3. National Guard.....	236
4. Attorney General.....	237
5. Federal Bureau of Investigation.....	237
6. Office of Law Enforcement Coordination	238
7. U.S. Attorney	239
8. U.S. Marshal.....	240
9. Drug Enforcement Agency (DEA).....	242
10. United States Department of Homeland Security	243
11. Secret Service	244
Index	247

CHAPTER I

HISTORICAL BACKGROUND¹

When the English colonists crossed the Atlantic and settled in the New World, they brought with them many of the legal developments of English jurisprudence, including the office of sheriff. Early settlers subdivided their territory into counties and elected a sheriff to oversee peaceful development within the sheriff's jurisdiction. The sheriff's office carried with it all the powers and duties associated with that of the ancient English keeper of the county. With this grant of power, the sheriff sought to preserve the peace and enforce the law in the spirit of the new age.

Despite dissatisfaction with most other forms of English administration, after the Revolution all of the American states provided for the maintenance of the office of sheriff. Through constitutional provisions and charters, the sheriff was vested with the authority to act as an executive of the state within his county. As a result, the sheriff was often the highest governmental official within the sheriff's county.

While the office has obviously evolved from its medieval origins, the sheriff still retains ancient duties to preserve the peace and execute the law through the exercise of power as an officer of the sovereign government. The office of sheriff remains the chief law enforcement office of the county, although the growth of local police departments has shifted some of the sheriff's responsibilities. Most importantly, the office of sheriff has not lost the dignity it has enjoyed since its inception. Like their Middle Ages counterparts, sheriffs of today continue to hold the respect

¹ Submitted by Bobby Timmons, Former Executive Director, Alabama Sheriffs' Association.

and admiration of the citizens they protect.

CHAPTER II

THE LEGAL BACKGROUND

1. The Constitutional Base

The sheriff is the highest purely executive officer in a county. In Alabama, the office of sheriff is so integral to the orderly administration of the county that it is mandated by the state constitution. Section 138 of Article V of the 1901 Alabama Constitution provides that “[a] sheriff shall be elected in each county by the qualified electors thereof” Furthermore, the Alabama Constitution sets the sheriff's term of office as well as the standards by which sheriffs are elected.

2. Powers

Sheriffs have the powers and duties pertaining to their office at common law except as modified by statute or the state constitution. Such powers and duties are fixed by law and are ordinarily of a ministerial nature. The sheriff must give reasonable performance of all of the duties required of the office; they cannot be selectively performed. *Scott v. Strobach*, 49 Ala. 477, 484 (1873), *Jones v. Conway*, 125 So. 2d 517, 518 (Ala. 1960).

An acting sheriff may not practice law. Ala. Code § 34-3-14 (1975). In determining the legal bounds of his or her authority, the sheriff may submit a written request to the attorney general for an opinion. The attorney general owes a duty to the sheriff to counsel him or her regarding the sheriff's duties. Ala. Code § 36-15-1(1)(b).

3. Qualifications for the Office

The code of Alabama does not expressly provide qualifications for the office of sheriff. The code does, however,

place limitations on the eligibility of an individual to hold a state office. Since the office of sheriff is considered to be a state office, *Vinson v. Clark County*, 10 F. Supp. 2d 1282, 1295 (S.D. Ala. 1998), *Caldwell v. Brogden*, 678 So. 2d 1148, 1150 (Ala. Civ. App. 1996), the following persons are disqualified from holding the office of sheriff:

- (1) Those who are not qualified electors . . . ;
- (2) Those who have not been inhabitants of the state, county, district or circuit for the period required by the Constitution and laws of the state;
- (3) Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery or any other crime punishable by imprisonment in the state or federal penitentiary and those who are idiots or insane;
- (4) Those against whom there is a judgment unpaid for any moneys received by them in any official capacity due to the United States, this state or any county or municipality thereof; and
- (5) Soldiers, seamen or marines in the regular army or navy of the United States;
- (6) Those who already hold another state or federal office.

Ala. Code § 36-2-1; Ala. Code § 36-2-1(b).

These eligibility requirements must be met throughout the sheriff's tenure in office. If for some reason a sheriff is disqualified from holding the position of sheriff during the elected term, the sheriff must vacate the office. *State ex rel. Graddick v. Rampey*, 407 So. 2d 823, 826 (Ala. 1981).

4. Term of Office

The election for the office of sheriff is held with the general election in November for other state offices. Once elected and qualified for holding office, the sheriff holds the position for four years from² the first Monday following the second Tuesday of January next after the election and until a successor is elected and qualified. Ala. Code § 36-3-4(a). Although the 1901 Alabama Constitution originally barred a sheriff from succeeding oneself, today a constitutional amendment freely allows a sheriff to hold office consecutively for as long as he or she remains eligible. Ala. Const. art. V, § 138.

5. Oath of Office

Under Alabama law, an elected sheriff must take an oath of office prior to entering his or her official capacity.

The oath of office is set out in the Alabama Constitution as follows:

"I_____ solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

² Case Law has construed the word "from" in this instance to be prima facie exclusive. In other words, the common interpretation is the term excludes Monday itself and the term actually begins the next day on Tuesday. See *Oberhaus v. State*, 173 Ala. 483, 55 So. 898 (1911).

Ala. Const. art. XVI, § 279. This oath is administered by the presiding officer of either house of the legislature, or by any officer authorized by law to administer an oath. Usually, the local probate judge presides over the sheriff's swearing-in ceremony, and a certificate of the oath is filed with the probate judge. Ala. Code § 36-4-4.

6. Sheriff's Bond

Alabama law requires that the sheriff must give a bond before entering the duties of the office. Ala. Code § 11-2-1(a)(2). A bond provides security for the faithful performance of a sheriff in the discharge of his or her official duties. Official bonds act as a form of insurance for the sheriff. Whenever the sheriff's office incurs civil liability for actions taken in the line of duty, the injured party can receive compensation from the surety on the sheriff's bond. Ala. Code § 11-2-1(b).

The sheriff may be covered by the state's blanket bond if the Governor and Director of Finance determine that extending the state blanket bond is in the best interest of the state and if approved by resolution of the county commission. Ala. Code § 41-4-302(b).

The sheriff's bond has an official form as follows: "Whereas the above bound _____ was duly elected to the office of sheriff on the ___ day of _____, for the term of four years from the ___ day of _____; therefore, if he shall faithfully perform and discharge all the duties of said office during his continuance therein, then the above obligation to be void." Ala. Code § 36-5-19(a).

If the bond deviates slightly from this statutorily-mandated form, it will still be honored. All official bonds are valid and binding in whatever form they may be taken, except so far as they may be conditioned for the performance of acts in violation of the law or policy of the state. Ala. Code § 36-5-

19(b). The amount of the bond shall be one-half of one percent of the amount budgeted in the then current county budget for activities conducted by or under the direction of the sheriff but shall not exceed \$50,000. Ala. Code § 11-2-20(a).

A surety is someone who promises to pay the debt of another once the debt is established. Alabama law requires that official bonds of sheriffs be endorsed by a surety. The surety must be a surety company or guaranty company authorized to make such bonds and qualified to do business in Alabama. Ala. Code § 36-5-42. Sureties are only authorized to make bonds in Alabama if the personal surety is a resident of the state, or in the case of corporations it must be licensed and qualified in Alabama. In the case of personal sureties on sheriffs' bonds, the surety must be a resident of the county and the surety's property must be located in the county of the sheriff. Ala. Code § 36-5-11. A practicing attorney cannot be a surety. Ala. Code § 36-5-13.

Once a surety is secured on the bond the newly elected sheriff has forty days in which to file the bond with the secretary of state. Ala. Code § 36-5-2. If the sheriff fails to give bond within this time limit, the sheriff is determined to have vacated the office. Ala. Code § 36-5-15.

When the sheriff's bond is secured by a surety company, the premium may be paid out of the funds of the sheriff's department. Ala. Code § 36-5-44.

7. Compensation

By statute, sheriffs of the several counties in Alabama are compensated for their services out of the same county treasury as all other county employees are paid. Alabama sheriffs are paid at a minimum rate of \$50,000 a year unless a higher salary is specifically provided for by general or local law. Ala. Code § 11-2A-2(1).

Sheriffs are expressly forbidden from accepting any payment beyond their statutory compensation. According to statute, their salaries shall be “in lieu of any salary expense account or other compensation provided by law.” Ala. Code §§ 11-2A-2(1), 36-22-16(b).

Sheriffs receiving \$50,000 are entitled to the same uniform increases in compensation, including cost of living increases, longevity increases, merit raises, and bonuses granted to county employees by the county commission. Sheriffs whose salary is set by local law do not receive increased compensation until the minimum salary exceeds the salary set by the local law. Ala. Code § 11-2A-4.

The minimum salary is not applicable to sheriffs whose salary is tied to any state elected official prior to March 8, 2000. Further, any sheriff's salary being paid in excess of \$50,000 remains in full force and effect. The provisions of the annual salary of \$50,000 does not apply to Barbour, Tuscaloosa, Cullman, St. Clair, Pike, Henry, Coffee, Russell, Geneva, Dale, Pickens, and Fayette unless approved by the county commission. Ala. Code § 11-2A-2(7). Where not approved, Ala. Code § 36-22-16, which provides for a minimum salary of \$35,000, will apply except when specifically provided for by general or local law.

For sheriffs paid pursuant to Ala. Code § 36-22-16(b), the sheriff and his or her deputies are, however, entitled to collect and retain mileage and expense allowances for returning or transferring prisoners and insane persons to or from points outside the county.

8. Location of the Sheriff's Office

The sheriff's office must be kept at the county courthouse. Ala. Code § 36-22-2.

9. Staffing the Sheriff's Office

The ministerial duties of a sheriff are considered assignable to a deputy, while the sheriff's judicial duties are not. A judicial duty is one which requires the personal judgment and deliberation of the sheriff, while a ministerial duty is a routine act clearly specified by statute. *Lucas v. Belcher*, 103 So. 909, 911 (Ala. App. 1925); see 80 C.J.S. Sheriffs and Constables § 31 et seq. Since most of the sheriff's duties are ministerial, many of the sheriff's responsibilities can be delegated to a deputy.

Absent any procedure set forth by local act, the sheriff may propose the number of deputies that he or she feels are reasonably necessary to effectively carry out the duties of the office, with their number and compensation as items in an annual budget request that is subject to the approval of the County Commission. § 11-8-3 In order for an individual to be deputized, that individual must swear to the following oath:

"I, _____, solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God." Ala. Const. art. XVI, section 279.

A deputy cannot deputize another deputy. Only the sheriff is authorized to deputize another individual to act on the sheriff's behalf. After the deputy has taken the oath of office, the sheriff must file a written certificate of the oath in the sheriff's office. However, the mere fact that the sheriff does not file a written copy of the oath will not automatically disqualify the deputy. Once a deputy has taken the oath, the

deputy is considered a "de facto" officer, and is authorized to carry out the duties imposed on him or her by the office even though verification of the office has not yet taken place. *Malone v. State*, 406 So. 2d 1060, 1062 (Ala. Crim. App. 1981).

The deputy is considered to be the "alter ego" of the sheriff and therefore is authorized to perform most of the sheriff's duties. For example, the deputy may act as a security guard at the jail or as a probation officer. The deputy is authorized to serve civil process and to execute search warrants issued. When the sheriff lacks time to attend sessions of court, the sheriff should appoint a bailiff to attend in the sheriff's place.

Employment standards for deputies are set forth by the Alabama Peace Officers' Standards and Training Commission©. The commission requires deputy applicants to complete required training prior to certification, but applicants may be provisionally appointed for a maximum one time period of six months. Ala. Code § 36-21-46(a)(3). All county law enforcement officers must earn a starting salary of at least \$1,300 per month. Ala. Code § 36-21-10(a). In addition to deputies, this requirement applies to full-time wardens, jailers, and radio dispatchers when classified as law enforcement officers by the Alabama Peace Officers' Minimum Standards Act. Ala. Code § 36-21-10(e). *See Houston County Comm's v. Hart*, 477 So. 2d 321 (Ala. 1985). When the term of a deputy sheriff is not otherwise fixed by statute, the deputy shall hold office during the term and at the pleasure of the appointing sheriff. 80 C.J.S. Sheriff & Constable § 39. The office and functions of a deputy sheriff terminate when the sheriff dies or otherwise leaves office. *McMullen v. Daniel*, 229 Ala. 194, 198, 155 So. 687, 691 (Ala. 1933). However, a deputy who is dismissed by a sheriff and is a classified employee in a county with a civil service board, may be entitled to a hearing. *Jefferson County v. Reach*, 368 So. 2d 250, 252 (Ala. 1978).

10. Funding

Under Alabama law, the county commission has the duty to “furnish the sheriff with the necessary quarters, books, stationery, office equipment, supplies, postage and other conveniences and equipment, including automobiles and necessary repairs, maintenance and all expenses . . . reasonably needed for the proper and efficient conduct of the affairs of the sheriff’s office.” Ala. Code § 36-22-18.

The county commission may also, at its own discretion and upon request of the sheriff, pay the expense of a sheriff’s membership dues in the Alabama Sheriff’s Association each year and also the dues in the National Sheriff’s Association each year. Ala. Code § 36-22-19.

A sheriff may be reimbursed for expenses incurred while traveling outside the county in the performance of his or her duties so long as said officer presents an itemized statement of all expenses incurred and such reimbursement is approved by the county commission. Ala. Code §§ 36-7-1, 36-7-2.

11. Use of Vehicles

A sheriff or a deputy, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law, may operate his or her sheriff’s vehicle in a manner consistent with the Alabama Rules of the Road. However, drivers of emergency vehicles may:

- (1) Park or stand irrespective of the rules.
- (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
- (3) Exceed the speed limits so long as not endangering life or property.

- (4) Disregard rules governing direction of movement or turning in specified directions.

Ala. Code § 32-5A-7(b).

These exemptions are granted to authorized emergency vehicles only when such vehicles are making use of a siren and emergency lights. Such exemptions do not relieve the driver of the duty to drive with due regard for the safety of others, nor does it protect the driver from liability resulting from his or her reckless disregard for the safety of others. Ala. Code § 32-5A-7.

12. Disqualification and Removal from Office

Although a sheriff's term is for four years, the sheriff's office may be vacated before the completion of the term. The Alabama Code lists several ways in which the sheriff's office may be vacated:

- (1) By the death of the incumbent;
- (2) By the resignation of the incumbent, except in such cases as specified by law;
- (3) By the incumbent's ceasing to be a resident of the state or of the division, circuit or county for which elected or appointed;
- (4) By the decision of a competent tribunal declaring the election or appointment of the incumbent void or the office vacant;
- (5) By legislation abridging the term of office of the incumbent, when the same is not fixed by the constitution; and
- (6) In such other cases as are or may be declared by law.

Ala. Code § 36-9-1.

Any sheriff convicted of a felony vacates his office at the time of conviction. If the judgment is reversed or a new trial granted, he is restored to office; but if pardoned shall not be restored to office. Ala. Code § 36-9-2.

Throughout the early development of the office of sheriff, the holder of the sheriff's office, once elected, was required to serve. If the sheriff refused the position or quit his or her post, the sheriff was subject to substantial penalties. Today, the sheriff is still encouraged to hold office for the length of the elected term, but no person is compelled to hold office and may retire at will. *See State ex rel. Williams v. Fitts*, 49 Ala. 402, 403 (Ala. 1873).

To resign a sheriff formally submits a letter of resignation to the Governor. Ala. Code §§ 36-9-12, 36-9-17. Once the unconditional resignation is transmitted to the Governor, the resignation becomes complete and effectual, without any acceptance, and cannot be afterwards recalled. *State ex rel. Williams v. Fitts*, 49 Ala. 402, 402-03 (Ala. 1873). If, however, the resignation is to be effective only upon the occurrence of some speculative event or a future date, then it can be withdrawn at any time before acceptance. *State ex rel. Almon v. Fowler*, 160 Ala. 186, 188, 48 So. 985, 986 (Ala. 1909).

The office of sheriff can be vacated by abandonment. If the sheriff refuses to perform his or her duties and intends to quit the office of sheriff, the sheriff is said to have absolutely relinquished the position. Though the sheriff fails to take further steps to notify superiors of the relinquishment, such abandonment effectively vacates the office once held.

Perhaps the most infamous reason for vacancy involves impeachment and removal from office. A sheriff, as an officer of the state, is subject to impeachment by the Alabama Supreme Court for a variety of reasons:

- (1) Willful neglect of duty, evidenced by intentional failure to perform duties or lack of moral and mental fitness for the office;
- (2) Corruption in office, if it is discovered and proved that a sheriff has used the office in an illegal manner;
- (3) Incompetency, or deterioration of the sheriff's mental health to the level of disability;
- (4) Intemperance in the use of intoxicating liquor or narcotics to such an extent that the sheriff's ability to perform his or her duties is impaired;
- (5) Any offense involving moral turpitude while in office or in the line of duty. The Alabama Supreme Court considers moral turpitude to signify an inherent quality of baseness, vileness, and depravity. Practically all crimes classified as felonies will constitute an act of moral turpitude, but a sheriff may be impeached for lesser crimes that also fall into the purview of moral turpitude. Ala. Code § 36-11-1.
- (6) Any instance in which a prisoner in the jail or in the custody of a deputy is unlawfully put to death or forced to suffer bodily harm owing to the neglect, connivance, cowardice, or other grave fault of the sheriff. *See State ex rel. Garber v. Cazalas*, 162 Ala. 210, 211-12, 50 So. 296, 296 (Ala. 1909); Ala. Const. Art. V, § 138.

An impeachment proceeding is a criminal prosecution subject to the standard of proof "beyond a reasonable doubt." *Alonzo v. State ex rel Booth*, 283 Ala. 607, 612, 219 So.2d 858, 863 (Ala. 1969, Coleman, J. dissenting); *State ex rel. Mullis v. Mathews*, 259 Ala. 125, 140, 66 So.2d 105, 118 (Ala. 1953). The procedure for removing a sheriff from office is generally prescribed by constitutional or statutory provisions. Ala. Const. art. 7, section 174.

Upon the vacancy of the sheriff, the coroner is empowered to act as sheriff until a successor is chosen. Ala. Code § 11-5-5. The successor is chosen by appointment rather than by election. A person appointed by the Governor to fill an unexpired term in the office of sheriff can hold office only for the length of the former sheriff's unexpired term and until the successor is elected and qualified. *Dowling v. White*, 116 Ala. 306, 309, 23 So. 133, 133 (Ala. 1897).

13. Retirement

In addition to the sheriff's salary, sheriffs are entitled to a retirement plan under the sheriff's retirement system except in counties having a population of 175,000 to 300,000, those counties having a population of 90,000 to 100,000 and in Lee County. Ala. Code §§ 36-22-40, 36-22-45. Further, the sheriff in Lamar County may participate in the Employees' Retirement System in lieu of participating in a supernumerary program or system. Ala. Act. 2015-26. Any sheriff of a qualifying county who has had 20 years of service as a law enforcement officer, sixteen of which have been as a sheriff, and who has reached the age of 55 years is eligible to participate and receive benefits under the sheriffs' retirement system. Ala. Code § 36-22-40.

If any sheriff is eligible for retirement under any other county retirement act, the sheriff must make a choice as to which retirement to come under. The sheriff must notify the county governing body within 60 days after becoming eligible for any payment under the sheriff's retirement system. Ala. Code § 36-22-44.

Participants in the retirement plan have four percent of their monthly salary up to \$25,000 deducted by the governing body of the county and paid into the county's general fund. Ala. Code § 36-22-42. Upon retirement, those eligible receive \$750 per month in benefits. Ala. Code § 36-22-43.

If any sheriff pays into the retirement plan, but ends his or her tenure of office prior to becoming eligible, that sheriff is entitled to receive one half of the amount he or she paid into the county fund. Ala. Code § 36-22-42. If a sheriff pays into the plan, but dies in office prior to becoming eligible, the deceased sheriff's estate will receive the one-half amount. Ala. Code § 36-22-42.

Additionally, if approved by their respective counties, sheriffs and other county employees are eligible for participation in deferred compensation plans established by the State Personnel Board. Ala. Code § 36-26-14

14. Supernumerary Sheriffs

A. In general

Although Alabama provides a pension program for retired sheriffs, many elected sheriffs do not qualify for the pension due to Alabama Constitution Article IV, § 98 (prohibiting the legislature from granting retirement funds to public officers upon becoming eligible after leaving office). For that reason, the Alabama Legislature created the supernumerary sheriff's program in 1979.

The word "supernumerary" literally means "super, above or beyond a number"; hence, supernumerary sheriffs are public officers who are eligible for compensation to public officials conditioned upon age and length of service. Its members are above and beyond the numbers prescribed for active sheriffs. *James v. Thompson*, 392 So. 2d 1178, 1180 (Ala. 1981). The program is funded by a six percent deduction from the payroll of the enrolled sheriffs while they are still serving on active duty. When the sheriff completes his or her service in office, the sheriff will begin receiving an additional amount equal to two percent of the sheriff's monthly salary for each additional year of service up to a maximum of 65 percent of

their monthly salary, but in no event will any person receive payments as both a supernumerary and for disability simultaneously. Ala. Code §§ 36-22-61, 62.

B. Eligibility requirements

A sheriff must meet one of two eligibility requirements in order to be enrolled as a supernumerary sheriff:

- (1) The sheriff must be permanently and totally disabled and have twelve years of service credit as a law enforcement officer, four of which were as a sheriff; or
- (2) The sheriff must be at least fifty-five years old and have sixteen years of service credit as a law enforcement officer, twelve of which served as a sheriff.

Ala. Code § 36-22-60.

The term "service credit" refers to the number of years the sheriff served after July 19, 1979. A sheriff could receive credit for active duty prior to July 19, 1979, by purchasing service credit through payments into the county fund in an amount equal to six percent of the current salary as sheriff for the number of months he or she wished to purchase, not to exceed five years or the time of prior to service as sheriff, whichever is less. Ala. Code § 36-22-63. Further, a sheriff may not enroll in both the supernumerary sheriff programs and another county, state, or municipal retirement plan. If a sheriff is eligible for two or more retirement plans, the sheriff must elect the plan he or she wishes to participate and notify the proper authority within 60 days after becoming eligible. Ala. Code § 36-22-64.

C. Widow's allowance

In the event of the death of any supernumerary sheriff who has a monthly retirement allowance when the sheriff died accruing, the spouse is entitled to a monthly allowance equal to fifty percent of the retirement allowance the supernumerary sheriff was drawing when the sheriff died, for a period up to 15 years. No spouse shall receive any benefit under this article unless such spouse was married to the deceased sheriff of supernumerary sheriff at the time of death, and any benefit of a spouse under this article shall terminate upon the remarriage of the spouse. Ala. Code § 36-22-61.

In the event a sheriff dies in office prior to his or her eligibility, then the total amount paid by the sheriff to the general fund of the county shall be paid to the named beneficiary. In the event a sheriff dies in office who, immediately prior to death, was eligible for supernumerary status but had not elected to be commissioned as a supernumerary sheriff, then the spouse shall be entitled to the same benefits as the deceased sheriff would have received as a supernumerary sheriff. Ala. Code § 36-22-61.

15. Responsibility Upon Leaving Office

While the general powers of a sheriff cease when he or she leaves office, certain duties extend beyond the sheriff's term and must be completed by the outgoing sheriff. The sheriff who begins to execute a writ of civil process must complete the execution before leaving office. *Bondurant v. Buford*, 1 Ala. 359, 361-62 (Ala. 1840). A sheriff who seizes property under attachment should retain possession of the property until the suit is determined or the attachment is dissolved. After leaving office, a sheriff may return or amend a writ of process which he or she began executing while still in office. *Jaffe v. Leatherman*, 226 Ala. 182, 146 So. 273 (Ala. 1933).

The outgoing sheriff must turn over to the successor all of the books and papers pertaining to the office, including civil process and writs of execution which have not been executed. All bonds payable to the outgoing sheriff in the official capacity should also be turned over to the successor. The new sheriff has the duty to complete all of the unfinished business of the predecessor. *Bondurant, supra* at 363.

16. Disability or Death

The sheriffs' retirement system provides disability benefits for sheriffs who are disabled in the line of duty. Any sheriff who served as a law-enforcement officer for at least 20 years, sixteen of which were as a sheriff, and who becomes totally disabled while performing duties relative to law enforcement shall be able to receive disability payments of up to \$750 per month. Ala. Code § 36-22-43. These disability benefits are in lieu of retirement benefits and last as long as the eligible person is totally disabled, but in no event shall any person simultaneously receive payments pursuant to both the retirement and disability. Payments shall be paid from the general fund of the county in which the sheriff resides at their retirement or disability. However, the sheriff's retirement system law is permissive in nature and the governing body of said county may decline to make such payments. In such event the full amount of any contributions made shall be paid back to the eligible sheriff. Ala. Code § 36-22-43.

In the event a sheriff, or deputy is killed, either accidentally, deliberately, or dies from an occupational disease or from injuries proximately received while engaged in the performance of his or her duties, or from a heart attack or stroke, the deceased peace officer's dependents are entitled to compensation in the amount of \$100,000, to be paid from the state treasury. Ala. Code § 36-30-2(a). Beginning in 2009, this amount is adjusted each year to reflect any increase in the preceding year in the United States Department of Labor's

consumer price index. Ala. Code § 36-30-2(b). However, there is an exception for a death caused by the willful misconduct of the officer or a death due to his or her own intoxication, willful failure or refusal to use safety appliances provided by his or her employer, or willful violation of a law or rule or regulation governing the officer's conduct. Ala. Code § 36-30-2(a).

CHAPTER III

THE SHERIFF'S ADMINISTRATIVE RESPONSIBILITIES

1. In General

In addition to being a law enforcement officer, the sheriff is an executive officer who performs administrative duties. Although this chapter will provide the sheriff with a general overview of his or her administrative responsibilities, the sheriff is strongly advised to consult the Alabama Code and local laws applicable to the county in order to be fully informed. Citations to the Alabama Code and case law are included in this handbook to assist the sheriff in research.

2. Peace Officer Standards and Training

A. Purpose

The Peace Officers Standards and Training Commission was created to ensure that law enforcement officers receive training in their vocation, thereby providing better service to the public. These goals are obtained by empowering the Commission with authority to promulgate rules in the selection, recruitment and training of law enforcement officers and the work of law enforcement agencies in the State; to prescribe standards for law enforcement officers; to grant to the Commission power to establish standards and issue and promulgate rules and regulations; and to make the violation of certain provisions of the Ala. Code § 36-21-40 through § 36-21-50 or the standards, rules and regulations of the Commission a misdemeanor. Ala. Code §§ 36-21-45, 36-21-50.

B. Composition and Selection

The Commission is composed of seven members, each of whom must be a qualified elector of the State who is over the age of 19 years. The State Fraternal Order of Police shall designate one member of the Commission to serve a term of four years; the Alabama Peace Officers Association shall designate one member to serve for a term of four years; the Law Enforcement Planning Association shall designate one member to serve for a term of four years; and the Governor shall designate four members to serve for terms of four years. Ala. Code § 36-21-41.

C. Organization and Operation

The Commission is an independent agency of the State of Alabama. Ala. Code § 36-21-41. Costs of operating the Commission, including administrative, secretarial, clerical and investigative are paid from legislative appropriations, though the peace officers' standards and training fund may accept grants from federal, state, or local governments, as well as any corporation or individual. Ala. Code § 36-21-47. The Commission may also collect fees and costs to fund the Commission's law enforcement training program. Ala. Code § 36-21-47.1. The Attorney General and his assistants provide legal services to the Commission. Ala. Code § 36-21-45(11).

3. Budget

The Office of Sheriff is like any other governmental agency when faced with implementing sound financial management and accounting controls. Sheriffs raise revenue from pistol permit sales, fees from serving executions,

sheriff's sales, federal grants, court costs, and other sources.³ Some of these revenues may be expended by the Sheriff, some revenue is remitted to other government agencies, and still other revenue is held in a fiduciary capacity for the benefit of other individuals or agencies.

During the month of September, each county commission may call on the sheriff to give an estimate of his anticipated revenue and expenditures for county operations in order to plan the county's budget for the next fiscal year. Ala. Code § 11-8-3(d)(2). Certain claims or expenses the sheriff may accrue are declared by Ala. Code § 11-12-15 to be preferred claims against the county. They should be paid in the order they are named by statute. The sheriff is allowed reasonable expenses for suitable books, stationery, postage stamps, and telephones to be paid for by the county on approval by the county commission. Ala. Code § 11-12-14. Generally, all fees, commissions, percentages, allowances, charges and court costs collected for use by the Sheriff, except those paid by the state directly into the Prisoner Feeding Fund pursuant to Ala. Code § 14-6-47, are collected and paid into the general fund of the county. Ala. Code § 36-22-17.

The Department of Examiners of Public Accounts ("DEPA") is responsible for auditing the Sheriff's accounting methods. *See* Ala. Code § 41-5A-12. The DEPA establishes the minimum accounting requirements of the Office of Sheriff. The purpose of these guidelines is to standardize the accounting system statewide for the Office of Sheriff. Proper management of funds is an essential governmental

³ See Act 2022-133, effective January 1, 2023, for changes in the ability to carry a pistol without a permit and the establishment of a new grant process for counties by the Alabama Department of Economic and Community Affairs to address the anticipation of lost pistol permit revenues as a result of these changes.

responsibility and will lead to the successful operation of the Office of Sheriff. The DEPA released a handbook clarifying the proper organization of these minimum account requirements, and the handbook may be obtained by contacting the DEPA office.

4. Records - Access

A. Auditing

All dockets maintained by the sheriff are subject to examination by the county treasurer semiannually. The county treasurer may also demand and receive all moneys due to the county and institute proceedings against defaulters. Ala. Code § 11-4-23(2). When a record book has been completely filled, it must be turned over to the office of the circuit court clerk for permanent storage. Ala. Code § 36-22-13.

B. Public Inspection

Any citizen may inspect and copy public documents. The Alabama Supreme Court gives a broad definition of "public documents." Most of the records maintained by the sheriff are open for public inspection. Ala. Code § 36-22-13. However, records regarding pending criminal investigations are exempt from public inspection, as are most law enforcement records pertaining to juveniles. Ala. Code §§ 12-15-133, 134, *Stone v. Consolidate Publishing Co.*, 404 So. 2d 678, 681 (Ala. 1981)⁴. The Alabama Criminal Justice Information System provides comprehensive regulations regarding the collection, storage and dissemination of criminal records

⁴ See also *Something Extra Publishing, Inc. V. Mack*, ___ So. 3d ___, 2021 WL 434 (broadens the investigative materials disclosure exemptions discussed in *Stone* to beyond mere work product.) 4346 (Ala. 2021).

which supersede any conflicting statutes. Ala. Code § 41-9-603. For more information about the Alabama Criminal Justice Information System, *see* section seven of this chapter.

C. Use in Court

Unless the law specifically provides otherwise, all records maintained by the sheriff are admissible as evidence in all courts. Ala. Code § 12-21-35(a).

D. Record Keeping

Alabama law requires public officials to create and maintain records that document the business of their offices. These records must be protected from “mutilation, loss, or destruction,” so that they may be transferred to an official’s successor in office and made available to members of the public. Records may be created and maintained in a variety of paper, micrographic, or electronic formats. Sheriffs may contact the Alabama Department of Archives and History with any questions about the retention of any records. Sheriffs may also access the department’s website at <http://www.archives.state.al.us>.

5. Records - Prisoners

A. Incarcerated

1. Daily

The sheriff must keep a public record of all prisoners incarcerated in the county jail. Ala. Code § 36-22-8. This record must contain the prisoner's name, physical description, reason for being held, authority for confinement, the confinement and release date. Ala. Code § 36-22-8.

2. Prisoner Records

It is the duty of the sheriff to make out and deliver to the presiding judge of the circuit court a list of all prisoners confined to the jail and of the offenses of which they are charged or have been convicted. Ala. Code § 14-6-14. This list is due on the first day of each session of the circuit court, and the failure to submit it is a misdemeanor. Ala. Code § 14-6-14.

The sheriff also has the duty to report to the circuit clerk, in writing, each new prisoner committed to the county jail. This must occur within the next 10 days succeeding the commitment. Ala. Code § 14-6-15. The report must include the prisoner's name, date of entry, and under whose authority the prisoner was incarcerated under or the charge committed. Ala. Code § 14-6-15. When the prisoner is to be discharged the sheriff shall also report to the circuit clerk the name of the prisoner and by what authority and when the prisoner was discharged, within next 2 days succeeding. Ala. Code § 14-6-15. It is also the duty of the sheriff to file in regular order and safely preserve the process or order by which an inmate is committed to, or discharged from the county jail. Ala. Code § 14-6-16.

B. Registration

1. Felons

The sheriff must maintain a book of all registered felons who reside within the county who have been convicted of felonies three or more times. Ala. Code § 13-A11-181. Access to the book is limited to the sheriff and the deputies in the county where registered. Ala. Code § 13A-11-185. The sheriff or one of his deputies must provide each of the registered felons with a registration card containing the individual's name, address, and date of registration. The sheriff or one of his deputies must sign the card and instruct

the registered felon to carry the card with him or her at all times. Ala. Code § 13A-11-182.

2. Sex Offenses–Community Notification

In 2011, the Alabama legislature repealed then-existing laws on community notification of sex offenders and in its place enacted the Alabama Sex Offender Registration and Community Notification Act. 2011 Ala. Acts 640, now codified at Ala. Code §§ 15-20A-1 – 15-20A-48. The Act applies to all sex offenders in the state, regardless of when or where convicted, provided that if the offender was convicted in another state, he was either deemed a sex offender in that state or meets the requirements to be considered a sex offender under the Act. Ala. Code §§ 15-20A-3, 15-20A-5(35), (37). Crimes considered to be sexual offenses are listed in Section 5, though Section 6 includes a procedure in which sexual motivation may be found, and thus the offender is deemed a sex offender, even if the offense is not listed in Section 5.

a. Adult Offenders

Adult offenders are subject to the act for life. Ala. Code § 15-20A-3(b). They may, however, petition the court for relief from some or all of the requirements under certain circumstances. Under Ala. Code § 15-20A-24(b), an offender may petition the court for relief from the registration and notification requirements of the act at any time if the offender can prove by clear and convincing evidence:

- (1) The sex offense did not involve force and was only a crime due to the age of the victim;
- (2) The victim was 13 or older at the time of the offense;
- (3) The sex offender was less than five years older than the victim; and

The offender is not eligible for relief under this section if adjudicated or convicted of a sex offense previous to or subsequent to the offense of which he or she is petitioning the court for relief or has any pending criminal charges for any sex offense. Ala. Code § 15-20A-24(k).

Relief may be granted fully or partially. Ala. Code § 15-20A-24(i). If denied, the offender may not file a subsequent petition for at least 12 months. Ala. Code § 15-20A-24(j).

A sex offender shall also petition for relief from the residency or employment restrictions of the act. For relief from the residency restrictions, the offender must be terminally ill, permanently immobile, or have a debilitating medical condition requiring substantial care or supervision or requires placement in a residential health care facility and the court must find by clear and convincing evidence that the offender does not pose “a substantial risk of perpetrating any future sexual offense.” Ala. Code § 15-20A-23. For relief from the employment restrictions, a sex offender who did not commit one of the more serious, enumerated crimes may petition, and the court may grant relief after considering the nature of the offense, the offender’s past criminal history, the location where the offender intends to obtain employment, and any other relevant information. Ala. Code § 15-20A-25.

The primary requirement of the Act is registration with every county in which the sex offender intends to reside, work, attend school, or accept volunteer positions. § 15-20A-10(a)(1) At least 30 days prior to release of the offender, or immediately upon release or conviction if the conviction carries less than 30 days of jail time or no jail time, respectively, the responsible agency shall inform the offender of his duty to register, instruct him to read and sign a form stating that the duty to register has been explained, and obtain the required information from him. Ala. Code § 15-20A-9.

The identity of the responsible agency varies with how the sex offender is incarcerated: if in state prison, the Department of Corrections; if in county jail, the sheriff of the county; if in municipal jail, the chief of municipal police; if the sex offender is not incarcerated, the sentencing court or its agent; if a juvenile, the Department of Youth Services; and if incarcerated out-of-state, the sheriff of the county in which the sex offender intends to reside. Ala. Code § 15-20A-4(22).

The sex offender must provide the following information when registering:

- (1) Name, including any aliases, nicknames, ethnic, or Tribal names.
- (2) Date of birth.
- (3) Social Security number.
- (4) Address of each residence.
- (5) Name and address of any school the sex offender attends or will attend. For purposes of this subdivision, a school includes an educational institution, public or private, including a secondary school, a trade or professional school, or an institution of higher education.
- (6) Name and address of any employer where the sex offender works or will work, including any transient or day laborer information.
- (7) The license plate number, registration number or identifier, description, and permanent or frequent location where all vehicles are kept for any vehicle used for work or personal use, including land vehicles, aircraft, and watercraft.
- (8) Any telephone number used, including land line and cell phone numbers.
- (9) Any email addresses or instant message address or identifiers used, including any designations or monikers used for self-identification in

Internet communications or postings other than those used exclusively in connection with a lawful commercial transaction.

- (10) A current photograph.
- (11) A physical description of the sex offender including physical appearance, physical characteristics, and identifying marks such as scars and tattoos.
- (12) Fingerprints and palm prints.
- (13) A DNA sample. The DNA sample may be collected by the probation officer, sheriff, chief of police, or other responsible agency. Prior to collecting a DNA sample, the responsible agency shall determine if a DNA sample has already been collected for the sex offender by checking the Dru Sjodin National Sex Offender Public Registry website, the Alabama Department of Forensic Sciences DNATracker site, or with the Alabama State Law Enforcement Agency. If a DNA sample has not been previously collected for the sex offender, the responsible agency shall coordinate for the collection of a DNA sample with the sheriff of the county in which the registration is occurring. The collection of a DNA sample should be performed using materials recommended and/or provided by the Alabama Department of Forensic Sciences. The DNA sample shall be immediately forwarded by the entity collecting the sample to the Department of Forensic Sciences.
- (14) A photocopy of the valid driver license or identification card.
- (15) A photocopy of any and all passport and immigration documents.
- (16) Any professional licensing information that authorizes the sex offender to engage in an

- occupation or carry out a trade or business.
- (17) A full criminal history of the sex offender, including dates of all arrests and convictions, status of parole, probation, or supervised release, registration status, and outstanding arrest warrants.
 - (18) A list of any and all Internet service providers used by the sex offender.
 - (19) Any other information deemed necessary by the Secretary of the Alabama State Law Enforcement Agency. Ala. Code § 15-20A-7(a).

If the sex offender intends to reside in-state, the responsible agency must inform the Alabama State Law Enforcement Agency, the Attorney General, the district attorney in the county of conviction, and the local law enforcement where the offender intends to reside, and it must provide each with the required registration information. § 15-20A-9(a)(2). If the sex offender intends to reside out-of-state, the responsible agency must do the same, except that notification and the information must be sent to the designated state law enforcement agency of the new state instead of local in-state law enforcement. § 15-20A-9(a)(3) If the sex offender is unable to provide a residence, notification and information must go to the sheriff of the county where the offender's last sexual offense conviction occurred. That sheriff shall have the offender immediately remanded to his custody upon release in order to register the offender. Ala. Code § 15-20A-9(a)(4).

If the sex offender fails to provide the required information prior to release, he will forfeit any correctional incentive time acquired and thus be denied release, if applicable, or he will be charged with violating the Act in the county where the last conviction occurred; he is to be arrested and released on bond only once he complies with the Act's reporting requirements. Ala. Code § 15-20A-9(a)(5).

Immediately upon release, the sex offender shall appear in person and register all required information with the local law enforcement in every county in which the offender intends to reside, accept employment, attend school, or accept a volunteer position. Ala. Code § 15-20A-10(a)(1). The same applies whenever the offender establishes a new residence, workplace, educational or volunteering setting. Ala. Code § 15-20A-10(b). The offender must also notify local law enforcement of any county in which he terminates one of these within three days. Ala. Code § 15-20A-10(c)(1). If the offender transfers residence from one county to another (in- or out-of-state), the sheriff of the first county must notify the sheriff of the second. Ala. Code § 15-20A-10(c)(2). If a sex offender from out-of-state comes into Alabama, he must immediately notify local law enforcement and register just as in-state sex offenders upon arrival to establish a residence, employment, or education; he must also provide each county in which he registers with a certified copy of the conviction, provided it is still available. Ala. Code § 15-20A-14.

The sex offender is also required to appear during his birth month and every three months thereafter in order to verify all required information in every county in which the sex offender is registered, for the duration of his life. Ala. Code § 15-20A-10(f). He must pay a registration fee of \$10 for each quarterly appearance and establishment or termination of residence. The amount may be paid in installments, but the payment period may not exceed 90 days. Ala. Code § 15-20A-22. If any of the required information changes, including transferring or terminating a residence, the offender has a duty to appear immediately and update the information. Ala. Code § 15-20A-10(e).

The registering agency must forward all required information, including any updated or changed information, to the Alabama State Law Enforcement Agency. Ala. Code § 15-20A-42(a). This includes knowledge of death of a sex

offender. Ala. Code § 15-20A-42(b). The sheriff is also responsible for maintaining a list of all sex offenders registered in the county. Ala. Code § 15-20A-42(g).

Homeless offenders—those who no longer have a fixed residence—must report such a change in status to local law enforcement where he is immediately located. The homeless offender is required to report once every seven days to local law enforcement, providing basic information as well as planned whereabouts for the next seven days with as much specificity as possible. When the offender establishes a permanent residence, he must report this immediately. Ala. Code § 15-20A-12.

The required information provided by the sex offender is to be transmitted to the Alabama State Law Enforcement Agency. Ala. Code § 15-20A-7(c). The Department is then required to provide the following information on a public registry website:

- (1) Name, including any aliases, nicknames, ethnic, or Tribal names.
- (2) Address of each residence.
- (3) Address of any school the sex offender attends or will attend. For purposes of this subdivision, a school includes an educational institution, public or private, including a secondary school, a trade or professional school, or an institution of higher education.
- (4) Address of any employer where the sex offender works or will work, including any transient or day laborer information.
- (5) The license plate number and description of any vehicle used for work or personal use, including land vehicles, aircraft, and watercraft.
- (6) A current photograph.
- (7) A physical description of the sex offender.

- (8) Criminal history of any sex offense for which the sex offender has been adjudicated or convicted.
- (9) The text of the criminal provision of any sex offense of which the sex offender has been adjudicated or convicted.
- (10) Status of the sex offender, including whether the sex offender has absconded.

Ala. Code § 15-20A-8(a). The Agency is prohibited, however, from publishing the following information:

- (1) Criminal history of any arrests not resulting in conviction.
- (2) Social Security number.
- (3) Travel and immigration document numbers.
- (4) Victim identity.
- (5) Any email addresses or instant message addresses or identifiers used by the sex offender.
- (6) Any Internet service providers used by the sex offender.

Ala. Code § 15-20A-8(b). All other required information is within the discretion of the Secretary of the Alabama State Law Enforcement Agency. Ala. Code § 15-20A-8(c). The website must be readily searchable, must contain links to sex offender safety and education resources, must include a process to contest allegedly erroneous information, and must contain a warning against using the website to injure, harass, or commit a crime against a sex offender. Ala. Code § 15-20A-8.

The website shall also include a warning that, prior to including the individual on the website, the Alabama State Law Enforcement Agency did not consider or assess the individual's specific risk of re-offense or current

dangerousness; that inclusion on the website is based solely on an individual's conviction record and state law; and that the Legislature's purpose in providing this data is to make the information more easily available and accessible, not to warn about any specific individual. Ala. Code § 15-20A-8(h).

Additionally, upon release of a sex offender, the sheriff or chief of police must notify all persons, schools, and childcare facilities within a certain distance of the sex offender's declared residence that the offender intends to reside there. Ala. Code § 15-20A-21(a). This must be accomplished by delivering a community notification flyer to all required residences containing the sex offender's information that appears on the public registry, Ala. Code § 15-20A-21(b), though other notification means may be used in addition to the flyers. All schools and childcare facilities within three miles of the sex offender's fixed residence must be notified; individuals must be notified as follows: in Birmingham, Mobile, Huntsville, and Montgomery, all residents within 1,000 feet must be notified; in other Alabama cities with a population of 5,000 or more, all residents within 1,500 feet must be notified; in all other areas, all residents within 2,000 feet must be notified. Ala. Code § 15-20A-21(a). Notification may be given to those in a broader area if desired. Ala. Code § 15-20A-21(c). For homeless offenders, the notice should be posted at the office of the sheriff and at the police station closest to the offender's declared residence, published in a local newspaper, or electronic publication via the Internet. Ala. Code § 15-20A-21(d).

The Act restricts sex offenders in several different ways. First, sex offenders are prohibited from residing within 2,000 feet of a school, childcare facility, the residence of a former victim of the offender, or the victim's immediate family. Ala. Code § 15-20A-11(b), (c). Offenders also may not reside with a minor or have overnight visits with one, unless the offender is a "parent, grandparent, stepparent, sibling, or

stepsibling of the minor.” Ala. Code § 15-20A-11(d). But even if the offender is a listed family member of a minor, he is still prevented from living with the child if:

- (1) Parental rights of the adult sex offender have been or are in the process of being terminated as provided by law.
- (2) The adult sex offender has been convicted of any sex offense in which any of the children, grandchildren, stepchildren, siblings, or stepsiblings of the adult sex offender was the victim.
- (3) The adult sex offender has been convicted of any sex offense in which a minor was the victim and the minor resided or lived with the adult sex offender at the time of the offense.
- (4) The adult sex offender has been convicted of any sex offense involving a child, regardless of whether the adult sex offender was related to or shared a residence with the child victim.
- (5) The adult sex offender has been convicted of any sex offense involving forcible compulsion in which the victim was a minor.

Ala. Code § 15-20A-11(d). Sex offenders are deemed to reside at their residence on record and anywhere the offender resides for three or more consecutive days or 10 days during a calendar month. Ala. Code § 15-20A-11(e).

Sex offenders are also prohibited from working or volunteering for any business or organization that primarily serves children or at any location within 2,000 feet of a school or childcare facility. Ala. Code § 15-20A-13(a), (b). If the offender was convicted of a sex offense involving a child, he may not work or volunteer for any organization within 500 feet of “any business or facility having a principal purpose of caring for, educating, or entertaining minors.” Ala. Code § 15-

20A-13(c).

Immediately before an adult sex offender temporarily leaves his or her county of residence for a period of three or more consecutive days, the adult sex offender shall report in person to the sheriff in each county of residence and complete and sign a travel notification document. Ala. Code § 15-20A-15(b). The travel notification document shall be a form prescribed by the Alabama State Law Enforcement Agency to collect dates of travel, the intended destination or destinations, temporary lodging information, and any other information reasonably necessary to monitor a sex offender who intends to travel. Ala. Code. § 15-20A-15(a). If a sex offender desires to travel outside the country, he shall report such intentions to local law enforcement at least 21 days prior to departure; local law enforcement must inform the U.S. Marshals and the Alabama State Law Enforcement Agency. Ala. Code § 15-20A-15(c). If travel to another county is for a family or personal medical emergency or a death in the family, then the sex offender shall report in person to the sheriff in each county of residence immediately prior to travel. Id. The sheriff must also inform local law enforcement for any county or jurisdiction to which the sex offender intends to travel. Ala. Code § 15-20A-15(e). The sex offender must also report to the sheriff when he returns. Ala. Code § 15-20A-15(f).

Sex offenders are prohibited from making contact by any means with former victims or making any harassing communication with the victim's immediate family. Ala. Code § 15-20A-16. If an offender was convicted of a sexual offense involving a minor, he is prohibited from loitering within 500 feet of any "business or facility having a principal purpose of caring for, educating, or entertaining minors." Ala. Code § 15-20A-17(a). Loitering is defined as "enter[ing] or remain[ing] on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property

beyond the time necessary to fulfill that purpose,” *Id.*, but the sex offender must first be asked to leave by a law enforcement officer, security officer, an owner or manager of the premises, a coach or teacher, etc., in order to violate the section.

Sex offenders are prohibited from changing their names unless it is incident to marriage or necessary to “effect the exercise of religion.” Ala. Code § 15-20A-36(a). Sex offenders are also required to carry at all times a state-issued identification card (typically a driver’s license) that bears a designation alerting law enforcement that the holder is a sex offender. Ala. Code § 15-20A-18(a), (c). Sex offenders must relinquish all other identification cards that do not bear such a designation and are prohibited from in any way altering the designation. Ala. Code § 15-20A-18(d), (e).

Some sex offenders may also be subject to electronic monitoring, capable of tracking the whereabouts of the offender for purposes of presence near crime scenes, departure from geographic limitations, curfew violations, etc. Ala. Code § 15-20A-20(a). Any person convicted of a Class A felony sex offense involving a child is subject to electronic monitoring for a period of at least 10 years after release. Ala. Code § 15-20A-20(d). Any sex offender may be required to be electronically monitored as a condition of parole, probation, or any community-based punishment. Ala. Code § 15-20A-20(b). Further, any sex offender may be deemed a sexually violent predator at sentencing, and if found, the offender is subject to electronic monitoring for at least 10 years. Ala. Code § 15-20A-19. The court should deem the offender to be sexually violent if the offender has been convicted of multiple sexually violent crimes or has committed one sexually violent crime and is likely to do so again. Ala. Code § 15-20A-19(b).

b. Juvenile Offenders

Juvenile sex offenders, depending on the time of

conviction and severity of the offense, shall either be subject to the Act for life or for a period of ten years following release. Ala. Code § 15-20A-3(d). If the juvenile was adjudicated delinquent of a sex offense prior to July 1, 2011, the juvenile is only subject to the Act for 10 years following release. Ala. Code § 15-20A-3(d). If the juvenile was adjudicated delinquent of a sex offense after July 1, 2011, the juvenile is subject to the act for life if he committed any of the following offenses:

- (1) Rape in the first degree, as provided by Section 13A-6-61, Code of Alabama 1975.
- (2) Sodomy in the first degree, as provided by Section 13A-6-63, Code of Alabama 1975.
- (3) Sexual abuse in the first degree, as provided by Section 13A-6-66, Code of Alabama 1975.
- (4) Sexual torture, as provided by Section 13A-6-65.1, Code of Alabama 1975.
- (5) Any offense committed in any other jurisdiction which, if had been committed in this state under the current provisions of law, would constitute an offense listed in subdivisions (1) to (4).
- (6) Any offense, committed in this state or any other jurisdiction, comparable to or more severe than aggravated sexual abuse as described in 18 U.S.C. § 2241(a) or (b).
- (7) Any attempt or conspiracy to commit any of the offenses listed in subdivisions (1) to (6).

Ala. Code § 15-20A-28(a). If the juvenile did not commit any of these offenses, he is subject to the act for 10 years from date of first release. Ala. Code § 15-20A-28(c).

Juvenile sex offenders are not automatically subject to the notification requirements of the Act. The sentencing court is required to conduct a hearing to determine whether to apply notification requirements, and if applied, to what

extent. Ala. Code § 15-20A-26(d). The court is given several factors to consider, centering around the risk of recidivism, in determining how to apply notification requirements. Ala. Code § 15-20A-27(a). If the court determines that some notification should be required but the risk of recidivism is low, notification is only needed to the principal of the school which the offender will attend, including name, address, and date of birth of the offender, as well as the sex offense committed and the age and gender of the victim. Ala. Code § 15-20A-27(b)(1). If the risk of recidivism is moderate, all schools and childcare facilities within three miles of the juvenile's fixed residence shall also be mailed a community notification flier. Ala. Code § 15-20A-27(b)(2). If the risk of recidivism is high, the juvenile shall be treated as an adult for notification purposes. Ala. Code § 15-20A-27(b)(3).

A juvenile sex offender who was made subject to the Act for life may petition the court for relief from the requirements of the Act 25 years after the juvenile is released from custody. Ala. Code §§ 15-20A-29(b), 15-20A-34(a). The court shall grant relief if it is "satisfied by clear and convincing evidence that the juvenile sex offender is rehabilitated and does not pose a threat to the safety of the public" Ala. Code § 15-20A-34(h). If the petition is denied, another petition cannot be filed for 12 months from the date of the order denying the petition. Ala. Code § 15-20A-34(k).

Juvenile sex offenders are subject to similar, though slightly lessened, reporting requirements. First, juveniles only need register in the county of residence, not counties in which employed or attending school. Ala. Code § 15-20A-30(a). Juveniles subject to the Act for life must appear and verify the information every three months, just as adults, Ala. Code § 15-20A-30(e), but juveniles subject to the Act for 10 years must only appear annually. Ala. Code § 15-20A-30(f). Further, until the juvenile reaches the age of majority, the juvenile's parent, guardian, or custodian is also under a duty to provide

the required registration information to the responsible agency, and failure to do shall render him or her guilty of a Class C felony. Ala. Code § 15-20A-29.

Juvenile sex offenders are required to receive sex offender treatment. Ala. Code § 15-20A-26(a). Upon completion of the treatment, the juvenile must undergo a sex offender risk assessment. Ala. Code § 15-20A-26(b). This must occur at least 60 days prior to the juvenile's release, or as soon as possible if not incarcerated. Ala. Code § 15-20A-26(b).

While the juvenile is subject to the Act's reporting requirements, he may not be employed or volunteer with any business or organization that provides services primarily for children. Ala. Code § 15-20A-31.

When a juvenile sex offender enters Alabama from another state, he must register and provide a certified copy of his adjudication, unless the sentencing court seals the records and refuses to provide such a copy. Ala. Code § 15-20A-32. Any juvenile sex offender who knowingly violates that requirement is guilty of a Class C felony. *Id.* Alabama courts are to retain records of juvenile sex offenders for 75 years after adjudication. Ala. Code § 15-20A-33.

When a low risk juvenile sex offender changes schools, the principal notifies local law enforcement, which is then responsible for notifying the principal of the new school and the local superintendent, if it is a public school. Ala. Code §§ 15-20A-27,30.

c. Youthful Offenders

A youthful sex offender is treated as a juvenile for purposes of the Act if he has not been previously adjudicated or convicted of a sex offense and has not yet reached age 18 at the time of the offense. If either of these are not met, the

youthful offender is treated as an adult under the Act. Ala. Code § 15-20A-35.

d. Miscellaneous Provisions

When a sex offender declares, and the county is notified that a sex offender intends to reside, maintain employment or volunteer position, or attend school in the county and the sex offender fails to appear for registration, the county that received the notice shall immediately inform the sheriff of that county that provided the notice that the sex offender failed to appear for registration. The sheriff of the new county must determine whether the sex offender has absconded, but if no determination can be made, the sheriff must notify the Alabama State Law Enforcement Agency and the U.S. Marshals. If the sex offender has absconded, the sheriff shall immediately obtain an arrest warrant and notify the same organizations. The Alabama State Law Enforcement Agency must then update the registry and notify other state and federal authorities. Ala. Code § 15-20A-37.

If a sex offender escapes from a detention facility, the responsible agency must notify the Alabama State Law Enforcement Agency, local law enforcement of the area where the conviction occurred, the sheriff and chiefs of police within the county of escape, and the U.S. Marshals within 24 hours. Ala. Code § 15-20A-38.

It is a Class C felony to harbor, assist, or conceal a sex offender. Ala. Code § 15-20A-39(a).

Upon request, all information shall be made available in electronic form to any law enforcement agency, prosecutor, probation officer, or National Child Protection Agency agent. Ala. Code § 15-20A-42(e). These records, even those of juveniles or youthful offenders, shall not be confidential if requested by law enforcement or a prosecuting attorney for

purposes of administering, implementing, or enforcing the Act. Ala. Code § 15-20A-42(f). No existing state law shall preclude disclosure of any information containing a juvenile or youthful offender for the purpose of conducting an assessment. Id.

Sex offenders are subject to a mandatory fine of \$250 in addition to other penalties, and local law enforcement who provides community notification is to receive \$50 of this amount. Ala. Code § 15-20A-45. Sheriff of the county providing community notification is also entitled to \$50 of the mandatory \$200 filing fee to petition for relief under the Act. Ala. Code § 15-20A-46, which shall be added to the sheriff's earmarked portion of the county general fund.

C. Reimbursement for Phones

In Alabama, "funds from a commission paid to the county, generated from a telephone installed in the county jail, are to be placed in the county treasury and used for the operation of the jail and care of the inmates therein." Attorney General's Opinion to Hon. Sid Holcomb, President, DeKalb County Commission, A.G. No. 1991-048 (Oct. 29, 1990). This opinion should be followed unless local law provides otherwise.

Pay telephone service, installation, or operation contracts for county jails awarded by county commissions are required by Ala. Const. Article I, § 22 to be competitively bid. See Attorney General's Opinion to Hon. William E. Shinn, Jr., Morgan County Attorney, A.G. No. 2000-219 (Aug. 23, 2000). Companies must compete on how much commission will be paid to the county and any other terms the county deems relevant. However, utilizing a "request for proposal" and then negotiating with responding vendors in lieu of an invitation to bid does not comply with Ala. Code §§ 41-16-50 through 41-16-63. See Attorney General's Opinion No. 2013-

012.

D. Reimbursement for State Inmates

If the county jail is sufficient, the sheriff must take into custody and keep any convict sentenced to the penitentiary until the prisoner is duly discharged. Ala. Code § 14-6-3. The sheriff has the same responsibilities for care of state and federal inmates as county inmates in his custody. Ala. Code § 14-6-4. Any officer refusing to receive a prisoner into his custody must, on conviction, be fined not more than \$500. Ala. Code § 14-6-5. If there is no sufficient jail within the county, the commitment must be to the nearest sufficient jail. The jailor of the nearest county must receive and confine the prisoner. Ala. Code § 14-6-6.

The state shall pay for the food of the county jail prisoners for preparing food, serving food, and other services incidental to the feeding of prisoners the amount of \$2.25 per day for each prisoner.

In a suit by a sheriff against the state to remove prisoners from their jail and for the state to pay for medical care, food and housing of prisoners, the court held the proper venue to be Montgomery County and not the county where the jail was located. *See* Ala. Code § 6-3-9. *See also, Ex parte Madison County*, 406 So. 2d 398 (Ala. 1981); *Ex parte Daniels*, 941 So. 2d 251 (Ala. 2006).

E. Bail Bonds

Unless a defendant is charged with an offense listed in Ala. Const. Art. I, §16, the defendant is entitled to bail as a matter of law. The presiding judge generally instructs the sheriff on the amount of bail the judge will approve in each degree of eligible felony offenses, and for misdemeanor and traffic offenses. The Alabama Supreme Court has established

a recommended range for bail for each offense as a general guide for circuit, district and municipal courts for persons charged with bailable offenses. *See* Ala. R. Crim. P. 7.2. *See* Chapter 4 of this book for the bail schedule for recommended ranges for eligible offenses.

6. Licensing of Pistols

A. In General

Act 2022-133 makes several significant changes regarding pistol licensing and concealed carry requirements. Ala. Code § 13A-11-7 has been amended to eliminate the “mere carrying of a pistol, holstered or otherwise secured on or about one’s person, without brandishing the weapon, in a public place,” as being a violation in and of itself. As to keeping pistols in vehicles, Ala. Code § 13A-11-90 has been amended specifically as to pistols to reflect that “a public or private employer may not restrict or prohibit the transportation or storage of a lawfully possessed pistol or ammunition for that pistol in an employee’s privately owned motor vehicle while parked or operated in a public or private parking area” provided that certain conditions have been met.

B. The Issuance of Pistol Permits

The sheriff is the official in the state of Alabama who is authorized by law to issue a pistol license, to allow the applicant to carry a pistol in a vehicle or concealed on the person. Ala. Code § 13A-11-75(a). The sheriff is conditionally required to issue a license to an Alabama resident who is 19 years of age or more and also to an Alabama resident who is 18 years of age or more if a service member or honorably discharged military veteran. The conditions for issuance are the completion of a criminal background check, review of other available criminal history databases, and for non-

citizens an Immigration Alien Query. Ala. Code § 13A-11-75(b). Section 75 of Chapter 11 also provides a list of considerations for the sheriff upon completing his or her investigation in making the decision to approve or deny the application. *See* Ala. Code § 13A-11-75(c)(1)-(11).

It is important to note that Ala. Code § 13A-11-85 has been amended by Act 2022-133 to reflect that “the issuance of a permit to carry a pistol pursuant to Section 13A-11-75 or the recognition of a nonresident license this section (13A-11-85) does not impose a general prohibition on the carrying of a pistol without a permit.”

Should the sheriff deny or revoke a license, he or she must give the applicant the reason(s) in a written statement of reasons. Ala. Code § 13A-11-75(d)(3)a. and b. Written notice of the denial must also be transmitted to the Alabama Law Enforcement Agency. The applicant may appeal the denial or revocation to the district court of the county. The sheriff shall have the burden of proving by clear and convincing evidence that the person is prohibited by state or federal law from possessing a firearm or one of the other grounds for denial exist. Ala. Code § 13A-11-75(j)(1).

If there is no local law setting the fee for a one-year permit, the fee shall be \$25, and the funds shall be distributed to the sheriff. If there is no local law setting the fee for a five-year permit, the fee shall be \$125, and the funds distributed to the sheriff. The fee for a lifetime permit shall be \$300 if the applicant is under 60 years of age and \$150 if the applicant is 60 or older. Ala. Code § 13A-11-75(f)(1) and (2).

Retired and/or honorably discharged military veterans, law enforcement officers, or honorably discharged retired law enforcement officers are eligible to receive a permit (and subsequent renewals if not a lifetime permit) without paying a fee, under Ala. Code § 13A-11-75(f)(1) and

(2).

Eighty percent of the fees for a lifetime carry permit shall be distributed to the sheriff of the county of the applicant, to be used for administration of the permit application process and other law enforcement purposes. The remaining twenty percent is to be distributed to the Alabama State Law Enforcement Agency, to be used for the administration of the state firearms prohibited person database and for other law enforcement purposes. See Ala. Code § 13A-11-75(f)(3).

C. Handgun Reciprocity

A license holder from another state, while he or she is not a resident of Alabama, shall be authorized to carry a handgun in Alabama. A license holder from another state shall carry the handgun in compliance with the laws of Alabama. See Ala. Code § 13A-11-85(a).

The Attorney General is authorized to enter into reciprocal agreements with other states for the mutual recognition of licensees to carry handguns and shall periodically publish a list of states which recognize licenses.. Ala. Code § 13A-11-85(b).

D. Regulated Handgun Sales Repealed

The Brady Hand Gun Violence Prevention Act of 1993 prohibits federal firearm licensees from selling handguns to persons who fall into a few categories conclusively presumed to be dangerous and/or irresponsible. Brady requires that handgun firearm dealers have up to five business days to complete a background check of a handgun purchaser. The background investigation is to be carried out by the sheriff in the county where the dealer is located. The purchase and sale may only be completed when the sheriff notifies the dealer

that the prospective purchaser is not ineligible or after five business days pass when the sheriff has not responded. Pub. L. No. 103-159, 107 Stat. 1536. Sheriffs across the United States sued arguing that Congress had no authority to order state and local officials to perform background investigations. The United States Supreme Court held the Brady Act violated the Tenth Amendment to the Constitution to the extent it forces states and local law enforcement officers to perform background checks on prospective handgun owners and to accept Brady forms from firearm dealers. The court did, however, hold that states and chief law enforcement officers may voluntarily continue to participate in the federal program. *Printz v. United States*, 521 U.S. 898, 117 S. Ct. 2365 (1997). These background investigations are now carried out by the FBI through their “insta check” procedure.

Any transferor of a handgun who receives a report from a sheriff containing information that the possession of a handgun by the transferee violates federal, state, or local law must immediately give the sheriff all information.

E. Licenses for the Retail Sale of Pistols

A pistol dealer’s license is required for the retail sale of pistols. A license for the retail sale of pistols may be issued by any duly constituted licensing authority of the city, subject to limitations. Ala. Code § 13A-11-79.

No retailer may sell or possess any pistol without being licensed. Ala. Code § 13A-11-78. No one shall make a loan secured by a mortgage, deposit, or pledge of a pistol. Ala. Code § 13A-11-80.

This law does not apply to purchase or sale of pistols as curiosities or ornaments or to the transportation of unloaded pistols in boxes, bags, or secretly wrapped. Ala. Code § 13A-11-83.

7. Alabama Criminal Justice Information System

A. In General

The Alabama Criminal Justice Information System (Ala. Code §§ 41-9-590 to 41-9-649) provides comprehensive regulations concerning the collection, storage, and dissemination of criminal records. These regulations, which are found in Title 41, Chapter 9 of the Alabama Code, must be followed carefully, because they supersede all other statutory provisions regarding criminal records. The Alabama Criminal Justice Information system is part of an international network of agencies devoted to the prevention of crime and the apprehension of suspected criminals. In order to remain a part of this sensitive network, Alabama Criminal Justice Information Center, "ACJIC" must maintain standards set by the nationally operated systems for the interstate sharing of information. Ala. Code § 41-9-621. Much of the information received by ACJIC is highly confidential, and access to the system is strictly controlled.

The penalties for breaches of the system are severe. Any law enforcement officer who fails to submit the records required under the ACJIC system may be fined not less than \$100 or more than \$10,000 and may be confined in the county jail for up to one year. The law enforcement officer will also be prosecuted for nonfeasance, and if found guilty, will be removed from office. Ala. Code § 41-9-600. Furthermore, any person who willfully requests, obtains, or seeks to obtain criminal offender information under false pretenses or who willfully communicates such information to any unauthorized person will be fined not less than \$5,000 nor more than \$10,000 or imprisoned in the state penitentiary for not more than five years. Ala. Code § 41-9-601. In order to enforce these privacy considerations, the ACJIC keeps a log of all disseminations made of each criminal history, and the purpose for which each is obtained. Ala. Code § 41-9-640.

B. Fingerprints and Photographic Records

The sheriff is required to record and submit to the Alabama Criminal Justice Information Center (ACJIC), by forwarding to the Alabama State Law Enforcement Agency, the fingerprints, descriptions, photographs, and other identifying data on the following:

- (1) Persons who have been lawfully arrested in this state for an offense.
- (2) Persons who have been charged with an act of delinquency or adjudicated a youthful offender for conduct which would constitute an offense if committed by an adult.
- (3) Any other data deemed necessary by the commission to carry out its responsibilities. See Ala. Code § 41-9-623.

Biometric identifiers collected shall be provided to ALEA according to rules of the Alabama Justice Information Commission. See Ala Code § 41-9-625.

Any law enforcement officer who arrests a person for one of the preceding crimes must obtain biometric identifiers, which may include fingerprints, photographs, palm prints, retina scans, or other identifiers specified by the FBI, according to the biometric identification system at ALEA and the rules established by the commission. Ala. Code § 41-9-625. The fingerprints and other identifying data must be sent to ACJIC within 24 hours. This time may be extended over the weekend or holidays. Ala. Code § 41-9-626. The photographs may be sent at the sheriff's discretion, but must be available upon the request of ACJIC. In addition, all biometric identifiers designated by FBI, according to the biometric identification system at ALEA and the rules established by

AJIC, must be collected from any person arrested or taken into custody as a fugitive from justice, or any unidentified human corpse within the sheriff's jurisdiction. If the arrested person is subsequently released without charge or cleared of the offense through criminal justice proceedings, the sheriff must report this information to ACJIC within 30 days, and all information shall be eliminated and removed. Ala. Code § 41-9-625.

C. Outstanding Arrest Warrants

A warrant may be executed in the county in which it was issued, unless the defendant is in another county. When the defendant is in another county, it may be executed therein by any law enforcement officer having the warrant. The law enforcement officer shall summon the assistance of local law enforcement if possible to assist in making the arrest and only then may exercise the same authority as the officer possesses in his own jurisdiction. Ala. Code §15-10-10).

If the sheriff has in his or her possession an arrest warrant which cannot be served, descriptions of the arrest warrant must be forwarded immediately to the Alabama State Law Enforcement Agency. Ala. Code § 41-9-627. If the warrant is subsequently served or withdrawn, the sheriff must notify ACJIC. The sheriff is also required to submit annually to the ACJIC a record of all arrest warrants within his or her jurisdiction that remain outstanding. Ala. Code § 41-9-627.

D. Alabama Uniform Crime Report

The sheriff is required to periodically submit an Alabama uniform crime report to the ACJIC at a time specified by the commission. This report must contain the number and nature of offenses committed within the sheriff's jurisdiction within that time period. The report must include

a statement concerning the sheriff's disposition of the offense. Ala. Code § 41-9-631.

E. Records Concerning Vehicles and Stolen Property

Any time that an arrest warrant is issued for an individual for a crime involving vehicles and property stolen from their county, or any time a person is arrested or suspected of such a crime, information concerning the vehicle and stolen property must be submitted to ACJIC within 12 hours after the sheriff has reasonable grounds to believe that the crime has occurred. If the property is later recovered, or the individual is no longer considered a suspect, the sheriff must notify ACJIC of this information. Furthermore, if the sheriff who recovers the property is different than the law enforcement officer or agency which issued the original report, the sheriff must notify that agency of the property's recovery. Ala. Code §§ 41-9-633, 634.

8. Physicians' Reports Regarding Physical Abuse

Any health care provider who believes that a mentally or physically impaired patient has received injuries as the result of neglect, exploitation, or physical, emotional, or sexual abuse must report the injuries either to the police chief, the county department of human resources, or to the sheriff. If the report is made to the sheriff, the sheriff must investigate the complaint within 7 days and prepare a written report containing the alleged victim's name, age, and address, and the nature and extent of injury suffered by the person, as well as any other potentially useful information. This report must be forwarded to the county Department of Human Resources within 24 hours. Ala. Code § 38-9-8.

9. Sexual Harassment Policy

The state of Alabama does not tolerate harassment of any of its employees, applicants, or customers. Any form of harassment related to an individual's race, color, sex/gender, religion age, national origin, disability or citizenship status is not tolerated under federal law and also could be treated as a disciplinary matter. Each county should formulate its own policy pursuant to federal guidance.

10. Off-Duty Security Work

Peace officers are generally considered to be on-duty 24 hours a day. However, in many cases they must supplement their income with a second job. This off-duty secondary employment raises many concerns for their employer, such as liability issues. This is especially true when the deputy uses county uniforms, firearms, nightsticks, or any other equipment supplied by the county and taxpayer dollars.

One seemingly obvious aspect of off-duty employment that has created problems in the past is the fact that outside employment must take place when the deputy is not on duty. A deputy may not draw pay from both a private employer and the county at the same time.

Ala. Code § 6-5-338 extends tort immunity to peace officers and requires private employers of off-duty officers to obtain insurance to indemnify the officer against the claims for security work or work while in the uniform of a police officer. Further regulation comes from Ala. Code § 36-25-5(c), which prohibits the use of public equipment or facilities for private benefits unless another law provides otherwise, or unless an employment agreement or policy permits the use of the agreement. The first step in allowing county equipment to be used while a deputy is off-duty is the enactment of a local law by the county permitting the use. Without such a policy,

section 36-25-5(c) seems to be an absolute bar against using county property during off-duty employment.

This section does not prohibit an officer from taking off-duty employment. However, some counties may have policies in place that prohibit deputies from taking secondary employment. This stems from the Alabama Supreme Court finding the city of Birmingham liable for the acts of off-duty police officers because the city heavily regulated the off-duty employment. *City of Birmingham v. Benson*, 631 So. 2d 902 (Ala. 1993). This is a policy decision that a county must weigh before allowing off-duty employment.

11. Bailiff

The state of Alabama considers the sheriff as the chief enforcement officer of courtroom security. Ala. R. Jud. Admin. 11. Therefore, a circuit judge may appoint the sheriff to act as a bailiff in court. Usually, a circuit judge will provide for an individual other than the sheriff to serve as a bailiff, since the bailiff may be needed for full time duties according to the business of the court. Positions for bailiffs in the circuit and district courts may be authorized by the Administrative Director of Courts upon recommendation of presiding circuit judges. Ala. Code §12-17-310. However, the enforcement of courtroom security remains the responsibility of the sheriff. Ala. R. Jud. Admin. 11.

CHAPTER IV

CRIMINAL LAW

1. Criminal Procedure

A. Arrest, Summons and Search Warrants

“An arrest may be made, under warrant or without a warrant, by any sheriff or other officer acting as sheriff or his deputy . . . within the limits of county.” Ala. Code § 15-10-1. Upon the return of an indictment, or upon a finding of probable cause, the judge or magistrate shall immediately issue an arrest warrant or a summons. Ala. R. Crim. P. 3.1(a). If a defendant who has been duly issued a summons fails to appear, or after issuance of the summons there is reasonable cause to believe that the defendant will not respond, a writ of arrest shall be issued. Ala. R. Crim. P. 3.1(c).

An arrest warrant issued upon a complaint shall be signed by the issuing magistrate or judge. Ala. R. Crim. P. 3.2(a). An arrest warrant issued upon an indictment shall be signed by circuit judge presiding, by the circuit clerk, or by a judge or magistrate directed to do so by the presiding judge of the circuit court. Ala. R. Crim. P. 3.2(a). The arrest warrant shall contain the defendant’s name or a description by which the defendant can be identified with reasonable certainty, the offense charged, and it shall command the defendant be arrested and brought before the issuing judge or magistrate. Ala. R. Crim. P. 3.2(a). If the issuing judge or magistrate is unavailable, the defendant may be brought before the nearest or most accessible district or circuit judge in the same county. Ala. R. Crim. P. 3.2(a). The summons shall be in the same form as the arrest warrant, except that it shall state a time and place for the defendant to appear within a reasonable time from the date it was issued. Ala. R. Crim. P. 3.2(b).

An arrest warrant may be directed to and executed by any law enforcement officer within the State of Alabama. Ala. R. Crim. P. 3.3(a). An arrest warrant shall be executed by arresting the defendant. Ala. R. Crim. P. 3.3(b). The law enforcement officer executing the warrant is required to endorse on it the manner and date of the execution, sign his name on the warrant, and return it to the clerk of the court specified. Ala. R. Crim. P. 3.3(c). An arrest warrant shall not be invalidated, nor shall any person in custody be discharged because of a defect in form. Ala. R. Crim. P. 3.5.

A search warrant is a written order, in the name of the state or municipality, signed by a judge or authorized magistrate, directed to any law enforcement officer, commanding him to search for personal property and, if found, to bring it before the judge or authorized magistrate. Ala. R. Crim. P. 3.6. Upon the request of a law enforcement officer or district attorney, a search warrant may be issued by a magistrate licensed to practice law in this state, a municipal judge, a district judge, or a circuit judge. Ala. R. Crim. P. 3.7. A search warrant may be issued if there is probable cause to believe the property sought was, or is expected to be, unlawfully obtained; was or is expected to be used as the means of committing an offense under the law or in the possession of any person to whom it may have been delivered to cancel or prevent its discovery; or it constitutes or expected to constitute evidence of a criminal offense under the law. Ala. R. Crim. P. 3.8.

A search warrant may be executed by any law enforcement officer named within the warrant. One of the named officers in the warrant must be present during the execution of the search warrant. Ala. Code §15-5-7. A search warrant must be executed in the daytime, unless the property to be seized falls into one of the exceptions below:

- (1) A controlled substance;

- (2) Affidavits are submitted that positively state the property is on the person or in the place to be searched.

In cases where the property falls under the second exception, the issuing judge or magistrate must state in the warrant whether it is to be executed during daylight, night, or any time of the day. Ala. Code §15-5-8. In order to properly execute a warrant, an Alabama law enforcement officer is required to give notice of his authority and purpose of his presence. If he is refused admittance, the officer may break open any door, window, any part of a house, or anything therein. Ala. Code §15-5-9.

The highly publicized United States Supreme Court decision, *Hudson v. Michigan*, 547 U.S. 586, 589-90 (2006), reversed existing case law that required law enforcement officers to “knock and announce” before entering a building during the execution of a search warrant. Alabama has a statute that **requires** law enforcement to “knock and announce;” thus law enforcement officers in this state continue to be bound by Ala. Code §15-5-9, and the *Hudson* decision does not affect Alabama sheriffs.

If property is taken under the authority of a search warrant, the law enforcement officer must give a receipt to the person who owned the property or was in possession of it. Ala. Code §15-5-11. A search warrant must be executed and returned within ten (10) days after the judge or magistrate signs it. Ala. Code § 15-5-12. Upon return of the search warrant, the law enforcement officer must specify with particularity the property taken and include a copy of the warrant application and a signed copy of the return. Ala. Code § 15-5-13.

B. Arrest and Initial Appearance

A law enforcement officer may arrest without a warrant if the law enforcement officer has probable cause to believe a felony has been committed, or is being committed, and the person to be arrested committed it; or any offense has been committed in the law enforcement officer's presence; or the arrest is authorized by statute. Ala. R. Crim. P. 4.1(a)(1). Rule 4.1(a)(2) provides that officers are required to inform persons of the offense for which they are being arrested. A private person may arrest another without a warrant if a felony in fact has been committed, and the arresting person has probable cause to believe that the person to be arrested committed it; or the person arrested committed an offense other than a felony in the presence of the arresting person. Ala. R. Crim. P. 4.1(b)(1).

A person arrested without a warrant may be cited by a law enforcement officer to appear at a specified time or place and released. Ala. R. Crim. P. 4.3(a)(1)(i). A person arrested without a warrant may be released by a law enforcement officer upon execution of appearance bond or secure an appearance in an amount according to Supreme Court's bail schedule⁵ and directed to appear either at a specified time and place. No person shall remain in jail anywhere in this state for more than 24 hours for any felony or misdemeanor case without an order of bail, unless bail is not authorized by law. Ala. Code § 15-13-106. A probable cause determination must be made by a judge or magistrate without undue delay, and in no event, later than 48 hours. Ala. R. Crim. P. 4.3(a)(1).

Except in cases where there is no right to release on bail

⁵ Provided, however, in violation and misdemeanor cases the minimum amount of bail shall be \$300 for each offense charged. See Ala. Code § 15-13-105.

pursuant to Ala. Code § 15-13-3, a person arrested with a warrant shall be afforded an opportunity to make bail. When a judge or magistrate in the county of arrest determines there is probable cause to believe the defendant committed the charged offense he shall issue an arrest warrant with the amount of the bail affixed and have it served upon the defendant. *See* Ala. Code § 15-13-104. Then the judge or magistrate shall proceed with the initial appearance. If a person is unable to obtain release on the appearance bond set, they are entitled to an initial appearance before a judge within 72 hours unless the offense is not aailable offense. Ala. R. Crim. P. 4.3(b)(2).

If the offense is listed in Ala. Const. Article I, § 16 as an offense not automatically bail eligible, the court shall hold a pretrial detention hearing at the defendant's first appearance wherein the defendant shall be entitled to counsel. The court will hold an evidentiary hearing and then consider factors such as the nature and circumstances of the offense(s), weight of the evidence, background and characteristics of the defendant, potential danger to the community, etc. *See* Ala. Code § 15-13-3.⁶

Following the pretrial detention hearing, if the court determines to not set bail, the judge shall enter a written order within 48 hours which includes factual findings and the reasons for denying bail. Subsequently, a pretrial detention hearing may be reopened at any time prior to trial if the court finds that information exists that was not known by the movant at the time of the pretrial detention hearing.⁷

⁶ The amendment to Ala. Code § 15-13-3 with this new pretrial detention procedure is found in Act 2021-267 which accompanied the constitutional amendments of Aniah's Law (Act 2021-201) located in Ala. Const. Art. I, § 16.

⁷ Act 2021-267 amendments to Ala. Code § 15-13-3.

Should the writ of arrest be issued upon an indictment for an offense for which bail may be denied, the writ of arrest shall indicate “no bail,” and the defendant may not be released prior to the initial appearance.⁸

Where a person has been arrested without a warrant for an offense that is bailable as a matter of right and taken into custody and there is no standard bail schedule prescribed by the presiding judge of the court of jurisdiction for the amounts of bail for the arrests made without warrants, then the arresting officer, as soon as possible, shall contact a judicial officer for an order of bail. If the arresting officer is unable to contact the judicial officer having jurisdiction of the case, the arresting officer may contact any judicial officer having the authority to set bail in that judicial circuit to issue the order of bail. If no judicial officer has issued an order of bail within 24 hours of the arrest of the defendant, then the bail shall be set by operation of law and the amount of bail shall be the amount prescribed as the minimum amount established by the bail schedule adopted by Supreme Court rule. Provided, however, in violation and misdemeanor cases the minimum amount of bail shall be \$300 for each offense charged. Ala. Code § 15-13-105.

C. Release

A defendant’s failure to appear in court would not suffice to forfeit his or her constitutional right to bail. Upon a defendant’s failure to appear, the trial judge may raise the amount of the second bond, require additional sureties, and add additional conditions as seems necessary.

According to the Alabama Court of Criminal Appeals, a defendant who commits a crime while out on bail continues

⁸ Act 2021-267 amendments to Ala. Code § 15.13-7.

to have a constitutional right to bail while pending trial on that charge. However, the constitutional right to pretrial bail may be waived or forfeited. "A defendant may forfeit his constitutional right to pretrial bail by his conduct while out on bail." *Ex parte Fleming*, 814 So. 2d 302, 303 (Ala. Crim. App. 2001). And in support of *Ex parte Fleming*, the court cited *Shabazz v. State*, 440 So. 2d 1200 (Ala. Crim. App. 1983). The *Shabazz* court cited other state cases denying pretrial bail stating, "Whatever force constitutional arguments against preventative detention have is diminished if the defendant has been released and demonstrated a deliberate intent to violate reasonable restrictions aimed at protecting public safety." *Shabazz v. State*, 440 So. 2d 1200, 1202 (Ala. Crim. App. 1983).

D. Bail Schedule

Recommended range for circuit, district, and municipal courts under Ala. R. Crim. P. 7.2(b) is as follows:

FELONIES:

Capital felony	\$50,000 to No Bail
Murder	\$15,000 to \$150,000
Class A felony	\$10,000 to \$60,000
Class B felony	\$5,000 to \$30,000
Class C felony	\$2,500 to \$15,000
Drug Manufacturing and Trafficking	\$5,000 to \$1,500,000
Class D Felony	\$1,000 to \$10,000

MISDEMEANORS (not included elsewhere in the schedule):

Class A misdemeanor	\$300 to \$6,000
Class B misdemeanor	\$300 to \$3,000
Class C misdemeanor	\$300 to \$1,000
Violation	\$300 to \$500

MUNICIPAL ORDINANCE \$300 to \$1,000
VIOLATIONS

TRAFFIC RELATED OFFENSES:

DUI	\$1,000 to \$7,500
Reckless driving	\$300 to \$1,000
Speeding	\$300 to \$500
Other traffic violations	\$300 to \$500

E. Discovery

Upon written request of the defendant, the prosecutor shall, within fourteen days, permit the defendant to inspect or copy certain documents, tangible objects, statements and reports of examinations or tests in the case file that are listed in Ala. R. Crim. P. 16.1. Upon written request from the state, the defendant shall, within fourteen days after the request has been filed, permit the state to inspect or copy certain documents and tangible objects. Ala. R. Crim. P. 16.2. Upon motion by the state and solely in connection with the particular offense with which the defendant is charged, the court shall order the defendant to submit certain physical evidence listed in Ala. R. Crim. P. 16.2(b). Except as to scientific or medical reports, this rule does not authorize the discovery related to the “work product” made by the defendant or the defendant’s attorneys in connection with the investigation or defense of the case. Ala. R. Crim. P. 16.2(d).

Each party to a criminal case has a continuing duty to disclose new or additional evidence. Ala. R. Crim. P. 16.3. Upon a sufficient showing, the court may issue a protective order or set conditions relating to the discovery of evidence in the case. Ala. R. Crim. P. 16.4. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with such an order, in whole or in part, corrective procedures are set out in Ala. R.

Crim. P. 16.5.

F. Trial

The law of evidence relating to civil actions shall apply to criminal proceedings, except as otherwise provided by law. Ala. R. Crim. P. 19.2(a). The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are allowed to cross-examine the witnesses called. Ala. R. Crim. P. 19.2(b)(1). The court may question all witnesses called, whether called by the court or by a party. Ala. R. Crim. P. 19.2(b)(2).

In the prosecution of any felony case, the trial court, in its discretion, may permit the jury hearing the case to break up and go home during the pendency of the trial. Ala. R. Crim. P. 19.3(a)(1). Ala. Code § 12-16-9. The court may, at any time, on its own initiative or on motion of any party, require that the jury be sequestered under the charge of a proper officer whenever the jurors leave the jury box, or the court may allow the jurors to separate. Ala. R. Crim. P. 19.3(a)(2). A motion to separate or sequester shall not be made within the hearing of the jury, and the jury shall not be told who made such motion. Ala. R. Crim. P. 19.3(a)(2).

In all cases the court shall admonish the jurors that they are not: to discuss among themselves any subject connected with the trial until the case is submitted to them for deliberation; to converse with anyone else on any subject connected with the trial until they are discharged as jurors in the case; to knowingly expose themselves to outside comments or to news accounts of the proceedings until they are discharged as jurors in the case; or to form or express any opinion on the case until it is submitted to them for deliberation. Ala. R. Crim. P. 19.3(b).

G. Release From Mental Commitment

When a defendant has been committed to the custody of the commissioner or a facility as provided by Ala. R. Crim. P. 25.6, the defendant may only be released without supervision and attendance when authorized by court order. Ala. R. Crim. P. 25.8(a). Upon the receipt by the court of a motion from the defendant or the commissioner of a facility alleging that the defendant is no longer mentally ill or poses a real and present danger to himself or others, the court shall then give notice to the district attorney, the commissioner, and the regional or communal mental health facility, and the defendant. Unless an order of release is stipulated by the parties with the consent of the court, the court shall hold a hearing to determine whether the defendant is still mentally ill or poses a real and present danger to himself or to others. The court shall conduct the hearing without empaneling a jury. Ala. R. Crim. P. 25.8(b).

A hearing is also required if the department or facility is of the opinion and gives notice to the court that the defendant is no longer mentally ill or a danger to himself or others by being at large. Ala. R. Crim. P. 25.8(c). In either case, the court shall set a hearing date to be held within 30 days of its receipt of the motion or notice. Ala. R. Crim. P. 25.8(d). If a hearing is not held within 60 days of receipt by the court of the notice, the defendant shall be released unless, for good cause shown, the hearing is continued for a reasonable time. Ala. R. Crim. P. 25.8(e). If, after conducting the hearing, the court determines that the defendant is no longer mentally ill or no longer poses a real and present threat of substantial harm to himself or others, the court shall order the defendant's release. Ala. R. Crim. P. 25.8(f). If necessary and appropriate, the court may impose conditions upon the release of the defendant. Ala. R. Crim. P. 25.8(f). The court retains the right to modify or totally remove the release conditions. Ala. R. Crim. P. 25.8(h), (i).

H. Presence of the Defendant During Sentencing

The defendant has the right to be present at the sentence hearing and at sentencing. Failure of the defendant to appear will not delay the pronouncement and entry of judgment if the defendant's right to be present has been waived. Ala .R. Crim. P. 26.7.

I. Initial Appearance After Probation Violation

When a probationer is arrested, the probation officer shall be notified immediately. The probationer shall be taken without delay before the judge who issued the warrant or summons, or before the original sentencing judge if the probationer was arrested without a warrant. The judge shall then inform the probationer of the alleged probation violation and furnish the probationer with a copy thereof; inform the probationer that any statement the probationer makes prior to the hearing may be used against the probationer; advise the probationer of his right to request counsel; set the date of the revocation hearing; and determine whether the probationer is to be released pending the probation revocation hearing or is to be held without bond. In cases involving breaches of conditions of probation because of nonpayment of fines, costs, or restitution, before the probationer is incarcerated, the court must inquire into the probationer's financial status and determine whether the probationer is indigent. Ala. R. Crim. P. 27.5(a).

The probationer may waive the probation hearing and the judge may make a final disposition of the issue, if the probationer has been given sufficient prior notice of the charges and sufficient notice of the evidence to be relied upon and the probationer admits that he committed the violation. Ala. R. Crim. P. 27.5(b).

2. Criminal Code

The Code of Alabama of 1975 contains the Alabama Criminal Code in Title 13A. Drug offenses in this title provide their own special penalties and are authorized sentences although they do not conform to the punishment and sentences chapter of the criminal code. *Dickerson v. State*, 414 So. 2d 998, 1005 (Ala. Crim. App. 1982). The following is a brief outline and synopsis of relevant chapters and sections of Title 13A:

Chapter 1 - General Provisions

Multiple Offenses. When the conduct of a defendant may violate multiple offenses, the defendant may be prosecuted for each offense. He may not be convicted of multiple offenses if one offense is included in the other, or inconsistent findings of fact were needed to convict the different offenses. Ala. Code § 13A-1-8(b).

Lesser Included Offenses. A defendant may be convicted of a lesser included offense of the crime charged. Ala. Code § 13A-1-9.

Chapter 2 - Principals of Criminal Liability

Conduct. A person is not relieved of criminal liability for conduct because he engages in that conduct under a mistaken belief of fact unless there is a stated defense in the statute. See Ala. Code § 13A-2-6(a).

Behavior of Another. A person is legally accountable for the behavior of another constituting a criminal offense if, with the intent to promote or assist the commission of the offense he aids or abets the person in committing the offense. Ala. Code § 13A-2-23.

Chapter 3 - Defenses

Official Conduct. Conduct which would otherwise constitute an offense is not criminal when required or authorized by law, judicial decree, or is performed by a public servant in the reasonable exercise of his official duties. Ala. Code § 13A-3-22.

Use of Force to Defend Oneself. A person is justified to use physical force upon another in order to defend himself or a third party from what he reasonable believes to be the use or imminent use of unlawful physical force. He may use a degree of force which he reasonably believes to be necessary for the purpose. Ala. Code § 13A-3-23(a).

A law enforcement agency may use standard procedures for investigating the use of force, but may not arrest the person for using force unless it is determined that there is probable cause that the force used was unlawful. Ala. Code § 13A-3-23(e). The additions to Alabama's justification law create legal presumptions, removes the duty to retreat under certain circumstances, and provides criminal and civil immunity.

A. Legal Presumptions

A person is now presumed to be legally justified in using deadly physical force in defense of himself or another, if the person reasonably believes the other person is:

- (1) Using or about to use unlawful deadly physical force.
- (2) Using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling.
- (3) Committing or about to commit a kidnapping in

any degree, assault in the first or second degree, burglary in any degree, robbery in any degree, forcible rape, or forcible sodomy.

- (4) Using or about to use physical force against an owner, employee, or other person authorized to be on business property when the business is closed to the public while committing or attempting to commit a crime involving death, serious physical injury, robbery, kidnapping, rape, sodomy, or a crime of a sexual nature involving a child under the age of 12.
- (5) In the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered, a dwelling, residence, business property, or occupied vehicle, or federally licensed nuclear power facility, or is in the process of sabotaging or attempting to sabotage a federally licensed nuclear power facility, or is attempting to remove, or has forcefully removed, a person against his or her will from any dwelling, residence, business property, or occupied vehicle when the person has a legal right to be there, and provided that the person using the deadly physical force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring. The legal presumption that a person using deadly physical force is justified to do so pursuant to this subdivision does not apply if:
 - a. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;

- b. The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;
- c. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- d. The person against whom the defensive force is used is a law enforcement officer acting in the performance of his or her official duties.

Ala. Code § 13A-3-23(a)(1)-(5).

B. Duty to Retreat

A person who is justified under [Ala. Code § 13A-3-23(a)] in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his or her ground. Ala. Code § 13A-3-23(b).

C. Immunity

An individual may be immune from criminal prosecution and civil action for the use of force, including deadly force, if it is determined to be justified and permitted under Ala. Code §§ 13A-3-20 to 13A-3-26.

Use of Force to Defend Another. A person may use physical force upon another person in order to defend a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person.

The person may use a degree of force which he or she reasonably believes to be necessary for the purpose. Use of deadly physical force in the defense of another person may be justified if it falls into one of the five subdivisions listed in § 13A-3-23(a).

Use of Force to Protect Property. A person in lawful possession or control of premises or a person who is licensed or privileged to be on the property, may use physical force upon another person to the extent the person reasonably believes it necessary to prevent or terminate what he reasonably believes is necessary to stop the commission of a criminal trespass by the other person in or upon such premises. A person may use deadly physical force only in defense of a person or when the person reasonably believes it necessary to prevent the commission of arson in the first or second degree by the trespasser. Ala. Code § 13A-3-25.

A person may use physical force, other than deadly force, upon another person if he believes it reasonably necessary to prevent or terminate the commission by the other person of theft or criminal mischief on a building. Ala. Code § 13A-3-26.

Use of Force Making an Arrest. A peace officer making an arrest or preventing an escape is justified in using the degree of physical force which he reasonably believes necessary, upon a person in situations outlined in the following statute.

Section 13A-3-27. Use of force in making an arrest or preventing an escape.

- (a) A peace officer is justified in using that degree of physical force which he reasonably believes to be necessary, upon a person in order:
 - (1) To make an arrest for a misdemeanor, violation or violation of a criminal

ordinance, or to prevent the escape from custody of a person arrested for a misdemeanor, violation or violation of a criminal ordinance, unless the peace officer knows that the arrest is unauthorized; or

(2) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest for a misdemeanor, violation or violation of a criminal ordinance, or while preventing or attempting to prevent an escape from custody of a person who has been legally arrested for a misdemeanor, violation or violation of a criminal ordinance.

(b) A peace officer is justified in using deadly physical force upon another person when and to the extent that he reasonably believes it necessary in order:

(1) To make an arrest for a felony or to prevent the escape from custody of a person arrested for a felony, unless the officer knows that the arrest is unauthorized; or

(2) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

(c) Nothing in subdivision (a)(1), or (b)(1), or (f)(2) constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to persons being arrested or to innocent persons whom he is not seeking to arrest or retain in custody.

(d) A peace officer who is effecting an arrest

pursuant to a warrant is justified in using the physical force prescribed in subsections (a) and (b) unless the warrant is invalid and is known by the officer to be invalid.

- (e) Except as provided in subsection (f), a person who has been directed by a peace officer to assist him to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes that force to be necessary to carry out the peace officer's direction.
- (f) A person who has been directed to assist a peace officer under circumstances specified in subsection (e) may use deadly physical force to effect an arrest or to prevent an escape only when:
 - (1) He reasonably believes that force to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
 - (2) He is authorized by the peace officer to use deadly physical force and does not know that the peace officer himself is not authorized to use deadly physical force under the circumstances.
- (g) A private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes has committed a felony and who in fact has committed that felony, but he is justified in using deadly physical force for the purpose only when he reasonably believes it necessary to defend himself or a third person from what he

reasonably believes to be the use or imminent use of deadly physical force.

- (h) A guard or peace officer employed in a detention facility is justified:
 - (1) In using deadly physical force when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner accused or convicted of a felony from any detention facility, or from armed escort or guard;
 - (2) In using physical force, but not deadly physical force, in all other circumstances when and to extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner from a detention facility.
 - (3) "Detention facility" means any place used for the confinement, pursuant to law, of a person:
 - a. Charged with or convicted of an offense; or
 - b. Charged with being or adjudicated a youthful offender, a neglected minor or juvenile delinquent; or
 - c. Held for extradition; or
 - d. Otherwise confined pursuant to an order of a criminal court.

Resisting Arrest. A person may not use physical force to resist a lawful arrest by a peace officer who is known or reasonably appears to be a peace officer. Ala. Code § 13A-3-28.

Chapter 4 - Inchoate Crimes

These are attempted crimes or conspiracy to commit a

crime. For example, a person is guilty of "attempt" when the person intends to commit a specific offense as burglary and does any overt act toward the commission of an offense, such as trying to break a lock on a door. Ala. Code § 13A-4-2(a). A person is guilty of conspiracy if two people engage in conduct where one of them commits an offense as part of the agreement. The accomplice is equally guilty. Ala. Code § 13A-4-3.

Chapter 5 – Punishments and Sentences

Crimes are divided into felonies (punishable by terms of more than one year), and misdemeanors (punishable by term of up to one year). Felonies are divided into four classes: A, B, C, and D. Misdemeanors are divided into three classes; A, B, and C. There is also a violations category. Ala. Code §§ 13A-5-6, 13A-5-7. Assuming the sentencing standards are not being applied (Ala. Code § 12-25-1 *et. seq.*), the sentencing ranges are as follows:

Felonies (Ala. Code § 13A-5-11)

	Imprisonment (with firearm)	Fine*
Class A	10 years to life or 99 years (20 years to life)	\$60,000
Class B	2 years to 20 years (Not less than 10 years)	\$30,000
Class C	1 year & 1 day to 10 years (Not less than 10 years); must be in accordance with § 15-18-8, unless sentenced as a Habitual Offender.	\$15,000

Class D 1 year & 1 day to 5 years \$7,500

Misdemeanor (Ala. Code § 13A-5-7 and § 13A-5-12)

Class A Not more than 1 year \$6,000

Class B Not more than 6 months \$3,000

Class C Not more than 3 months \$500

Violations Not to exceed 30 days \$200

(*or any amount up to double the pecuniary gain to defendant or loss to the victim. Ala. Code § 13A-5-11(a)(4))

Additional Penalties

Any person convicted of an unlawful sale of a controlled substance that takes place within a three-mile radius of the campus boundaries of any public or private education institution or a public housing project owned by a housing authority faces a sentencing enhancement. The person may receive a penalty of five years of incarceration in a state corrections facility with no provision for probation. Ala. Code § 13A-12-250.

Certain crimes including those involving the use of a deadly weapon against minors, sex offenses involving a child, and drug trafficking have additional penalties.

Habitual Felony Offender Act (HFOA)- Ala. Code § 13A-5-9

In all cases where the sentencing standards are not being applied (see Ala. Code § 12-25-1 *et. seq.*), when it is shown that a criminal defendant has been previously convicted, of Class A, Class B, or Class C felony and after such

conviction commits another felony, the defendant must be sentenced using the Habitual Felony Offender Act (HFOA). The HFOA sentencing ranges are as follows:

Second Felony Offense

C - Punished for a Class B felony; 2-20 years

B - Punished for a Class A felony; 10-99 years or life

A - 15-99 years or life

Third Felony Offense

C - Punished for a Class A felony; 10-99 years or life

B - 15-99 years or life

A - life or any term of years not less than 99 years

Fourth Felony Offense

C - 15-99 years or life

B - mandatory life or any term not less than 20 years

A (with no prior Class A felony conviction) - life with or without parole

A (with prior Class A conviction) - life without parole

Additionally, when it is shown that a criminal defendant has been previously convicted of any two or more felonies that are Class A or Class B, and after such convictions has committed a Class D felony, upon conviction, he or she must be punished for a Class C felony.

Finally, when it is shown that a criminal defendant has been previously convicted of any three or more felonies and then commits a Class D felony, he or she must be punished for a Class C felony.

Hate Crime Enhancement - Ala. Code §13A-5-13(c)

An individual that has been found guilty of a crime, the commission of which was shown beyond a reasonable doubt to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, or physical or mental disability, shall be punished as follows:

Class A Felony Offense -not less than 15 years

Class B Felony Offense - not less than 10 years

Class C Felony Offense - not less than 2 years

Class D Felony Offense - not less than 18 months

Any Misdemeanor -to be sentenced as a Class A misdemeanor, except that the defendant shall be sentenced to a minimum of 3 months.

The Presumptive Sentencing Standards and Voluntary Sentencing Standards - Ala. Code §§ 12-25-1 et. seq.

Alabama began the use of voluntary sentencing standards in 2006.⁹ However, in 2012 the Alabama Legislature adopted a presumptive sentencing structure to commence in 2013 for the sentencing of many, but not all, criminal offenses.¹⁰

A range of sentencing for the 26 most frequently sentenced offenses was determined using worksheets and prison sentence length tables that evaluated historical sentencing data, the major factors considered in making sentencing decisions and the importance of these factors to each other. See the Alabama Sentencing Commission's Sentencing Standards and Worksheets General Instructions.

⁹ Act 2006-312.

¹⁰ Act 2012-473.

Rather than a straight application of the statutory sentencing range of the subject offense or use of the Habitual Felony Offender Act, the sentencing court instead applies a sentence (durational) for a covered offense within the range determined by completing of the worksheets and also applies the prison in/out (dispositional) recommendation set by the guidelines. See Ala. Code § 12-25-34.2

Presumptive sentencing standards means the standards and guidelines are required by law to be applied unless the circumstances provide for a departure. See Ala. Code § 12-25-34.2(b).

A sentencing court may depart from either a dispositional or a durational recommendation in exceptional cases, upon a finding of aggravating and/or mitigating factors; however, if the sentencing court decides to depart from a sentence recommendation in the presumptive sentencing standards, the aggravating and/or mitigating factors found as reasons for any departure must be stated in the written sentencing order. The parties may assert aggravating and/or mitigating circumstances for the sentencing court's consideration. *Oliver v. State*, (Ala. Crim. App. 2014).

Absent a stipulation by the defendant of the presence of an aggravating factor, when the state seeks a departure from a recommendation in the presumptive sentencing standards, it bears the burden of proving an aggravating factor beyond a reasonable doubt. *Hyde v. State*, 185 So. 3d 501 (Ala. Crim. App. 2015).

Not all sentences come under the presumptive sentencing umbrella, however. Several violent offenses and burglary offenses instead fall under the purview of the voluntary sentencing standards. *Hyde v. State*, 185 So. 3d 501 (Ala. Crim. App. 2015).

Where the sentencing standards are voluntary rather than presumptive, the sentencing court may follow the guidelines recommendations, or instead choose to sentence within the permissible statutory range for that sentence, including, where called for, the application of the Habitual Felony Offender Act. See. Ala. Code § 12-25-35.

Where the sentence is not for an offense covered under the presumptive sentencing standards, neither the departure nor the reason for the departure shall be subject to appellate review but shall be supplied to the (sentencing) commission for future consideration concerning modification of the voluntary sentencing standards and for statistical purposes only. Ala. Code § 12-25-35(c).

The worksheets for offenses under both the presumptive guidelines and the voluntary guidelines must be completed prior to sentencing for the sentencing court's due consideration. In imposing sentence, the court shall indicate on the record that the worksheet and applicable sentencing standards have been reviewed and considered. Ala. Code § 12-25-35(b).

The worksheets are to be completed by a probation officer, the prosecutor, or any other person designated by the sentencing judge. Ala. Code § 12-25-35(a). If the defendant is charged with more than one offense, the guidelines are to be prepared for the most serious offense.

Chapter 6 - Offenses Involving Danger to the Person

Murder - Ala. Code § 13A-6-2. General requirements are causing the death of another with intent, or under circumstances manifesting extreme indifference to human life, or the death occurring in the furtherance of certain felonies being committed. Murder is a Class A Felony.

Manslaughter – Ala. Code § 13A-6-3. General requirements are recklessly causing the death of another person, or causing the death of another due to a sudden heat of passion caused by provocation recognized by law. Manslaughter is a Class B Felony.

Criminally Negligent Homicide – Ala. Code § 13A-6-4. The general requirement is causing the death of another person by criminal negligence. Criminally negligent homicide is a Class A Misdemeanor (unless caused by the operator of a vehicle or vessel being under the influence in violation of Title 32, Chapter 5A which results in the offense being a Class C Felony).

Assault in the First Degree. General requirements for assault in the first degree include the intent to cause serious physical injury, causing such injury, and use of a deadly weapon or dangerous instrument. There are other variations of this charge listed in the statute. Class B Felony. Ala. Code § 13A-6-20.

Assault in the Second Degree. General requirements for assault in the second degree include the intent to cause serious physical injury and actually causing such injury. There are other variations of this charge listed in the statute. Class C Felony. Ala. Code § 13A-6-21.

Assault in the Third Degree. General requirements for assault in the third degree include the intent to cause physical injury and actually causing such injury. There are other variations of this charge listed in the statute. Class A Misdemeanor. Ala. Code § 13A-6-22.

Chapter 7 – Offenses Involving Damage and Intrusion Upon Property

Criminal Trespass in the First Degree. A person is guilty of

criminal trespass in the first degree if he knowingly enters or remains unlawfully in a dwelling (Class A Misdemeanor). Ala. Code § 13A-7-2.

Criminal Trespass in the Second Degree. A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in a building or upon real property which is fenced in or designed to exclude intruders. Ala. Code § 13A-7-3.

Criminal Trespass in the Third Degree. A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in or upon premises of another. Ala. Code § 13A-7-4.

Chapter 8 - Offenses Involving Theft

Theft Defined. A person commits theft of property if he (1) knowingly obtains or exerts unauthorized control over the property of another, with intent to deprive the owner of his property; (2) knowingly obtains by deception control over the property of another, with intent to deprive the owner of his property; (3) knowingly obtains or exerts control over property in the custody of a law enforcement agency which was explicitly represented to the person by an agent of the law enforcement agency as being stolen; or (4) knowingly obtains or exerts unauthorized control over any donated item left on the property of a charitable organization or in a drop box or trailer, or within 30 feet of a drop box or trailer, belonging to a charitable organization.

The limitations period for any prosecution under subdivision (2) of subsection (a) does not commence or begin to accrue until the discovery of the facts constituting the deception, after which the prosecution shall be commenced within five years. Ala. Code § 13A-8-2.

Theft of Services. A person commits the crime of theft of services if (1) he intentionally obtains services known by him to be available only for compensation by deception, threat, false token or other means to avoid payment for the services; or (2) having control over the disposition of services of others to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto. Ala. Code § 13A-8-10(a).

Robbery in the First Degree. A person is guilty of robbery in the first degree if while committing a theft he uses or threatens imminent use of force and he: (1) is armed with a deadly weapon or dangerous instrument; or (2) causes serious physical injury to another. Class A Felony. Ala. Code § 13A-8-41.

Robbery in the Second Degree. A person is guilty of robbery in the second degree if while committing a theft violates uses or threatens force and he is aided by another person actually present. Class B Felony. Ala. Code § 13A-8-42.

Robbery in the Third Degree. A person is guilty of robbery in the third degree if in the course of committing a theft he: (1) uses force against the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or (2) threatens the imminent use of force against the person or the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property. Class C Felony. Ala. Code § 13A-8-43.

Chapter 9 - Forgery and Fraudulent Practices

Forgery, bad checks, and business and charitable fraud are enumerated in this chapter.

Chapter 10 - Offenses Against Public Administration

Refusing to Aid a Peace Officer. A person commits the crime of refusing to aid a peace officer if, upon command by a peace officer identified to him as such, he fails or refuses to aid such peace officer in: (1) effectuating a lawful arrest; or (2) preventing the commission by another person of any offense. Ala. Code § 13A-10-5.

False Reporting to Law Enforcement. A person commits false reporting to law enforcement authorities if he knowingly makes a false report or causes the transmission of a false report to law enforcement authorities of a crime or relating to a crime. (Class A Misdemeanor) Ala. Code § 13A-10-9.

Impersonating a Peace Officer. A person commits the crime of impersonating a peace officer if he falsely pretends to be a public servant and does any act in that capacity. (Class C Felony) Ala. Code § 13A-10-11.

Escape with Force. A person commits escape in the first degree if; (1) he employs physical force, a threat of physical force, a deadly weapon, or dangerous instrument in escaping or attempting to escape from custody; or (2) having been convicted of a felony, he escapes or attempts to escape from custody imposed pursuant to that conviction. (Class B Felony) Ala. Code § 13A-10-31.

Escape from a Penal Facility. A person commits the crime of escape in the second degree if he escapes or attempts to escape from a penal facility. (Class C Felony) Ala. Code § 13A-10-32.

Escape from Custody. A person commits escape in the third degree if he escapes or attempts to escape from custody. (Class C Felony) Ala. Code § 13A-10-33.

Resisting Arrest. A person commits the crime of resisting

arrest if he intentionally prevents or attempts to prevent a peace officer from affecting a lawful arrest of himself or another person. (Class B Misdemeanor)_Ala. Code § 13A-10-41.

Hindering Prosecution. For purposes of Section 13A-10-43 through 13A-10-45, a person renders “criminal assistance” to another if he hinders prosecution or apprehension. The statute lists specific incidents that hinder prosecution or apprehension as hiding a person or helping a fugitive to escape. Ala. Code § 13A-10-42.

Chapter 11 - Offenses Against Public Order and Safety

Failure to Disburse. A person commits the crime of failure of disorderly persons to disperse if he participates with five or more persons in a course of disorderly conduct likely to result in substantial harm or serious inconvenience, annoyance or alarm, and intentionally refuses to fails to disperse when ordered to do so by a peace officer or other public servant. (Class B Misdemeanor)Ala. Code § 13A-11-6.

Chapter 12 - Offenses Against Public Health and Morals

These crimes consist of gambling, prostitution, obscenity, drugs, drug possession, drug trafficking.

Chapter 13 - Offenses Against the Family

These offenses include incest, nonsupport, abandonment of a child, and child endangerment.

Chapter 14 - Miscellaneous Offenses

These offenses include prohibition of marathon physical contests, maiming one’s self for charitable relief, and impersonating a clergyman.

3. Evidence

In July of 1995, the Alabama Supreme Court issued an order adopting the Alabama Rules of Evidence which became effective January 1, 1996. There are several of these rules that are helpful for law enforcement personnel to know.

A. Competency

Ala. R. Evid. 601 states, "Every person is competent to be a witness except as otherwise provided in these rules." All witnesses are competent to take the stand except if they have been rendered incompetent under the Alabama Rules of Evidence. Historic grounds of witness incompetency such as perjury convictions and various dead men's statutes are no longer valid. Almost all witnesses, regardless of age, will be allowed to testify unless they are deemed to be so disabled they have no personal knowledge of the incident, they cannot understand the oath or affirmation, their testimony is not relevant, or their testimony is unfairly prejudicial or a waste of time.

B. "Personal knowledge of the matter"

A witness may not testify about a matter of which he or she has no first-hand knowledge. A proper foundation must be established to show that a witness was in a position to, and did, observe the facts to which the witness is to testify. Ala. R. Evid. 602.

C. Hearsay evidence

Hearsay evidence is testimony in court, or written evidence, of a statement made out of court, which is being offered as an assertion to show the truth of the matters asserted therein. Unless falling under one of the exemptions recognized by the Alabama Rules of Evidence, hearsay

includes all statements made out of court offered to prove the truth of the matter asserted. Ala. R. Evid. 801. The appellate courts have noted two ways to overcome a hearsay objection in addition to those reasons that fall under one of the exceptions. Such statements that have qualified in the past are those made to law enforcement officers causing them to conduct an investigation. *Mason v. State*, 768 So. 2d 981, 1002 (Ala. Crim. App. 1998). Definitional non-hearsay may also occur in an out-of-court statement overheard by an officer leading the officer to search someone's property. *Smith v. State*, 727 So. 2d 147, 167 (Ala. Crim. App. 1998).

D. Police Reports

Alabama has a statute that states that police reports are inadmissible into evidence. The Alabama Supreme Court has reasoned that this is because the reports are considered hearsay. This means that the report would be admissible if it can be classified as a hearsay exception. The exception has been that of past recorded recollection. *Worsham v. Fletcher*, 454 So. 2d 946, 948 (Ala. 1984). A police report can be used to refresh the memory of a witness under Ala. R. Evid. 612. If used to refresh, the report itself is not admissible. This is because the evidence is considered to be the refreshed memory rather than the report itself.

E. Privileges

The Alabama Rules of Evidence do not encompass the entire body of evidence law in this state. Anyone wanting to consult Alabama evidence law in its entirety should refer to the Alabama Rules of Evidence, case law, statutes, constitutional principles, and other rules of court. The privilege rules were modeled after Alabama's preexisting privilege statutes and the Uniform Rules of Evidence. Alabama's privilege rules include, but are not limited to the following evidence rules: attorney-client privilege, Rule 502;

psychotherapist-client privilege, Rule 503; husband-wife privilege, Rule 504; clergymen, Rule 505; identity of informer, Rule 509; and waiver by voluntary disclosure, Rule 510.

4. Vehicular Stops

A. Restricted Driver's License

The Director of Public Safety has the authority to impose restrictions suitable to the licensee's driving ability with respect to the type of special restrictions or control devices that are required to assure the safe operation of a motor vehicle by the licensee. Ala. Code § 32-6-12(a). The restrictions are shown on the usual driver's license form. Ala. Code § 32-6-12(b). It is a misdemeanor for any person to operate a motor vehicle in any manner inconsistent with the restrictions imposed in such a restricted license. Ala. Code § 32-6-12(d).

B. Insurance

No person shall operate, register, or maintain registration of a motor vehicle designed to be used on public highway unless the motor vehicle is covered by a liability insurance policy, motor vehicle liability bond, or deposit of cash. Ala. Code § 32-7A-4(a).

Every operator of a motor vehicle shall carry in the vehicle an insurance card as evidence of insurance. The proof of insurance must be displayed upon the request by any law enforcement officer. The insurance card may be in electronic form, but the use of an electronic device to display evidence of insurance does constitute consent for the law enforcement officer to access any other content on the electronic device. Ala. Code § 32-7A-6. Failure to comply is a Class C misdemeanor. Ala. Code § 32-7A-16.

Additionally, drivers are required to retain their vehicle's registration receipt within their vehicle and, upon demand, present it for inspection by a law enforcement officer. Ala. Code § 40-12-260(b). This receipt may be retained in an electronic format. However, use of an electronic device to display the receipt does not constitute consent for an officer to access other content on the device. Ala. Code § 40-12-260(b)(3).

C. Seat Belts

Unless otherwise provided, a person in the front seat of most passenger cars may be issued a citation for failing to wear a safety belt while a motor vehicle is in motion. Ala. Code § 32-5B-4. The penalty is a \$25 fine. Ala. Code § 32-5B-5.

5. Domestic Violence

Domestic violence is physical, mental, sexual or emotional abuse in an intimate relationship. It occurs when one person uses abusive tactics to gain power and control over a partner or former partner in a dating relationship. Domestic violence hits homes in every community. It has a devastating effect on victims, children, families, and communities.

There are several legal remedies including, but not limited to, Protection from Abuse Orders and Temporary Restraining Orders. A Protection from Abuse (PFA) Order provides a legal option for someone who is being abused or threatened by an intimate partner or former partner. A PFA is a circuit court order that provides legal protection for a person in or just out of an abusive relationship. With a PFA order, the police can intervene before the abuser harms the victim. Any violation of the PFA order is a crime.

A Temporary Restraining Order directs a person to do

or cease from doing a certain act. It can be an order requiring the abuser to stay away from the victim, the victim's family, the victim's home, etc. There are several types of Temporary Restraining Orders. Some are issued by municipal or district courts in conjunction with a criminal case; others are issued by a family court or a circuit court. They may be issued upon filing for a divorce, or in response to a petition for a Protection From Abuse Order. *See* Ala. Code § 30-5-1 – 30-5-11.

When a law enforcement officer investigates an allegation of domestic violence or elder abuse, whether or not an arrest is made, the officer shall make a written report of the alleged incident, including a statement of the complaint, and the disposition of the case. Ala. Code § 15-10-3(b).

If the defendant is arrested under this section for committing an act of domestic violence, including domestic violence in the first degree, pursuant to Section 13A-6-130, domestic violence in the second degree, pursuant to Section 13A-6-131, domestic violence in the third degree, pursuant to Section 13A-6-132, interference with a domestic violence emergency call, in violation of Section 13A-6-137, or domestic violence by strangulation or suffocation, pursuant to Section 13A-6-138, in violation of a domestic violence protection order, or an act of elder abuse in violation of an elder abuse protection order, the defendant shall be held in custody until brought before the court within 48 hours for the purpose of enforcing the protection order and for consideration of bail in accordance with Section 15-13-190 and the applicable rules of criminal procedure, pending a hearing. If the defendant is not brought before the court within 48 hours, the defendant shall be subject to bail according to the Alabama Rules of Criminal Procedure.

6. Arrest

A. In General

The sheriff has the authority to make an arrest with or without an arrest warrant within the sheriff's county. Ala. Code § 15-10-1.

An arrest is the taking into custody of a person for the purpose of holding or detaining that person to answer a criminal charge or civil demand. A law enforcement officer must inform the person arrested of the officer's authority and the cause of arrest unless the person is arrested in the actual commission of a public offense or in pursuit following the commission of an offense. An arrest occurs when a person is placed within the power of the officer and submits to that power. Technically, no manual touching is necessary to complete an arrest. *Central Ga. Ry. Co. v. Carlock*, 196 Ala. 659, 661-62, 72 So. 261, 262 (Ala. 1916). However, words alone will not constitute an arrest if the party resists submission to the officer's power.

The final test of whether an arrest has occurred is whether a reasonable person detained in that manner would believe that he or she was not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

False imprisonment consists of any unlawful detention of the person of another for any length of time whereby he is deprived of his personal liberty. Ala. Code § 6-5-170.

B. Without Warrant

Where any public offense or breach of peace has occurred in the presence of a law officer, the officer has the authority to arrest that person without a warrant. Ala. Code § 15-10-3(a)(1). The officer does not have to actually see the

offense being committed. Knowledge gained from other senses, such as hearing, which provides a fair inference to the officer that a crime is being presently committed, constitutes a valid reason for a warrantless arrest. *Jakes v. State*, 398 So. 2d 342, 345-46 (Ala. Crim. App. 1981). However, mere belief in the person's guilt, or even reasonable grounds to suspect an offense, are not sufficient reasons to arrest a person without a warrant. *Burk v. Knott*, 20 Ala. App. 316, 319, 101 So. 811, 813 (Ala. Civ. App. 1924). When making a warrantless arrest, the officer must inform the person of the officer's authority and the cause of the arrest, unless the arrest is made during the commission of the offense. *Lakey v. State*, 24 Ala. App. 273, 274, 134 So. 455, 455 (Ala. Civ. App. 1931).

Warrantless arrests may also be made in connection with the **commission of a felony**. An officer may make a warrantless arrest of any individual who has committed a felony, or whom the officer has reasonable cause to believe has committed a felony. Even if it later appears that the arrested individual did not commit a felony, the warrantless arrest of the individual will be upheld. The charge of a felony, based upon reasonable cause, is sufficient for a warrantless arrest. Ala. Code § 15-10-3(a). The probable cause required for a warrantless arrest is the same as would justify the issuance of an arrest warrant. *State v. Calhoun*, 502 So. 2d 795, 801-02 (Ala. Crim. App. 1986) *aff'd in part, rev'd in part on other grounds*, 502 So. 2d 808 (Ala. 1986). Probable cause is knowledge of circumstances such as would lead a reasonable person of ordinary caution, acting impartially, reasonably and without prejudice, to believe that the person arrested is guilty of a felony. *Oliver v. State*, 385 So. 2d 69, 74 (Ala. Crim. App. 1980). Hence, mere suspicion on the part of the officer that a felony has been committed is not sufficient. *State v. Calhoun*, 502 So. 2d 795, 801 (Ala. Crim. App. 1986) *aff'd in part, rev'd in part on other grounds*, 502 So. 2d 808 (Ala. 1986). The officer's knowledge must be based upon facts which are "reasonably trustworthy." *Foy v. State*, 387 So. 2d 321, 324 (Ala.

Crim. App. 1980).

An officer may make a warrantless arrest when the officer has actual knowledge that an arrest warrant has been issued for the defendant's commission of a felony or misdemeanor. The officer does not need to have the warrant in his or her possession to arrest the individual; the officer must, however, inform the person arrested of the offense charged and of the fact that a warrant has been issued for the person's arrest. Ala. Code § 15-10-3(a)(6). For more information regarding arrests made without possession of the warrant, *see* subsection D of this chapter under "Arrests with a Warrant."

A law enforcement officer may arrest a driver at the scene of an accident if the sheriff has reasonable grounds to believe that the driver contributed to the accident by driving under the influence. The arrest may be made without a warrant even if the sheriff did not personally see the violation committed. The officer may write a citation based on personal investigation. Ala. Code § 32-5-171.

Finally, when the officer has probable cause to believe that either a felony or a misdemeanor offense involving family violence has occurred, the officer may make a warrantless arrest. Family violence is defined as any attempt or threat of abuse or assault between family, household, dating, or engagement members. Ala. Code § 15-10-3. Any officer making an investigation of family violence must make a written report of the investigation, regardless of whether an arrest is made. For more information on domestic violence offenses, *see* Section 5 of this chapter.

A law officer cannot enter a person's dwelling to make a routine felony arrest. *Payton v. New York*, 445 U.S. 573, 590 (1959). Although Alabama law provides that an officer making a warrantless arrest may forcibly enter a dwelling if

the officer is refused admittance, Ala. Code § 15-10-4, the United States Supreme Court has held that such an act violates the defendant's constitutional rights, unless the officer can show a compelling necessity for immediate action. *Payton v. New York*, 445 U.S. 573, 590 (1959).

There are at least eight occasions in which a law enforcement officer has the authority to make an arrest without a warrant.

- (1) If a public offense has been committed or a breach of the peace threatened in the presence of the officer.
- (2) When a felony has been committed, though not in the presence of the officer, by the person arrested.
- (3) When a felony has been committed and the officer has reasonable cause to believe that the person arrested committed the felony.
- (4) When the officer has reasonable cause to believe that the person arrested has committed a felony, although it may afterwards appear that a felony had not in fact been committed.
- (5) When a charge has been made, upon reasonable cause, that the person arrested has committed a felony.
- (6) When the officer has actual knowledge that a warrant for the person's arrest for the commission of a felony or misdemeanor has been issued, provided the warrant was issued in accordance with this chapter. However, upon request the officer shall show the warrant to the arrested person as soon as possible. If the officer does not have the warrant in his or her possession at the time of arrest the officer shall inform the defendant of the offense charged and of the fact that a warrant has been issued.

- (7) When the officer has reasonable cause to believe that a felony or misdemeanor has been committed by the person arrested in violation of a protection order, including a domestic violence protection order or an elder abuse protection order, issued by a court of competent jurisdiction.
- (8) When an offense involves domestic violence as defined by this section, and the arrest is based on probable cause, regardless of whether the offense is a felony or misdemeanor.

Ala. Code § 15-10-3(a).

C. With a Warrant

An arrest warrant is a written order of the court based upon a complaint which commands a law enforcement officer to arrest a person and bring that person before a magistrate. The sheriff has the duty to arrest any person against whom an arrest warrant has been issued. The sheriff may not question the probable cause on which the warrant is based or delay the serving of the warrant. 1989 Op. Att'y Gen. (Ala.) 89-00426. Alabama law provides that an officer may execute a warrant for arrest on any day and at any time; but in doing so, must inform the defendant of the officer's authority and, if the officer has the warrant in his or her possession, must show the warrant to the prisoner upon request. Ala. Code § 15-10-2. The warrant used in the arrest must be the original, not a certified copy. 1989 Op. Att'y Gen. (Ala.) 89-00426. A warrant that is void on its face will not protect the officer from charges of false arrest. *Sasnett v. Weathers*, 21 Ala. 673 (Ala. 1852).

Ordinarily, an arrest warrant is only valid in the county in which it is issued. When the defendant is in another county, the warrant may be executed by any law enforcement officer having the warrant, but an outside officer shall

summon the assistance of local law enforcement if possible before exercising authority. Ala. Code § 15-10-10. There is no longer any requirement that warrants be endorsed by a judge or magistrate to allow execution outside the original county. 2006 Ala. Acts 547. An arrest can also be made in another county based on a probation violation arrest authorization, independent of the requirements of § 15-10-10. Ala. Code § 15-22-54; *Beard v. State*, 661 So. 2d 789, 793 (Ala. Crim. App. 1995).

An arrest may still be “based upon a warrant,” even when the warrant is not in the actual possession of the officer at the time of the arrest. For example, if a law enforcement officer is notified by radio or telephone that a warrant is on file in the sheriff's office, the officer may arrest the individual without having seen the warrant or having had it in his or her possession. 1989 Op. Att'y Gen. (Ala.) 89-00381. The officer must, however, inform the arrested person of the cause of the arrest and notify the person that a valid warrant for his or her arrest exists. Ala. Code § 15-10-3(a)(6). The arrested individual may be transported to the jurisdiction where the warrant was issued, or to a county other than the one issuing the warrant, provided that the prisoner is able to go before a magistrate or judge within a reasonable period of time to post bail. 1989 Op. Att'y Gen. (Ala.) 89-00381. If the prisoner is kept in a county other than the one which issued the warrant and demands to see the warrant, a delay of a day or more is generally considered reasonable while waiting for the warrant to be transmitted. 1989 Op. Att'y Gen. (Ala.) 89-00381.

D. Boundaries of Sheriff's Authority to Arrest

Ordinarily, the sheriff cannot exceed the boundaries of his or her county in making an arrest. An arrest warrant issued in another jurisdiction may be executed by a sheriff provided that the sheriff secures the assistance of local law enforcement, if possible. Ala. Code § 15-10-10. There is no

longer any endorsement requirement. 2006 Ala. Acts 547.

E. Informing the Arrested Person of His Rights

As soon as possible after arresting a person, the officer must inform the person of their rights. The officer must tell the person arrested:

- (1) The reason for the arrest, particularly if the arrest is made without an arrest warrant. *Davis v. State*, 27 Ala. App. 490, 176 So. 226 (Ala. Civ. App. 1937).
- (2) That the person has the right to make a telephone call "without undue delay." Ala. R. Crim. P. 4.2. Although the Rules of Criminal Procedure do not place specific restrictions upon this right, it is generally assumed that the prisoner cannot use the phone call for purposes of harassing the victim. A long distance call to a relative or attorney is generally permitted. Reasonable restrictions placed upon this right are usually acceptable provided they don't prevent the prisoner from communicating to another person the fact that he or she is being held by the police. Comm. Comments, Ala. R. Crim. P. 4.2.

If the prisoner is taken into custody, or "deprived of [individual] freedom of action in any significant way," the prisoner cannot be questioned until the prisoner has been informed of his or her constitutional right against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The prisoner must be told:

- (a) That they have the right to remain silent and that anything they say can and will

be used against them in a court of law. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

- (b) That the prisoner has the right to the assistance of counsel, and that counsel will be appointed for him or her if indigent. Ala. R. Crim. P. 6.1(a). The prisoner must be allowed to consult with an attorney “as soon as feasible” after taken into custody, and at “reasonable times thereafter.” Ala. R. Crim. P. 6.1(a). No indigent criminal defendant can be sentenced to a term of imprisonment unless the state has given him or her the right to assistance of appointed counsel. *Scott v. Illinois*, 440 U.S. 367, 374 (1979). Likewise, the violation of a term of probation cannot activate a suspended sentence resulting in an indigent criminal defendant being imprisoned when that defendant was not given the right to assistance of appointed counsel. *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).

Failure to inform the arrested person of these basic rights may result in the court releasing the accused.

F. Using Force in Making Arrests

If the person resists arrest for a misdemeanor, the officer may use physical force which the officer reasonably believes to be necessary to effect the arrest, or to defend oneself or others from harm. However, an officer cannot use deadly physical force in making an arrest for a misdemeanor, unless it is to

protect the officer or a third person from physical harm when human life is endangered *Holland v. State*, 162 Ala. 5, 13, 50 So. 215, 218 (Ala. Civ. App. 1909). Thus, an officer is empowered to use deadly physical force on another when and in order to the extent the officer reasonably believes it is necessary to:

- (1) Make a felony arrest or to prevent the escaped from custody of a person after having been arrested for a felony; or
- (2) Defend oneself or a third person from the imminent use of deadly physical force.

Ala. Code § 13A-3-27(b).

If the officer exceeds the boundaries of these powers, the officer may be held liable to persons injured or killed as a result of the officer's recklessness or negligence.

G. Resisting Arrest and Hindering Prosecution

A person may not use physical force against an officer who is making a lawful arrest. Ala. Code § 13A-3-28. A person who intentionally prevents or attempts to prevent a peace officer from lawfully arresting oneself or another person commits the crime of resisting arrest. Ala. Code § 13A-10-41. The intent to prevent an arrest may be shown by acts other than the use of force or violence. Commentary, Ala. Code § 13A-10-41. If injury results to the officer as a result of the prisoner's resistance, the crime may become one of third degree assault rather than resisting arrest. Ala. Code § 13A-6-22(a)(4). The crime of resisting arrest usually occurs where there is only a slight injury to the officer, rather than a more serious injury which constitutes assault. The defendant cannot be convicted for both resisting arrest and for assault of the same officer. *Crear v. State*, 591 So. 2d 530, 535 (Ala. Civ. App. 1991).

If the defendant uses physical force, a threat of physical force, a deadly weapon, or a dangerous instrument in attempting to escape from custody, the defendant is guilty of escape in the first degree. Ala. Code § 13A-10-31. The mere escape from custody without use of physical force constitutes escape in the third degree. Ala. Code § 13A-10-33. Custody is defined as a restraint or detention pursuant to a lawful arrest. Therefore, escape from custody cannot occur until the defendant has been lawfully arrested.

H. Enlisting Civilian Assistance

A peace officer, after identifying himself, may command a person to assist the peace officer in:

- (1) Effecting or securing a lawful arrest; or
- (2) Preventing the commission of an offense by another person.

The call for assistance must be reasonable under the circumstances. The failure of a person to aid the peace officer is a Class C Misdemeanor. Ala. Code § 13A-10-5.

A private citizen does have the authority to make a citizen's arrest.

- (1) A private person may arrest another for any public offense:
 - (a) committed in his presence,
 - (b) where a felony has been committed, though not in his presence, by the person arrested; or
 - (c) where a felony has been committed and he has reasonable cause to believe that the person arrested committed it.
- (2) An arrest for a felony may be made by a private person on any day and at any time.

- (3) A private person must at the time of the arrest inform the person to be arrested of the cause thereof, except when such person is in the actual commission of an offense, or arrested on pursuit.
- (4) If he is refused admittance, after notice of his intention, and the person to be arrested has committed a felony, he may break open an outer or inner door or window of a dwelling house.
- (5) It is the duty of any private person, having arrested another for the commission of any public offense to take him without unnecessary delay before a judge or magistrate or to deliver him to someone of the officers specified in § 15-10-1 who must forthwith take him before a judge or magistrate.

Ala. Code § 15-10-7.

The circumstances under which a private citizen may make an arrest are the same as those under which an officer may make a warrantless arrest. However, unlike officers making warrantless arrests, if the offense did not occur in the person's presence, the private citizen must be able to later prove that a felony was actually committed. *American Ry. Express Co. v. Summers*, 208 Ala. 531, 532, 94 So. 737, 738 (Ala. 1922).

I. Procedures After Arrest

Unless a defendant is charged with an offense punishable by death or some other serious offense as listed in Ala. Const. Art. I § 16, the defendant is entitled to bail as a matter of law. Ala. Const. Art. I, § 16; Ala. R. Crim. P. 7.2; Ala. Code § 15-13-2. *Shabazz v. State*, 440 So. 2d 1200, 1201 (Ala. Crim. App. 1983). The presiding judge generally instructs the sheriff on the amount of bail the judge will approve in each

degree of felony, misdemeanor and traffic offenses. The Alabama Supreme Court has established a recommended range for bail for each offense as a general guide for circuit, district, and municipal courts for persons charged with bailable offenses. A person charged with a capital offense is not generally entitled to bail. *See* Ala. R. Crim. P. 7.2. In the other offenses listed in Ala. Const. Article I, §16, the defendant is to be held without bond until a pretrial detention hearing (to be held at the defendant's first appearance) wherein the court will hear evidence and the circumstances to decide about bail. The prosecuting attorney's burden in the pretrial detention hearing is clear and convincing, and the defendant is entitled to counsel. Should the court determine to maintain the defendant's no bond status after the pretrial detention hearing, it must make that finding in writing within 48 hours of the hearing, setting out its reasoning. *See* Ala. Code §§ 15-13-3, 15-13-5, 15-13-7.¹¹

If an individual has been charged with driving a vehicle under the influence, the sheriff must retain that individual in custody until the weight of alcohol in that individual's blood falls below:

- (1) 0.08 percent if 21 years of age or older.
- (2) 0.02 percent if under age of 21 years.

Ala. Code § 32-5A-191(n).

If an individual has been charged with operating a marine device under the influence, the sheriff must retain that individual in custody until the weight of alcohol in that individual's blood falls below 0.08 percent. Ala. Code § 325A-191.3(g). Once the blood alcohol weight falls below the required percentage, the sheriff may release that individual at

¹¹ Act 2021-267

the sheriff's discretion. Prior to release, the sheriff must take the accused individual before a magistrate as soon as possible so that bail can be determined. Ala. Code § 32-1-4(b).

Ala. Code § 15-10-90 states that whenever a sheriff takes a person into custody, the sheriff must fingerprint the accused person and send a copy of the fingerprints to the director of the Federal Bureau of Investigation in Washington, D.C., and a copy to the director of the Alabama State Law Enforcement Agency in Montgomery, Alabama.

While not specifically repealed, Ala. Code § 15-10-90 has at least been supplemented by Ala. Code § 41-9-623(a), which requires all criminal justice agencies within the state to submit to ALEA fingerprints, descriptions, photographs, and other identifying data of anyone lawfully arrested for an offense or of anyone charged with an act of delinquency or adjudicated a youthful offender for conduct which would constitute an offense if committed by an adult.

The statute goes on to require chiefs of police, sheriffs, prosecuting attorneys, parole and probation officers, wardens, or other persons in charge of correctional or detention institutions in Alabama to furnish ALEA with any other data deemed necessary by the Alabama Justice Information Commission to carry out its responsibilities. Ala. Code § 41-9-623(b).

7. Juror Responsibilities

A. Juror Selection

With the consent of the circuit judges of the court, the presiding circuit judge may elect to utilize the following juror selection and qualification plan (referred to as One-Step Jury Selection Process) which eliminates the master jury box and interposition of the jury commission in the qualifying process.

Ala. Code § 12-16-145; Ala. R. Crim. P. 12; Ala. R. Civ. P. 47.

- (1) Jury Commission compiles master list of persons residing in county (must be revised by December 31st of each even-numbered year).
- (2) At least 20 days prior to date jurors are to serve, the presiding circuit judge, or circuit judge designated by him or her, requests the number of names needed for term(s), such names to be randomly drawn by AOC from the master computerized list.
- (3) Jurors selected are summoned by first-class mail. The court may include or cause to be included, for completion and return to the court, a juror questionnaire. Ala. R. Crim. P. 12.1(b). The summonses are sent from AOC, with a list of jurors summoned provided to the court clerk.
- (4) Prior to date of service, presiding circuit judge or designee can excuse, disqualify, or postpone service for prospective juror.
- (5) Qualifying the Venire. Jurors appear in court and the judge examines them as to qualifications. Jurors disqualified are excused. The court may grant excuse or postpone service of jurors requesting to be excused. In criminal cases, the judge administers or has administered an oath to jurors prior to qualifying them. It must affirmatively appear in record that oath was administered. Ala. R. Crim. P. 12.1(c).
- (6) Grand Jury Drawn. 18 names of persons qualified and present drawn at random for grand jury. Ala Code § 12-16-74; Ala. R. Crim. P. 12.2(a). If the number of grand jurors is subsequently reduced below 13, the deficiency

may be provided by qualified jurors. Ala. Code § 12-16-207(b); Ala. R. Crim. P. 12.2(c).

- (7) Oath Administered to Foreman and Grand Jurors. The court administers the following oath to the Foreman of the Grand Jury:

“You, as foreman of the grand jury of _____ County, do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, of all indictable offenses given you in charge, as well as those brought to your knowledge, committed or triable within the county; the state’s counsel, your fellows’ and your own you shall keep secret; you shall present no person from envy, hatred, or malice, not leave any one unrepresented from fear, affection, reward, or the hope thereof; but you shall present all things truly as they come to your knowledge, to the best of your understanding, so help you God.”

The court then administers an oath to the other grand jurors. Ala. Code §§ 12-16-171, 172; Ala. R. Crim. P. 12.3(a).

- (8) Oath Administered to Petit Jurors (civil cases). The remainder of qualified persons are sworn as petit jurors with the following oath:

“You do solemnly swear (or affirm, as the case may be) that you will well and truly try all issues which may be submitted to you during the present session (or week, as the case may be), and true verdicts render according to the evidence -- so help you God.”

It must affirmatively appear in the record that the oath was administered. Ala. Code §§ 12-16-74, 12-16-170.

- (9) Instructions. The judge instructs the grand jury as to its powers and duties. Ala. R. Crim. P. 12.3(b).

(10) Number of Petit Jurors for Criminal Cases. Unless lesser number are agreed to by parties, the strike list must contain not less than:

* 36 -Capital Felony

**24 -Non-Capital Felony

***18 - Misdemeanor or Violation

Ala. Code § 12-16-100(a); Ala. R. Crim. P. 18.4(f)(1).

B. Failure of a Person Summoned as a Juror to Obey a Summons

If the court determines that any person summoned as a grand or petit juror failed to obey the summons and appear in court without good excuse, to be determined by the court, that person may be deemed guilty of contempt of court and may be fined no more than \$300 and imprisoned in the county jail for not more than 10 days. Ala. Code § 12-16-82.

8. Extradition

Extradition is the surrender of a person in custody by one state or country to a requesting state or country to stand trial or be imprisoned. The state that has the jurisdiction to try and punish the individual usually requests the other state to surrender the individual. U.S. Const. art. IV, § 2; 18 U.S.C. §§ 3181 - 3196.

Alabama law requires that individuals found in Alabama who have been charged with treason, felony, or any other crime in another state, and who have fled from justice, must be surrendered to the governor of Alabama to the state where the charge is pending. Ala. Code § 15-9-30. Such extradition to another state can occur only upon approval of the Alabama governor, after the governor has received a written request from the governor of the other state, with the accompanying documentation required under §§ 15-9-31 and

15-9-33. Once Alabama's governor signs the arrest warrant, it is delivered to a sheriff or other appropriate law enforcement officer for execution. Ala. Code § 15-9-35. The warrant of arrest issued by the governor of Alabama grants the sheriff the authority to arrest the accused individual in any part of the state. The sheriff or officer arresting the accused person must inform the person of his or her rights as in any other arrest.

9. Toxicology and DNA

Due to the nature of violent crime there is often an exchange of bodily fluids from which valuable DNA evidence may be recovered. Once biological evidence is recovered it is sent to the Alabama Department of Forensic Science for analysis. At the Alabama Department of Forensic Science Laboratories, through using DNA analysis, it is often possible to determine the original donor of the DNA evidence. Ala. Code § 36-18-20.

The Alabama Department of Forensic Sciences is an integral member of the Combined DNA Index System (CODIS) project. The CODIS system provides a framework for storing, maintaining, tracking and searching DNA information. The purpose of the system is to create a national information repository where law enforcement professionals can exchange DNA information. CODIS allows various law enforcement agencies to cross reference their DNA information with that of other agencies around the country. This cross-referencing has the potential of producing DNA matches and linking previously unrelated cases.

DNA must be obtained from any person, who after May 6, 1994, has been convicted for a felony offense, is confined in jail, prison or involuntary confinement as a result of a felony conviction, convicted of any offense in Ch. 6, Title 13A or any attempt, solicitation, or conspiracy of those, or

convicted or sentenced for any of the offenses above and serving a sentence of probation, suspended sentence, or other offenses not requiring immediate incarceration, or arrested for any felony or sexual offense, including those that would require registration pursuant to the Community Notification Act. Ala. Code § 36-18-24(b).

Samples for DNA testing may be taken for criminal identification purposes from a child who is charged with a delinquent act that would constitute a Class A or B felony if committed by an adult. The DNA records shall be filed with the Department of Forensic Sciences. Special precautions shall be taken to ensure that the DNA records will be maintained in a manner and pursuant to safeguards that will limit their use to inspection for identification purposes by law enforcement officers or by staff of the testing facility only in the investigation of a crime. Ala. Code § 12-15-135(e).

Prior to release, every adult criminal sex offender convicted of a criminal sex offense shall submit to the probation officer or sheriff a DNA sample that will be sent to the Department of Forensic Sciences. Those who knowingly fail to do this shall be guilty of a Class C felony. Ala. Code § 15-20A-7.

Firearm identification is essential also. The Federal Bureau of Investigation developed a computerized technology that allows the forensic firearms examiner to associate previously unrelated firearms involved in crimes. They call it the DRUGFIRE system. DRUGFIRE is a database driven multi-media system designed to increase the effectiveness of forensic firearm examiners in searching open case expended cartridge and bullet files. The DRUGFIRE system integrates a forensic database, video, audio, digital imaging and telecommunications to aid the examiner in his quest to associate unrelated cases. The DRUGFIRE system in the state of Alabama is operated by the Alabama Department

of Forensic Sciences and has terminals in the Huntsville, Birmingham, Montgomery, and Mobile regional laboratories.

10. Sentencing Commission

The Alabama Sentencing Commission was created by the Legislature in May of 2000 as a separate state agency under the Alabama Supreme Court and charged with the task of reviewing Alabama's criminal laws and procedures and recommending changes that would protect public safety and promote public confidence in the criminal justice system by assuring an effective, fair, and efficient sentencing system that:

- (1) Provides certainty and consistency in sentencing;
- (2) Avoids unwarranted sentencing disparity between like offenders committing like offenses;
- (3) Promotes truth-in-sentencing by assuring that a sentence served bears a certain relationship to the sentence imposed;
- (4) Provides proportionality in sentencing so that the sentence imposed reflects the severity of the offense and offender relative to other offenses and offenders;
- (5) Maintains judicial discretion and flexibility to permit individualized sentencing as warranted by mitigating or aggravating factors in individual cases;
- (6) Enhances the availability of and use of a wide array of sentencing options;
- (7) Prevents jail and prison overcrowding by recognizing those offenders who may best be punished, supervised, and rehabilitated through more cost effective alternatives to incarceration;

- (8) Prevents the premature release of inmates; and
- (9) Provides restitution to the victim.

The Alabama Legislature has passed numerous bills to address the above goals. For example, the adoption of the voluntary and presumptive sentencing standards (Ala. Code §§ 12-25-34 and 34.2) is a result of the Alabama Sentencing Commission's proposals.¹²

¹² For a discussion of the sentencing standards, see pp. 74-79 in this Chapter.

CHAPTER V

JAILS

1. In General

The sheriff is responsible for the daily operation of the county jail and is required to diligently protect and guard the prisoners incarcerated there. Every correctional officer or jail deputy that works for the sheriff within the county jail shall take and subscribe to an oath of office before starting the duties of his or her office. Ala. Code § 14-3-13.

Any time a prisoner is committed to the county jail, that prisoner's name must be reported in writing to the clerk of the circuit court of the county. The sheriff must give this notice within 10 days of the prisoner's incarceration, and also provide notice of release within two days. Ala. Code § 14-6-15. Additionally, the sheriff must keep a current list of the names of all prisoners confined in the jail and the offenses with which they are charged or have been convicted. A certified copy of this list must be delivered to the presiding judge upon the first day of each session of the circuit court of the county. Ala. Code § 14-6-14.

The sheriff shall provide to prisoners at the expense of the county, necessary clothing and bedding, medicines and medical attention, and upon request, feminine hygiene products to female prisoners. Ala. Code § 14-6-19.

The sheriff must also preserve the legal process or order by which any prisoner is committed to a jail as well as the discharge from jail. Ala. Code § 14-6-16.

Special laws apply to when juveniles may be detained or confined in a jail or lockup for adults. Those laws are covered in Chapter VI.

2. Facilities

The cost of maintaining the county jail building and its equipment is paid out of the county's funds. The county jail is required to be fireproof, properly ventilated, sufficiently lighted day and night, adequately heated, and adequately equipped with sewer connections. Ala. Code § 14-6-103. The jail must have sufficient size and strength to safely contain the prisoners incarcerated there.

To assure the jail is adequately funded, to assure the jail is clean, heated, supplied with water, etc., the county must provide funding as a priority expense of the county. Ala. Code § 14-6-104. The duties of the counties with respect to the jails "are limited to funding the operation of the jail and to providing facilities to house the jail". *Stark v. Madison County*, 678 So. 2d 787, 787 (Ala. Civ. App. 1996). The county commission must appropriate funds for the jail to cover the expense of necessities such as bedding, clothing, electricity, and sanitation. *Turquitt v. Jefferson County*, 137 F.3d 1285, 1290 (11th Cir. 1998); Ala. Code § 14-6-19.

Male and female prisoners, except husband and wife, must be confined in separate rooms. Ala. Code § 14-6-13.

A status offender is a minor who is charged with or adjudicated for conduct that would not be a crime if committed by an adult. *See* Ala. Code § 12-15-201(4). A status offender shall not be detained or confined in secure custody, except that a status offender who is charged with or has violated a court order may be detained in secure custody in a juvenile detention facility for up to 72 hours in any six-month period. Short-term secure custody of accused status offenders prior to formal juvenile court action may be allowed for up to 24 hours in a juvenile detention facility for investigative or identification purposes or for allowing the minor to be returned to his or her parents or legal guardian. Ala. Code §

12-15-208(a)(1).

3. Regional Jail

Two or more counties may establish a regional jail authority for the purpose of constructing, maintaining, and operating a regional jail facility for those counties participating. A county that desires to join an existing regional jail authority may, by resolution and with the initial consent of the sheriff, request participation and the regional jail authority may by resolution approve the request. If approved, the county shall participate with all rights and obligations of the original counties in the regional jail authority. Ala. Code § 14-6A-1.

When operational, the regional jail facility shall serve as the county jail for each county participating and shall satisfy the requirements of Sections 11-14-10 and 14-6-1. All jail personnel, including the superintendent, are employees of the regional jail authority unless it is a privately owned jail. The sheriff and members of the board of directors select the superintendent, who serves at their pleasure. The superintendent's control and authority over the prisoners housed in the facility is according to the written policies and procedures adopted by the sheriff and members of the board of directors. The superintendent shall supervise all officers and employees assigned to the facility. The sheriff of each county retains his or her authority regarding the custody and transportation of his or her county's prisoners and may remove any prisoner from the regional jail facility for any purpose. Ala. Code § 14-6A-4(a).

"Upon resolution of the county commission, any county participating in a regional jail authority may continue to keep operational the jail in its county for the limited purpose of temporarily housing prisoners as necessary while awaiting arraignment or other hearing or as otherwise

deemed necessary by the sheriff of the county". Ala. Code § 14-6A-4(b).

4. Health of Prisoners

As noted previously, necessary clothing, bedding, and medical attention for those who are unable to provide for themselves must be provided by the sheriff or jailer at the expense of the county. *See* Ala. Code § 14-6-19. (NOTE: There is no requirement imposing an obligation for municipalities to pay the costs of medical treatment rendered to a person in its custody. *Baptist Health Sys., Inc. v. City of Midfield*, 792 So. 2d 1095, 1096 (Ala. 2001).)

The county must also provide adequate janitorial services and provide separate bathing facilities for males and females. In addition, the jail must provide soap and towels, hot and cold water, clean and sufficient bedding, and clean clothes for prisoners who are not able to provide for themselves. Ala. Code § 14-6-93. The court shall order a convicted defendant in a misdemeanor case to pay all or a portion of the expenses for housing, maintenance, and medical costs associated with the defendant's incarceration. Ala. Code § 14-6-22(a)(1). The costs must not exceed \$20 per day and may be entirely waived if the court determines that the payment would impose a hardship upon the prisoner or his or her family. Ala. Code § 14-6-22(a). The sheriff must ensure that the prisoners bathe upon entering jail and at least once per week thereafter. Ala. Code § 14-6-94.

County jail inmates who are eligible for Medicaid benefits have those benefits suspended during their incarceration. However, such inmates are eligible for reinstatement of their benefits for inpatient medical care received as an inpatient in a defined medical institution. *See* Ala. Code § 22-6-13.

The sheriff has the responsibility of taking every precaution to prevent the spread of infectious disease within the jail. *See, e.g.,* Ala. Code § 14-6-21, 93-95. If a person who is infected with a communicable disease is incarcerated in the jail, that room of the jail must be fumigated immediately upon the removal of such person. Ala. Code § 14-6-96. Any person to be held for 30 days or more must be tested for sexually transmitted diseases upon arrival and anyone detained for more than 90 days shall likewise be tested 30 days before release. Ala. Code § 22-11A-17(a).

If any inmate's health appears to be seriously endangered by further confinement, the court must order the sheriff to take the inmate to a hospital until the inmate's health is sufficiently restored to authorize his or her recommitment to jail. Ala. Code § 14-6-9.

5. Meals of Prisoners

The sheriff, in his or her official capacity, in person or by his or her deputy or jailer, shall be responsible for the feeding of prisoners in the jail under his or her jurisdiction. Ala. Code § 14-6-40. The sheriff shall also see that the inmates' food is nutritious, clean, wholesome, of sufficient size, sufficient quantity, and variety. Ala. Code § 14-6-97.

Allowances for food service and preparation shall be paid for by the state in the amount of \$2.25 per day for each prisoner. Ala. Code § 14-6-42(a). Payment made by the state pursuant to this section to the office of the sheriff shall be deposited into a separate account designated the Prisoner Feeding Fund established in Ala. Code § 14-6-47. *See* Ala. Code § 14-6-42.

All records are to be kept by the sheriff's office on forms prescribed and furnished by the Department of Examiners of Public Accounts. Ala. Code § 14-6-47(c). The

sheriff shall maintain records of all payments received and all expenditures made from the Prisoner Feeding Fund, which shall be subject to regular audit by the Department of Examiners of Public Accounts. Expenditures from this fund are exempt from the competitive bid law. Ala. Code § 14-6-42(b). The failure of any sheriff to keep an adequate written accounting for money paid into the Prisoner Feeding Fund, or to submit the same before the grand jury at each term of the circuit court, or upon the expiration of his or her term of office, to turn the same over to his or her successor, is a misdemeanor. Ala. Code § 14-6-48.

Funds deposited in the Prisoner Feeding Fund shall only be used for feeding prisoners, except that at the conclusion of each fiscal year, the sheriff may expend not more than 25 percent of the unencumbered balance in the fund on jail operation for law enforcement purposed related to the operation of the office of sheriff. The remainder is to be retained in the fund for the next fiscal year. Ala. Code § 14-6-47(a).

There is also an Emergency Prisoner Feeding Fund into which there is automatically appropriated \$500,000 each state fiscal year, with the fund not to exceed an aggregate amount of \$1,000,000. The monies in this fund may be expended from time to time upon the joint application by a county commission and the sheriff of a county - up to 80 percent of the actual cost overrun and subject to a maximum of \$25,000 per year - in case of unforeseeable emergency cost overrun that fully depletes the Prisoner Feeding Fund for that county. The Department of Finance may demand any pertinent financial record prior to disbursing the funds and shall determine when a cost overrun qualifies for a disbursement. Ala. Code § 14-6-51.

6. Visitation

Convicted prisoners retain a limited right under the First Amendment of the United States Constitution to receive outside visitors while they are incarcerated. *Pell v. Procunier*, 417 U.S. 817, 822-23 (1974). Prison officials may limit visitation rights only in furtherance of “legitimate penological objective[s],” such as the maintenance of security or the rehabilitation of the prisoner. *Lynott v. Henderson*, 610 F.2d 340, 342 (5th Cir. 1980)¹³. Courts generally give great deference to prison officials in determining what constitutes a legitimate objective. *Pell v. Procunier*, 417 U.S. 817, 827 (1974).

A sheriff has the authority to determine what time and under what circumstances a prisoner may receive outside visitors. *Shields v. State*, 104 Ala. 35, 38, 16 So. 85, 86 (Ala. 1893)¹⁴. However, the sheriff should not limit a prisoner's visitation rights unless the sheriff's conscience and professional judgment tell him or her that a legitimate security risk requires it. In addition, all prisoners possess the right to be visited by their attorney, provided that the attorney is not disruptive. *Johnson v. Avery*, 393 U.S. 483 (1969).

Inmates who are imprisoned awaiting trial are generally afforded the same limited rights as convicted inmates. Sheriffs may refuse to allow contact visitation with pre-trial detainees provided that the refusal is based upon security considerations rather than an attempt to punish the detainee. *Block v. Rutherford*, 468 U.S. 576, 584 (1984).

¹³ Followed by the 11th Circuit in *Evans v. Johnson*, 808 F. 2d 1427 (11th Cir. 1987)

¹⁴ Cited favorably by the federal appellate court in *Cates v. Stroud*, 976 F.3d 972, 981 (9th Cir. 2020).

Some courts hold that individuals visiting inmates may be subjected to strip searches upon their consent provided that the search is based upon the sheriff's reasonable suspicion and required for security. *Wool v. Hogan*, 505 F. Supp. 928, 932 (D. Vt. 1981). This search must be conducted in private by an officer of the same sex, and must include only a visual search of the individual. If the visitor refuses to consent to such a search, the visitor may be denied visitation with the inmate. However, the visitor cannot be required to choose between the right of visitation and an unreasonable search which violates the visitor's Fourth Amendment rights. *Cochrane v. Quattrocchi*, 949 F.2d 11, 14 (1st Cir. 1991).

7. Records

The sheriff must keep a record of all prisoners incarcerated in the county jail in a "well-bound book." Ala. Code § 36-22-8¹⁵. This record must contain the prisoner's name, physical description, reason for being held, authority for confinement, the confinement and release date. Ala. Code § 36-22-8.

It is the duty of the sheriff to make and deliver to the presiding judge of the circuit court a list of all prisoners confined to the jail. This list must enumerate the offenses for which the prisoner is charged and those for which the person has been convicted. This list is due on the first day of each session of the circuit court. Failure to do so is a misdemeanor. Ala. Code § 14-6-14.

¹⁵ *Holcombe v. State ex rel. Chandler*, 240 Ala. 500, 200 So. 739 (A loose-leaf book kept by the sheriff containing descriptions of prisoners and information concerning them and shown by the evidence to have been kept in substantial compliance with provisions of this section was held to be a "well-bound" book within this section.)

The sheriff also has the duty to report in writing to the circuit clerk each new prisoner committed to the county jail. This must occur within the next 10 days succeeding the commitment. Ala. Code § 14-6-15. The report must include the prisoner's name; date of entry, and under whose authority the prisoner was incarcerated or the charge committed. Ala. Code § 14-6-15. When the prisoner is to be discharged the sheriff shall also report to the circuit clerk the name of the prisoner and by what authority and when the prisoner was discharged within 2 days next succeeding. Ala. Code § 14-6-15. It is also the duty of the sheriff to file in regular order and safely preserve the process or order by which an inmate is committed to, or discharged from the county jail. Ala. Code § 14-6-16.

8. Sentences

Multiple sentences of prisoners confined in the county jail run consecutively. Ala. Code § 14-6-12. However, the Alabama Correctional Incentive Time Act provides several ways in which convicts can reduce their sentences by receiving time deductions. The detailed provisions of this act may be found in Ala. Code § 14-9-41. In general, incentive time credit is awarded at various rates depending upon the length of the inmate's elapsed time of imprisonment and the inmate's behavior during that period. For example, a Class I prisoner who is considered to be trustworthy receives 75 days credit for each 30 days actually served, while the lowest classification of prisoners is a Class IV prisoner and receives no "good time."

The "good time" act has several limitations. First, it applies only to sentences imposed after May 19, 1980, and has no retroactive effect. Ala. Code § 14-9-44(a). Secondly, the act does not apply to offenders sentenced to life imprisonment or death, habitual offenders, or to felony offenders convicted a Class A felony or for serious assault, sexual abuse of a minor,

or other felonies defined in the act. Ala. Code § 14-9-41(e).¹⁶

9. Release, Removal, and Transfers

The sheriff is responsible for timing the discharge of a convict. Within two days of the prisoner's discharge, the sheriff must provide notice of the discharge to the clerk of the circuit court of the county. Ala. Code § 14-6-15.

Prisoners held in the county jail may be removed from the jail to another detention facility upon an order by the circuit court. Proper reasons for such a removal are the insufficiency or lack of safety of the jail, the destruction of the jail, or the illness of one or more of the prisoners. Ala. Code § 14-6-7.

In addition to convicts sentenced to imprisonment in the county jail, the county jail may be used to confine the following individuals:

- (1) Persons committed for trial for public offenses;
- (2) Convicts sentenced to imprisonment in the penitentiary, until their removal thereto;
- (3) Persons committed for contempt or on civil process;
- (4) Persons committed on failure to give security for their appearance as witnesses in any criminal case;
- (5) Persons charged with, or convicted of, a criminal offense against the United States;
- (6) Insane persons, pending transfer to a mental hospital or other disposition; and

¹⁶ Act 2022-322, known as the Sergeant Nick Risner Act, amends § 14-9-44 to add manslaughter as a crime ineligible for the application of “good time” in sentences where the use of a deadly weapon was involved.

- (7) All other persons committed thereto by authority of law.

Ala. Code § 14-6-3.

The sheriff must keep in the county jail any person committed under a federal charge. Ala. Code § 14-6-4.

10. Probation, Pardon, and Paroles

Circuit and district courts have the authority under Alabama law to place a defendant on probation, provided the sentence is not for more than 15 years. Further, the defendant cannot waive placement on probation by the sentencing court. Ala. Code § 15-22-50. The grant of probation to a prisoner is strictly a privilege, not a right, and may be granted or withheld according to the discretion of the trial court. *Lapesarde v. State*, 54 Ala. App. 654, 312 So. 2d 60 (Ala. Crim. App. 1975). The court's power to suspend execution of the sentence and place a prisoner on probation continues until the execution of the sentence actually commences, which is generally the very moment of the sheriff's delivery of the convict to the penitentiary agent. *Dailey v. State*, 402 So. 2d 1117, 1118 (Ala. Crim. App. 1981). If the prisoner is found to have violated any of the conditions of his or her probation, the court may issue a warrant for the prisoner's arrest and hold a violation hearing. However, unless new criminal charges are pending, the time the prisoner may be held without a bond while awaiting a violation hearing is limited to 20 days. Ala. Code § 15-22-54(c).

The sheriff is authorized to arrest the prisoner without a warrant if the sheriff has a written statement from the probation officer alleging that the prisoner has violated his or her probation. Ala. Code § 15-22-54(d). The prisoner's probation may not be revoked until the court has provided him or her with a hearing. Ala. R. Crim. P. 27.6; *Sparks v. State*,

40 Ala. App. 551, 554, 119 So. 2d 596, 598 (Ala. Ct. App. 1959); *Peeterse v. State*, 720 So. 2d 1042, 1042 (Ala. Crim. App. 1998).

The board of pardons and paroles determines who, when, and under what circumstances prisoners may be released on parole. Ala. Code § 15-22-24(a). As in cases of probation, the sheriff may arrest any person without a warrant upon a written statement by the parole officer that the prisoner has violated his or her parole. Ala. Code § 15-22-31(b).

11. Escape

The sheriff must provide adequate safeguards to prevent the escape of any prisoner in his or her custody. This duty includes the responsibility of summoning additional guards or using force in the recapture of an escaped convict. Ala. Code § 13A-3-27(h). A sheriff in “fresh pursuit” of a person who may have committed a felony offense may chase them throughout the state to make an arrest. Ala. Code § 15-10-74.

In the event of an escape, all proper measures should be undertaken for his or her apprehension, including notification within 12 hours of the following:

- (1) The Governor.
- (2) The Department of Public Safety.
- (3) The sheriff and district attorney of the county where the last the escape occurred.
- (4) The chief of police where the escape occurred if the escape occurred within a municipality.
- (5) The sheriff and district attorney of the county where the last conviction of the escapee occurred, if known.
- (6) The chief of police where the last conviction occurred, if the conviction occurred within a municipality and if known.

- (7) The sheriff of the county where the convict's home of record is located, if known.
- (8) The chief of police where the convict's home of record is located if the location is within a municipality and if known.
- (9) All electronic media outlets broadcasting which are known by the department or agency from which the escape occurred, and which broadcast within a radius of 75 miles from where the escape occurred.

This notification must contain specific information detailed in §14-3-58, and it also requires posting the notification on the department or agency website and entering the inmate into the National Crime Information Center Website within 12 hours of the escape. §14-3-58 is known as the "Joel Willmore Act."

An officer's intentional or reckless facilitating of a prisoner's escape is a felony if the escapee is a felon, and a misdemeanor if the escapee was convicted of a misdemeanor. Ala. Code §§ 13A-10-34, 13A-10-35. However, if the prisoner's escape is due merely to the officer's negligence, the officer does not incur any criminal sanctions, but the officer may be dismissed from employment. *See* Ala. Code § 13A-10-35 Commentary.

12. Death of an Inmate in Sheriff's Custody

There does not appear to be a general law in the Alabama Code that prescribes any procedure a sheriff must follow when an inmate dies in sheriff's custody. Some counties have local laws that are relevant. For example, Baldwin County law enforcement officers must report all deaths of persons in the custody of law enforcement officers, penal institutions, or state mental institutions to the Baldwin County Coroner, who may conduct a coroner's investigation of the death. Ala. Code §§ 45-2-61.03 and 45-2-61.08. The

Baldwin County Sheriff's Office shall, if they have jurisdiction and with the approval of the county coroner, take possession of the personal effects on or near the body and ascertain that the next of kin is notified. The personal effects are either retained as evidence or returned to the next of kin. Ala. Code §§ 45-2-61.09.

13. State and Federal Prisoners

A defendant who has been sentenced to the state penitentiary may be temporarily detained in the county jail by court order. Ala. Code § 14-3-30(a).¹⁷

A state convict or a state prisoner whose sentence has been reversed and remanded may be temporarily held in the county jail. Ala. Code § 14-3-37. Similarly, a federal prisoner may be incarcerated in the county jail upon an order of the court. The sheriff's responsibility toward these prisoners is the same as toward the other prisoners ordinarily detained in the county jail. Ala. Code § 14-3-32.

14. Department of Corrections

A. Creation and Authority

The current legislative authorization for the Alabama Department of Corrections is Ala. Code §§ 14-1-1.1 - 14-1-1.5. Note that § 14-1-16 abolished the State Board of Corrections which, prior to the enactment of those provisions, exercised the authority and functions now vested in the Alabama

¹⁷ Amendments to Ala. Code § 14-3-30(a), effective January 1, 2022, place time requirements on the entry of orders and record transcripts by the court clerk upon the Department of Corrections, and also imposes a conditional deadline upon the sheriff for the transfer of physical custody of the defendant.

Department of Corrections.

B. Purpose

The purpose of the Department is to serve as the State's administrative department with responsibility for administering and exercising direct and effective control over penal and corrections institutions throughout Alabama. Ala. Code §14-1-1.2

C. Composition

The Department is headed by and under the independent direction, supervision, and control of a Commissioner of Corrections, who is appointed by and serves at the pleasure of the Governor. The Governor sets the salary of the Commissioner at the level of other cabinet officers or at a reasonable level in excess thereof. The Commissioner is to devote full-time to his/her post, and before taking office, must take a constitutional oath of office and execute to the State a bond to be approved by the Governor for faithful performance of duties. Ala. Code § 14-1-1.3.

D. Duties

The Department has all duties, responsibilities, power, assets, liabilities, property, funds, appropriations, contractual rights and obligations, property rights, and personnel, which, prior to §§ 14-1-15 through 14-1-17, were vested in the Governor. § 14-1-1.1. This includes operation of a system of diversified prison industries, maintenance of necessary records on prisons and inmates, provision for apprehension of escaped convicts, and responsibility for clothing and travel expenses for discharged convicts. The Department of Corrections receives annual appropriations from the General Fund and income from prison industries and services.

15. Work Release

A. State Inmates

The Board of Corrections is authorized to adopt policies that authorize the prisoner to leave the confines of the incarcerating facility under proscribed conditions, unaccompanied by a custodial agent for a set period of time to work. Ala. Code § 14-8-2(a). The prisoner works for pay while continuing as an inmate of the institution. Ala. Code § 14-8-2(a). The inmate shall remain confined to the institution except during the hours of his employment and including travel to and from such employment. Ala. Code § 14-8-2(a).

The work-release program is open to the public. Any business or individual looking for workers can go to a work release center and make application for workers. The program will deliver and pick up inmates from their work location.

Employers hiring work-release inmates must pay these workers at least the federal minimum wage. Ala. Code § 14-8-4(1). Employers pay the inmate's wages directly to Department of Corrections. Ala. Code § 14-8-6. The Department is then authorized to withhold costs related to the inmate's confinement. Such withholdings cannot exceed 40 percent of the inmate's earnings. Ala. Code § 14-8-6. Earnings are then credited to the inmate's account with the department. Ala. Code § 14-8-6. Upon release all moneys being held by the department shall be paid over to the inmate. Ala. Code § 14-8-6.

B. Work Release for County Inmates

Each county may establish a work release program for the state and county inmates within the county. The State Board of Corrections may contract with the county for the

costs of maintaining the state inmates participating in the program. Ala. Code § 14-8-31. Work release camps may be established to house inmates in lieu of the county jail. Ala. Code § 14-8-32.

The Board of Corrections and the county may make investigations and recommendations concerning the validity of visits or job opportunities of prisoners. Ala. Code § 14-8-34.

Compensation for work in the work release program must be at least as high as the prevailing wage for similar work in the area where the work is performed. (repetitive with pg. 143?) Work release program employment shall not result in displacement of other employed workers, and inmates cannot be employed as strikebreakers or impair existing contracts. Exploitation of any eligible inmates is prohibited. Ala. Code § 14-8-35.

The State of Alabama and any county can be employers of work release inmates and may employ the inmates in any state or county job available. These inmates are to be paid the federally established minimum wage. Ala. Code § 14-8-36.

An employer sends the inmate's earnings directly to the county or its designated agent, and 25% of gross wages go to the cost of his confinement. The Department of Corrections charges 40%. If the cost of confinement is more than 25% of the inmate's gross wages, the Board must pay the difference to the county. The remainder of the inmate's wages are credited towards the inmate's account with the county and is to be paid out at the inmate's request for clothing, medical care, spending money, savings or dependent support. Ala. Code § 14-8-37.

Any inmate that willfully leaves the limits of the work release program or fails to return to the place of confinement

within the prescribed time period is deemed to have escaped. Ala. Code § 14-8-42.

Where inmates are worked by the county, it is the duty of the superintendent of Public Works to see that the convicts committed to him labor faithfully and assure that the convicts are not overworked or maltreated. The inmates must have proper food and clothing and are properly housed and given medical attention. Further, the sheriff must ensure that they do not escape. Ala. Code § 14-4-13.

The superintendent may hire a convict and their work on public roads, bridges, and other public works in the county will be considered "hard labor for the county." Ala. Code § 14-5-1.

Although county inmates may work county jobs as roads, maintaining drainage and other authorized work, they may not do any work for a district attorney, judge or sheriff, or any of their relatives. Ala. Code § 14-5-11(a).

16. Probation

Alabama has a statewide uniform administration of adult probation. Probation and Parole Officers are appointed by the Board of Pardons and Paroles, subject to the Merit System, and are supervised by the Board. Probation and Parole Officers act in a dual capacity as they serve the Courts in probation matters and the Board in parole matters. They are sworn peace officers with arrest powers and must meet the training requirements of the Peace Officers Minimum Standards and Training Act.

Circuit courts and district courts may suspend execution of a defendant's sentence and place on probation any person convicted of a crime in any court exercising criminal jurisdiction. The defendant shall not be permitted to

waive placement on probation by the sentencing court. Ala. Code § 15-22-50. Probation is not available to persons convicted and sentenced to death or more than 15 years imprisonment. Ala. Code § 15-22-50. Upon the direction by a court, a probation officer will investigate a defendant and his/her case fully and submit to the judge a written probation report. Ala. Code § 15-22-51. No defendant shall be eligible for probation until such report is finished and considered by the court. Ala. Code § 15-22-51(a).

The court shall determine and at any time modify the conditions of probation. A probation officer is then assigned to each defendant, and such officer shall report in writing to the court the defendant's progress. The probation officer is then shall remain apprised about the conduct and condition on each person on probation under his supervision by visiting the defendant, requiring reports, or in other ways, based on the offender's measured risk of offending. The probation officer is also required to supply the defendant with a copy and inform him of the terms and conditions of the defendant's probation. Ala. Code § 15-22-53(a).

A probation officer, in execution of his duties, has arrest powers and the right to execute process. Violation of probation results in the reimplementaion of the suspended jail sentence.

17. Split Sentence

When the defendant is convicted of an offense, other than a sex offense involving a child, that constitutes a Class A or Class B felony offense, and receives a sentence of 20 years or less and the judge presiding over the case is satisfied the ends of justice will be served, the judge may order under Ala. Code § 15-18-8(a):

- (1) the convicted defendant be confined in a prison,

- jail time institution, or treatment institution for a period not exceeding three years where the imposed sentence is no more than 15 years. In addition, the execution of the remainder of the sentence will be suspended and the defendant will be placed on probation for such period and upon such terms as the court deems best; or
- (2) the convicted defendant be confined in prison, jail time institution, or treatment institution for a period of three to five years where the sentence is greater than 15 years but not more than 20 years for Class A or Class B felony convictions and for not more than three years for Class C felony convictions. During this time the defendant shall not be eligible for parole or release because of deduction from sentence for good behavior under the Alabama Correctional Incentive Time Act, and that the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for the period upon the terms as the court deems best.

When a defendant is convicted of a misdemeanor or convicted of a municipal ordinance, a judge presiding over the case may impose a sentence in accordance with Section 13A-5-7. The court may order a portion of the sentence to be suspended and the defendant be placed on probation for such a period not exceeding two years and upon such terms as the court deems best. Ala. Code § 15-18-8(1).

Nothing shall be construed as superseding the sentencing requirements set forth as adopted by the Legislature as prescribed by the Alabama Sentencing

Commission's Sentencing Standards.¹⁸ Ala. Code § 15-18-8(c).

As a result of Act 2022-381, if a defendant had been originally sentenced pursuant to Ala. Code § 15-18-8, and part of the sentence is served due to the revocation of probation that is less than the length of the time remaining on the original sentence, the remainder of the sentence shall be suspended and the defendant may be placed back on probation for a period and upon terms as the court deems best.

¹⁸ See a discussion of the Sentencing Standards in Chapter 4 (Criminal Law) of this publication.

CHAPTER VI

JUVENILES AND INCOMPETENTS

1. Juveniles

A. In General

A juvenile in Alabama may be defined as either a minor or a child. A child is a person under the age of 18 or under 21 years of age and before the juvenile court for a delinquency matter arising before that individual's 18th birthday, or under 19 years of age and before the juvenile court for a child in need of supervision matter or commitment to the State Department of Mental Health, or under 19 years of age and before the juvenile court for a proceeding initiated under Section 12-15-115(b)(2). (An allegation of denial or infringement of rights resulting in suspension, expulsion, or exclusion from a public school.) A minor is any individual who is under the age of 19 years and who is not a child within the meaning of the preceding definition. See Ala. Code § 12-15-102.

B. Taking a Juvenile Into Custody

§ 12-15-125. Taking into custody of children generally.

(a) A child or minor may be taken into custody for any of the following reasons:

- (1) Pursuant to an order of the juvenile court.
- (2) By a law enforcement officer having reasonable grounds to believe that the child or minor has run away from a juvenile detention, residential, shelter, or other care facility.
- (3) By a law enforcement officer having reasonable grounds to believe that the child or minor is suffering

from an illness or injury or is in immediate danger from the surroundings of the child or minor and that the immediate removal of the child or minor from those surroundings is necessary for the protection of the health and safety of the child or minor.

(b) In addition to the grounds listed in subsection (a), a child may also be taken into custody for any of the following reasons:

- (1) By a law enforcement officer for an alleged delinquent act pursuant to the laws of arrest;
- (2) By a law enforcement officer who has reasonable grounds to believe that the child has run away from his or her parents, legal guardian, or other legal custodian;
- (3) By a law enforcement officer who has reasonable grounds to believe that the child has no parent, legal guardian, legal custodian, or other suitable person willing and able to provide supervision and care for the child; or
- (4) By a juvenile probation officer pursuant to Section 12-15-107.

Unless otherwise ordered by a juvenile court, a law enforcement officer who takes a child into custody must immediately release that child to the custody of the child's parents or guardian, except in the following circumstances:

- (1) When the child has no parent, legal custodian, or legal guardian who is able to provide supervision and care for the child;
- (2) When the release of the child would present a clear and substantial threat of a serious nature to the person or property of another, and where the child is alleged to be delinquent;
- (3) When the release of the child would present a serious threat of harm to the child;

- (4) When the child has a history of failing to appear for hearings before the juvenile court; or
- (5) The child is alleged to be delinquent for possessing a pistol, short-barreled rifle, or short-barreled shotgun.

Ala. Code § 12-15-128(a).

In releasing a child, a juvenile court or juvenile intake officer may impose restrictions on the travel, association, or place of abode of the child or place the child under the supervision of a department. This may also apply to a child released from juvenile detention because of an overcrowded population. Ala. Code § 12-15-128(c).

If the child is detained for one of the preceding reasons, that child must be delivered, with all possible speed, to a detention facility established or approved by the department of human resources or the department of youth services. However, Alabama law permits law enforcement officers to transport juveniles to the police station for questioning prior to delivering them to a juvenile detention facility. *Chambers v. State*, 497 So. 2d 607, 610 (Ala. Crim. App. 1986); overruled on other grounds, *P.J.B. v. State*, 999 So. 2d 581 (Ala. Crim. App. 2008). Status offenders, federal wards, nonoffenders, and children under 10 years of age shall not be held in detention, with a few exceptions. *See* Ala. Code § 12-15-208. Generally, a juvenile taken into custody may not be held in the county jail unless the facility has been established, licensed, or approved by the Department of Youth Services or Department of Human Resources as a facility for the care of juveniles. Ala. Code § 12-15-208(e).

However, a person under 18 years old may be detained or confined in jail or lockup for adults under the following limited exceptions:

- (1) A child may be detained in a jail or lockup for adults for up to 6 hours while processing the case of the child.
- (2) A child transferred for criminal prosecution pursuant to Section 12-15-203 may be detained in a jail or lockup for adults.
- (3) A person charged pursuant to Section 12-15-204 may be detained in a jail or lockup for adults.

Ala. Code § 12-15-208(c).

Jails and lockups used for holding adults shall not hold status offenders in secure custody at any time. An accused status offender may be detained in a nonsecure area of a jail or lockup for processing while waiting transportation to a nonsecure shelter care facility or a juvenile detention facility or while waiting for release to a parent, legal guardian, or legal custodian. Ala. Code § 12-15-208(c).

Moreover, accused or adjudicated delinquent children or status offenders shall not have contact with adult inmates, including trustees. Contact is defined to include any physical or sustained sight and sound contact. Sight contact is defined as clear visual contact between adult inmates and accused or adjudicated delinquent children or status offenders within close proximity to each other. Sound contact is defined as direct verbal communication between adult inmates and accused or adjudicated children or status offenders. Ala. Code § 12-15-208(d).

No person under the age of 18 years, including one who has been transferred for criminal prosecution pursuant to Section 12-15-203 or charged pursuant to Section 12-15-204, shall be detained or confined in any facility under the control of the Department of Corrections unless the facility is fully compliant with the sight and sound separation requirements in subsection (d) of Section 12-15-208. The use of solitary

confinement or other practice resulting in extended isolation as a method of complying with subsection (d) of Section 12-15-208 shall be prohibited. Ala. Code § 12-15-208.1

C. Law Enforcement Records

§ 12-15-134. Maintenance and inspection of law enforcement records.

(a) Law enforcement agencies shall take special precautions to ensure that law enforcement records and files concerning a child will be maintained in a manner and pursuant to those safeguards that will protect against disclosure to any unauthorized person, department, agency, or entity. Unless a charge of delinquency is transferred for criminal prosecution pursuant to Section 12-15-203 or the juvenile court otherwise orders in the interests of the child, of public safety, or of national security, the law enforcement records and files with respect to the child shall not be open to public inspection nor their contents disclosed to the public.

(b) Law enforcement records and files described in subsections (a) and (f) shall be open to inspection and copying by the following:

- (1) A juvenile court having a child currently before it in any proceeding.
- (2) Personnel of the Department of Human Resources, the Department of Youth Services, public and private institutions or agencies of which the child under the jurisdiction of the juvenile court has been placed into the legal custody, and those responsible for his or her supervision after release.
- (3) Law enforcement officers of other jurisdictions when necessary for the discharge of their current official duties.

(4) The probation and other professional staff of a court in which the child is subsequently convicted of a criminal offense or adjudicated as a youthful offender for the purpose of a presentence report or other dispositional proceedings, officials of penal institutions and other penal facilities into which the child is placed, or a parole board in considering his or her parole or discharge or in exercising supervision over him or her.

(5) The probation and other professional staff serving a court handling criminal cases when investigating or considering youthful offender applications.

(6) The parent, except when parental rights have been terminated, or legal guardian of the child and the child's attorney and guardian ad litem.

(7) The principal of the school in which the child is enrolled, or the representative of the principal, upon written petition to the juvenile court setting forth the reasons why the safety or welfare, or both, of the school, its students, or personnel necessitate production of the information and without which the safety and welfare of the school, its students, and personnel would be threatened.

(c) Law enforcement records may be viewed by victims during the investigation of a crime at the discretion of the investigating officer.

(d) All law enforcement agencies shall report to the Alabama State Law Enforcement Agency that a child has been charged with an act of delinquency along with any pertinent identifying information or historical data concerning that child, when either of the following occurs:

- (1) The child is taken into custody and charged with an act of delinquency for an act which would constitute a felony if committed by an adult.
- (2) The child is taken into custody and charged with an act of delinquency for an act which would constitute a misdemeanor if committed by an adult.

(e) Nothing in this section shall be construed to prohibit or otherwise limit counsel from disclosing confidential law enforcement records relating to a client as needed to investigate the case of the client or prepare a defense for that client, provided that the disclosure is in furtherance of counsel's representation of the party.

(f) Except for use in legal proceedings, photographs, likeness, and personal identifying information contained in law enforcement records of a person charged pursuant to Section 12-15-204 are not public records and may not be published in any printed or electronic media nor open to public inspection, prior to conviction, unless the district court or circuit court with jurisdiction over the case orders the records be released in the interest of the person charged, in the interest of public safety, or in the interest of national security.

(g) Except as provided in this section, any person who directly or indirectly discloses, makes use of, or knowingly permits the use of information described in this section that identifies a child, or the family of a child, who is or was under the jurisdiction of the juvenile court, upon conviction, shall be guilty of a Class A misdemeanor under the jurisdiction of the juvenile court.

D. Youthful Offender's Act

A person charged with a crime, which was committed during the person's minority involving moral turpitude or is a felony, may be tried as a youthful offender. It is within the court's discretion whether the defendant is to be arraigned as a youthful offender. Ala. Code § 15-19-1. A person is eligible to obtain youthful offender status if the crime was committed before the person attained the age of twenty-one years of age. Ala. Code § 26-1-1(d). This applies equally to all crimes from petty theft to murder. *Pressey v. State*, 597 So. 2d 1385, 1386 (Ala. Crim. App. 1992).

A person tried as a youthful offender is tried before a judge without a jury. Ala. Code § 15-19-4. Any statement made by the defendant to the court or any officer of the court during the examination and investigation shall be inadmissible as evidence against the person. Ala. Code § 15-19-5. When a person charged with a felony is adjudicated as a youthful offender, the court shall:

- (1) Suspend the imposition or execution of sentence with or without probation;
- (2) Place the defendant on probation for a period not to exceed three years;
- (3) Impose a fine as provided by law for the offense with or without probation or commitment; or
- (4) Commit the defendant to the custody of the Board of Corrections for a term of three years or a lesser term.

Ala. Code § 15-19-6(a).

An adjudication as a youthful offender does not automatically revoke the person's driver's license and is not deemed a conviction of a crime, unless the youthful offenders is subsequently convicted of a crime. The fingerprints,

photographs, and other records of the person are not open to public inspection, except by prosecutors, or unless the person adjudged a youthful offender is treated as an adult sex offender according to § 15-20A-35. Ala. Code § 15-19-7. A narrow exception exists where a person adjudged a youthful offender is treated as an adult sex offender according to Section 15-20A-35. See § 15-9-7(b).

2. Civil Commitments

A person may be civilly committed if the probate court finds clear and convincing evidence that (1) the person is mentally ill; (2) as a consequence of such mental illness poses a real and present threat of substantial harm to himself or to others; (3) the person will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently; and (4) the person is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable. Ala. Code § 22-52-10.4.

An alleged mentally ill person may be taken into temporary custody when the law enforcement officer has reasonable cause to believe the person is mentally ill and likely to be an immediate danger to himself or others. The officer should contact the community mental health officer, who will go to the scene and assess conditions to determine if the person appears mentally ill. The alleged mentally ill person is then taken to a mental health facility for diagnosis before being admitted to the mental health facility. If the person is not admitted the person is returned to the law enforcement officer for release. This provision is not applicable to any county until the judge of probate, with the approval of the county commission, makes the finding that the facilities are available to the paying persons. If no facility is available in the county, the county may contract for beds in a state facility. Ala. Code §§ 22-52-91, -92.

An alleged mentally ill person cannot ever be placed in jail or other facility for persons accused of or convicted of committing crimes, but must be detained in a designated mental health facility or hospital. Ala. Code § 22-52-7(b). However, this does not prohibit a person who has committed a criminal act from being detained in a jail facility for the criminal act.

An alleged incompetent person must be provided a hearing upon the filing of a petition for commitment. Notice to that person to be committed is to be served by the sheriff with a copy of the petition and order setting the date of hearing. Ala. Code § 22-52-3. Where the petition is filed seeking to have the alleged mentally ill person held prior to a final hearing on the merits, the probate judge will order the sheriff of the county in which the alleged mentally ill person is located to be served with a copy of the petition and to immediately bring the person before the probate judge. The hearing is then held to determine whether the person is held for temporary treatment pending further hearings. Ala. Code § 22-52-7.

3. Criminal Commitments

A defendant is mentally incompetent to stand trial or to be sentenced for an offense if that person lacks sufficient present ability to assist in his or her defense by consulting with counsel with a reasonable degree of rational understanding of the facts and legal proceedings against the defendant. Ala. R. Crim. P. 11.1. The circuit court may order a defendant to be examined in a state institution and may commit a defendant to the department of mental health and mental retardation for a period of time necessary to conduct the examination. Ala. R. Crim. P. 11.3(b). A probate judge may order law enforcement officers to convey any person involuntarily committed for inpatient treatment to a designated mental health facility as ordered by the court, and

all necessary expenses incurred by the officer shall be taxed as costs of the proceedings. Ala. Code § 22-52-12.

A person committed to inpatient treatment may be transferred from any treatment facility to another treatment facility by any law enforcement law officer or designated employee of the department of mental health. It is not permissible for the law enforcement officer to leave the person at the mental health facility without acceptance by the facility. A designated mental health facility shall not be required to accept a committed person if they are unable to provide proper services and treatment. § 12-52-12.1

4. County Juvenile Council

The sheriff is a member of the county children's policy council. As a member of this council, the sheriff is required to meet at least once each quarter on call of the senior juvenile court judge. The council is charged with reviewing the needs of children in the community and with reviewing the responsibilities assigned to agencies that deal with children. The council must submit a report to the Department of Children's Affairs by July 1 of each year. Ala. Code § 26-24-34.

CHAPTER VII

CIVIL PROCESS

1. Service of Civil Process Generally

The State of Alabama confers on the sheriff the duty of executing and serving process on the defendant of a civil lawsuit. Ala. Code § 36-22-3(a)(1). The sheriff should be aware that state law requires strict compliance with the rules of service of process specified in Rule 4 of the Alabama Rules of Civil Procedure. (*Ex parte Shuttleworth*, 410 So. 2d 896, 900 (Ala. 1981)?) The purpose of service is to notify or inform the defendant of the action filed against him or her. *Moore v. Moore*, 424 So. 2d 1312, 1314 (Ala. Civ. App. 1982). Failure to accomplish this purpose could render any judgment made against the defendant void. *Sams v. Equitable Life Assurance Soc'y*, 402 So. 2d 999, 1001 (Ala. Civ. App. 1981).

A. Duty to Execute or Serve Process

A civil action is commenced by filing a complaint with the court. Ala. R. Civ. P. 3(a). After a summons and complaint have been filed with the court clerk, the clerk delivers or mails the process and complaint to the sheriff of the county in which the party to be served resides. Ala. R. Civ. P. 4(i)(1)(A). Although a process-server may be any person 18 years of age or older who is not a party to the lawsuit, the sheriff is considered the primary process-server in civil lawsuits. Service of process by any person other than the sheriff or constable, in absence of a court appointed alternative, is void. However, if the sheriff's office is presently vacant, or the sheriff is an interested party to the lawsuit, the coroner may properly serve process. Ala. Code § 6-4-3.

The sheriff serving process must have jurisdiction in the county in which the party to be served resides. Ala. R. Civ.

P. 4(i)(1)(A). However, if the party who resides in that county cannot be found there, the sheriff may serve process in the adjoining county if such parties are found there, or the sheriff may pursue them and execute it in any part of the state. Ala. Code § 6-4-2.

B. Inspection of the Process

The sheriff is not required to question the validity of the process if it appears valid on its face. Ala. Code § 36-22-7. The sheriff cannot be held liable for executing process which is later deemed invalid or otherwise defective, unless the sheriff executed the process with knowledge that either the process or the underlying judgment was void. *Clark v. Lamb*, 76 Ala. 406, 408 (Ala. 1884). However, the sheriff is responsible for inspecting the process to determine whether the court issuing it has jurisdiction of the subject-matter and the parties. *Albright v. Mills*, 86 Ala. 324, 328, 5 So. 591, 593 (Ala. 1889). Upon receipt of the papers to be served, the sheriff should inspect them to ensure they appear to be valid. A process should:

- (1) Be signed by the clerk.
- (2) Contain the name of the court.
- (3) Contain the name of the parties.
- (4) Be directed to the defendant or other proper party.
- (5) Contain the names and addresses of the plaintiff or the plaintiff's attorney.
- (6) State the time within which the rules require the defendant to appear and defend.
- (7) Notify the defendant of the consequences of failure to appear, including the warning that failure to respond to the summons will result in a default judgment.
- (8) Have a copy of the complaint or other document attached. Ala. R. Civ. P. 4(a)(2).

C. Serving Process

Upon receipt of the process, the sheriff must execute the process with due diligence. Ala. Code § 36-22-3(a)(1). Generally, the law defines due diligence as a reasonable effort made in good faith to locate the person to be served. *Birmingham Dry-Goods Co. v. Bledsoe*, 117 Ala. 495, 498, 23 So. 153, 154 (Ala. 1898).

D. Identifying the Proper Party to be Served

Unless the law provides otherwise, service of process must be made upon the individual named in the process. The sheriff shall locate the person to be served and deliver to that person a copy of the summons, complaint, and other accompanying documents as soon as possible, and in no case later than sixty (60) days. Ala. R. Civ. P. 4(i)(1)(D). Courts presume that the sheriff can locate anyone in the county who is a resident. Service of process to anyone other than the named defendant of the action is invalid. For example, serving process upon a defendant's wife, rather than upon the defendant, has been held invalid. *Wright v. Rogers*, 435 So. 2d 90 (Ala. Civ. App. 1983). However, the law specifies that service of process may be served on someone other than the named defendant if that defendant is a member of a special class. These special classes are specified under Rule 4 of the Alabama Rules of Civil Procedure. The following is an excerpt from Rule 4(c) designating the proper party to be served:

- (1) **Individual.** Upon an individual, other than a minor or an incompetent person, by serving the individual or by leaving a copy of the summons and the complaint at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons

and the complaint to an agent authorized by appointment or by law to receive service of process;

- (2) **Minor.** Upon a minor by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor or with whom the minor lives, or the spouse, if the minor is married, and, if the minor is over the age of twelve (12) years, by also serving the minor personally;
- (3) **Incompetent Not Confined.** Upon an incompetent person not confined by serving the incompetent and that person's guardian but, if no guardian has been appointed, by serving the incompetent and a person with whom the incompetent lives or a person who cares for the incompetent;
- (4) **Incompetent Confined.** Upon an incompetent person not having a guardian and confined in any institution for the mentally ill or mentally deficient, by serving the superintendent of the institution or similar official or person having the responsibility for custody of the incompetent person;
- (5) **Incarcerated Person.** Upon an individual incarcerated in any penal institution or detention facility within this state, by serving the individual, except that when the individual to be served is a minor, by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor, or the spouse, if the minor is married, and, if the minor is over the age of twelve (12) years, by also serving the minor personally;
- (6) **Corporations And Other Entities.** Upon a domestic or foreign corporation or upon a partnership, limited partnership, limited

liability partnership, limited liability company, or unincorporated organization or association, by serving an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process;

- (7) **State.** Upon this state or any one of its departments, agencies, offices, or institutions, by serving the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of this state;
- (8) **Local Governments And Other Governmental Entities.** Upon a county, municipal corporation, or any other governmental entity not previously mentioned, or an agency thereof, by serving the chief executive officer or the clerk, or other person designated by appointment or by statute to receive service of process, or upon the attorney general of the state if such service is accompanied by an affidavit of a party or the party's attorney that all such persons described herein are unknown or cannot be located.

E. Claim of Immunity From Service of Process

The sheriff may disregard any claim by the party being served that the party is immune from service of process. Any such claim may be asserted by the party to the court.

F. Refusal of the Party to Accept Service

If the party upon whom the process to be served refuses to accept process, the sheriff must acknowledge this refusal upon the process and return it to the court clerk within 60 days. Ala. R. Civ. P. 4(i)(1)(D). The sheriff should write the word "refused" in explaining the failure of the process to be

served. Merely stating that the process is "unclaimed" could result in a default judgment against the defendant being deemed void. *John H. Peterson, Sr., Enter., Inc. v. Chaney*, 486 So. 2d 1307, 1309 (Ala. Civ. App. 1986); see *Fuller v. Fuller*, 991 So. 2d 285, 287 (Ala. Civ. App. 2008) ("unclaimed refused" has a similar meaning as "refused" and is distinguishable from "unclaimed"). Failure to make service within the 30 day period, if not due to lack of due diligence on the part of the sheriff, will not affect the validity of the service. Ala. R. Civ. P. 4(i)(1)(D).

If the sheriff has made a good faith effort to locate the person to be served, and has been unsuccessful in locating the individual, the sheriff should acknowledge this fact by noting it on the process and returning it to the court clerk within 60 days.

G. Returning the Process to the Court

The sheriff must acknowledge the delivery of the process to the proper party by endorsing the process and returning it to the court clerk. Ala. R. Civ. P. 4(i)(1)(C). The endorsement should contain the name of the sheriff and indicate the time, place, and first and last name of the individual served. If the service is substituted service on a person other than the defendant, the return shall also include sufficient information to show the person served qualifies as a person to be served for the defendant under Rule 4(c).

Failure to return or falsely to return an execution may lead to statutory summary proceedings against the sheriff by the plaintiff, the defendant, and the court clerk, in addition to other proceedings against the sheriff. Ala. Code § 6-6-680. The court gives great weight to the validity of process that has been endorsed and returned by the sheriff. Any defendant questioning the validity of process served in this manner carries the burden of establishing lack of service by clear and

convincing proof. *Wright v. Rogers*, 435 So. 2d 90, 91 (Ala. Civ. App. 1983).

2. Subpoenas

The State of Alabama confers on the sheriff the duty of serving subpoenas which are issued by the court clerk. Ala. R. Civ. P. 4.1. A subpoena is a document issued under the authority of the court to compel the attendance of witnesses at trials and depositions.

In the absence of a statute to the contrary, the subpoena must be personally served upon the named individual. Subpoenas must be served within the state at some time (including Sundays and holidays) before appearance of the witness is required. The subpoena should be signed by the witness and a proper return made to the court clerk by the sheriff or a deputy.

A *subpoena duces tecum* (SDT) is a document issued by the court to compel production of documents, records, or other articles in the possession of anyone reasonably believed to possess them.

3. Repossessions

A creditor who has a secured mortgage on personal property has the right to take possession of the collateral without going to court if it can be done without a breach of peace. If a threat of breach of the peace exists, the plaintiff must go to court and pursue recovery under Ala. R. Civ. P. 64(b) and the detinue statute. Ala. Code §§ 6-6-250 - 264.

After the plaintiff has filed a complaint and affidavit with the court, the court will order the process to be served by the sheriff upon the party holding possession of the collateral. Where the plaintiff executes a bond with sureties

that is approved by the clerk (the bond has the condition that if the plaintiff is unsuccessful in the lawsuit, the plaintiff will pay the defendant all the costs and damages that the defendant may suffer by a wrongful complaint), it is the duty of the clerk to endorse on the summons that the sheriff is required to take the property described in the complaint into the sheriff's possession unless the defendant files a bond payable to the plaintiff in double the value of the property. Ala. Code § 6-6-250(a).

The sheriff is merely the agent of the law to take the bond of the defendant payable to the plaintiff and return it to the court. *Anderson v. Bellenger & Ralls*, 87 Ala. 334, 337 (Ala. 1889). The sheriff's failure to take a proper bond before redelivering the property seized will subject the sheriff to liability and result in damages. *Living's v. Barnes*, 24 Ala. App. 367, 368 (Ala. Civ. App. 1831).

The sheriff should pay particular attention to the validity of any bond since taking of a defective bond will subject the sheriff to be liable under the sheriff's own bond. *Traweek v. Heard*, 97 Ala. 715, 717 (Ala. 1893). Once the sheriff has taken the property, the defendant must make the bond within 5 days from the date of taking by the sheriff. If the defendant fails to make the bond the plaintiff must make the bond double the property's value within 10 days from the taking of the property by the sheriff. Ala. Code § 6-6-250(b). Where the sheriff takes property and there is no bond given by the plaintiff, the sheriff must return the property to the defendant. *Giles v. Watkins*, 263 Ala. 690, 692 (Ala. 1955).

4. Evictions

A. Sheriff's Duty to Execute Process

Upon the order of the district court, the sheriff may be required to execute process for a forcible entry and unlawful

detainer action. Ala. Code § 6-6-332. The sheriff must serve the notice to the defendant at least six days before the return day of the process. The process may be served upon the defendant anywhere in the state, and the process shall be served personally upon the defendant. If the sheriff or constable is unable to serve the defendant personally, service may be perfected by delivering the notice to any person who is residing on the premises, or if after reasonable effort no person is found residing on the premises, by posting a copy of the notice on the door of the premises, and on the same day of posting or by the close of the next day, the sheriff or person filing the complaint shall mail notice of the filing of the unlawful detainer action by enclosing, directing, stamping, and mailing by first class a copy of the notice to the defendant at the mailing address of the premises and if there is no mailing address for the premises to the last known address, if any, of the defendant and making an entry of the action on the affidavit filed in the case. Ala. Code § 6-6-332(b). A forcible entry action is an *in rem* proceeding, meaning that the land is within the jurisdiction of the court. Therefore, serving process by leaving a copy at the defendant's residence, rather than personally serving the process, is sufficient to satisfy due process. Ala. Code § 6-6-332(b).

B. Failure of the Sheriff to Execute Process

If a sheriff is found negligent in failing or refusing to execute any process placed in his or her hands by a district court judge, the sheriff shall pay to the aggrieved party \$200, under an action in the circuit court. Ala. Code § 6-6-333.

C. Sheriff's Duty to Execute the Judgment of the District Court

If the district court finds in favor of the plaintiff in an unlawful detainer action, the court will issue a writ of execution to the sheriff. The sheriff must then place the

plaintiff in possession of his land according to the complaint and levy on and sell a sufficient amount of the defendant's goods, chattels, lands, and tenements to satisfy the costs of the proceedings. The court may issue successive writs of execution, if necessary, to eject the defendant or collect costs and damages. Ala. Code § 6-6-337(a). The court will not consider the sheriff's execution complete until the plaintiff has actually been placed in "actual and peaceable possession of the premises recovered." *Lankford v. Green*, 62 Ala. 314, 319 (Ala. 1878). Therefore, the sheriff must physically remove any property of the defendant's from out of the house or building and place them off the plaintiff's property.

5. Garnishments

A garnishment is the process whereby parties can, through court, reach the money or property of a defendant that is under the control of a third party for debts owing by the defendant to the plaintiff. The third party is called the garnishee. Ala. Code § 6-6-370. One must have a final judgment before a garnishment can be instigated. Ala. Code § 6-6-390.

Once a garnishment is filed with the court, the court will order that a copy is served upon both the defendant and the garnishee. Ala. Code §§ 6-6-390, 394.¹⁹

Money in the hands of the sheriff may be garnished and the money paid into court. Ala. Code § 6-6-412.

¹⁹ Act 2022-397 has added Ala. Code § 6-6-394.1, allowing a post-judgment service of the garnishment notice on defendant by posting on the circuit clerk's website and mailing to the defendant's last known address in cases where sheriff's attempted service of the garnishment notice has been returned due to the defendant not having been found.

6. Execution on Judgments

A. In General

Execution on a judgment by the sheriff is the process by which a court may seize the property of a defendant if that defendant has failed to pay a final judgment. A judgment can be executed at any time within ten years of the date of judgment and for a successive period of ten years if the judgment is executed again before the expiration of the ten years after refiled in the probate office. Ala. Code § 6-9-1. No execution can be levied after the death of the judgment debtor. However, a writ of execution issued and received by the sheriff during the life of the defendant may be levied after the defendant's death if at the time of death there was of record, in the county where the property is, a certificate of the judgment on which the execution was issued. Ala. Code § 6-9-62. The court clerk who issues the writ of execution must include a description of the property to be executed upon and the last known address of the person against whom execution is sought. Ala. R. Civ. P. 69(b). A writ of execution must be accompanied by a notice of the right to claim certain property as exempt from execution Ala. R. Civ. P. 69(b). The court clerk then delivers the writ of execution and exemption notice (which is the defendant's right to claim exemption) to the sheriff, for service upon the judgment debtor.

B. Sheriff's Duty to Execute

Alabama law confers on the sheriff the duty of serving the judgment debtor with a copy of both the writ of execution and the notice of exemption rights. Ala. R. Civ. P. 69(c). However, if the sheriff is unavailable, or is an interested party, the proper person to serve the documents is the coroner. Ala. Code § 6-9-25. When the documents are received by the sheriff, the sheriff should write the time and date of receipt on the papers. If more than one writ of execution is issued against

the same defendant, the sheriff must mark on the documents the order in which they were received. Ala. Code § 6-9-98. Before a sheriff levies upon a piece of land in the county, the sheriff must file with the probate judge.

The sheriff receiving an execution must execute the writ with diligence and perform the court's order as soon as practicable and not later than 90 days from the date of the execution. Ala. Code § 6-9-80.

The documents must be personally delivered to the judgment debtor at the time of levy upon the debtor's real property or the seizure of the debtor's personal property. Ala. R. Civ. P. 69(c). If the documents cannot be personally served upon the debtor, the service may be made by first class mail to the debtor's last known address, which is stated on the writ of execution, and by posting the documents on the door of the debtor's last known address. Ala. R. Civ. P. 69(c). If, at the time of the levy, the defendant expresses a desire to have the execution satisfied by certain property, the sheriff must take and sell that property first, if the sheriff believes that it is sufficient to satisfy the judgment and costs. Ala. Code § 6-9-90. When a levy is made on real or personal property, a full description of the property and the date of the levy must be endorsed upon or appended to the execution. Ala. Code § 6-9-99. If the defendant substitutes any property for that seized prior to the date of sale, the substituted property must be described in the return. When the sheriff has doubts as to the defendant's proper ownership of personal property, the sheriff may demand indemnity from the defendant either before or after the levy. Ala. Code § 6-6-80.

C. Debtor's Right to Exemption

At any time after a levy or seizure of property, and before the sale of the property, a debtor may file with the sheriff and the court clerk a notarized claim of exemption.

Filing the exemption only with the sheriff is invalid; the notice must also be filed with the court clerk. The sheriff may not sell any property claimed as exempt until the creditor has an opportunity to contest the claim. Ala. R. Civ. P. 69(d). If the claim is regular on its face, it cannot be disregarded by the sheriff. Under no circumstances should the sheriff attempt to disregard the claim on the basis that it is legally insufficient. *Block v. Bragg*, 68 Ala. 291, 293 (Ala. 1880).

It is the duty of the sheriff to give notice to the plaintiff that the judgment debtor has filed a claim of exemption. *Allen v. Towns*, 90 Ala. 479, 479-80, 8 So. 101, 102 (Ala. 1890). If the plaintiff seeks to contest the claim, the plaintiff must file with the sheriff an affidavit contesting the exemption within 10 days after the notice of the claim. The sheriff shall then return the process and other papers to the court to which the process is returnable, accompanied with a full statement of the facts Ala. R. Civ. P. 69(e).

If the plaintiff fails to contest the claim within 10 days, the plaintiff's right to contest is waived, and the property levied upon must be returned to the defendant with the costs of levying the personal property charged to the plaintiff. Ala. Code § 6-10-26. Therefore, after the defendant's proper claim of exemption has been filed, and the plaintiff has been notified of the claim and has failed to contest it within 10 days, the sheriff is bound to deliver the property to the defendant Ala. Code § 6-10-26.

D. Return of the Writ of Execution

Upon completion of the levy, the process must be returned to the court showing the manner of notice and execution. If the writ is not executed or only partially executed, the reason for failure of execution must be stated on the return. Ala. Code § 6-9-96. Upon the return of an execution endorsed with "no property found," the court may issue an

execution against the plaintiff for any unpaid fees. Ala. Code § 12-19-50(c).

E. Liability of Sheriff for Failure to Return Execution

A sheriff found in dereliction of duty for failing to return, levy, or collect executions may be subject to penalties and judgments of the probate court, including monetary penalties. Ala. Code § 12-13-17.

F. Bonds

The defendant in an attachment case may retain his or her attached property by executing a bond in double the amount of the value of the attached property. Ala. Code § 6-6-100. If the defendant fails to return the property within 30 days after the court issues judgment, the sheriff must return the forfeited bond and a writ of execution must be issued against the principal of the property and interest from the date of the bond. Ala. Code § 6-6-101.

G. Liabilities Arising Out of Collection, Custody, or Disposition of Money

A sheriff has a fiduciary duty to the owners of all property committed to the sheriff in his or her official capacity for safe-keeping. *Scott v. Caldwell*, 37 So. 2d 85, 87 (Fla. 1948). The sheriff should not accept anything other than cash when discharging an execution or receiving payment in a sheriff's sale. If the sheriff does not receive cash in payment, the sheriff will be liable to the plaintiff for the amount of money the sheriff should have received in cash. *Grace v. Wooley*, 26 Ala. App. 83, 84, 153 So. 659, 660 (Ala. Ct. App. 1934).

The sheriff cannot extinguish his or her fiduciary responsibility by placing the property in the hands of a third

party. For example, if the sheriff deposits fiduciary funds in a bank, and the bank is not a lawful depository for funds in the sheriff's possession, the sheriff will be liable for the funds if the bank fails. *Jefferson County ex rel. Hawkins v. Downs*, 226 Ala. 427, 429, 147 So. 626, 627 (Ala. 1933). A sheriff may release his or her liability for the funds by paying them to an authorized agent of the owner, such as the owner's attorney. *Williams v. State*, 46 S.W. 186, 188 (Ark. 1898). Before relinquishing the money into the hands of the third party, the sheriff should confirm the third party as a proper agent for the owner. Otherwise, the sheriff will be held liable for any payment of money made to an unauthorized person. *Custer v. Agnew*, 83 Ill. 194, 195 (Ill. 1876).

When a sheriff receives funds into his or her official custody that are deposited into an interest bearing account, the sheriff should make certain that the accrued interest on the funds is paid to the owner. Additionally, if the sheriff fails to return the funds to their owner at the proper time, the sheriff will be held liable for the funds wrongfully withheld plus interest on the funds. *Grace v. Wooley*, 26 Ala. App. 83, 84, 153 So. 659, 660 (Ala. Civ. App. 1934).

H. Records Pertaining to Execution of Judgments

The sheriff must maintain a book to record the execution of judgment orders of all sales or collections. Ala. Code § 36- 22-10. The sheriff must include in this record the amount of any payment received as the result of the sheriff's sale. Ala. Code § 36-22-12. For more information regarding the sheriff's duties of service of process, *see* Chapter V of this handbook.

7. Sheriff's Sale

A. In General

A sheriff's sale is a sale of property by the sheriff under authority of a court's order and writ of execution in order to satisfy an unpaid judgment of the debtor.

B. Perishable Property

The court that has issued an attachment on perishable property may order the property to be sold. Ala. Code § 6-6-77. The sheriff is required to sell the property at a public auction and retain the proceeds until the court has issued a final judgment. Ala. Code § 6-6-77. The sheriff may sell the goods at such time, on such notice, and at such place as sound discretion warrants. Ala. Code § 6-9-88. The sheriff is liable for any abuse of discretion which results in injury to a party.

Upon an order of the court, the sheriff must turn over to the defendant the balance of the proceeds that exceeds the plaintiff's demand, retaining sufficient proceeds to cover the probable costs and charges in the case. Ala. Code § 6-6-78(a). The plaintiff must give bond before such proceeds can be demanded. After taking the bond, the sheriff is bound to turn over to the court clerk an endorsement showing the date and amount of the proceeds given to the plaintiff. Ala. Code § 6-6-78(b).

C. Personal Property

Before the sheriff can sell personal property under order of the court's final judgment, notice of the sale must be given by advertisement at the courthouse door and also by publication in a newspaper, published in the county. Publication must be one insertion in the paper 10 days before the sale.

A defendant that has property being executed upon may point out any of his or her property on which to levy the execution. The sheriff shall be bound to take and sell that property first if, in the opinion of the sheriff, it is sufficient to satisfy the judgment and costs. Ala. Code § 6-9-90. The debtor also has the right, on the day of the sale, to substitute other property of equal value, not covered by any lien. Ala. Code § 6-9-91. When such property is substituted, a description of the substituted property should be appended to the writ of execution. Ala. Code § 6-9-91. Personal property may be sold at the courthouse, the residence of the defendant, the place where levied on or the neighborhood thereof, as may be most expedient. Ala. § 6-9-86.

D. Real Property

Before the sheriff can sell real property under order of the court, notice of the sale must be given by advertisement at the courthouse door for 30 days prior to the sale and also by publication in a newspaper of general circulation published in the county once a week for three successive weeks prior to the sale. Ala. Code § 6-9-87. Real property must be sold on any Monday of the month at the courthouse of the county. When any real estate or interest therein has been sold by the sheriff, the sheriff must execute and deliver to the purchaser a deed for the real estate or interest sold within five days after the execution of the sale. Ala. Code § 6-9-149.

E. Liabilities Arising Out of the Sale of Property

A sheriff may be held liable to a purchaser for failure to deliver the property sold, or for a failure to execute a deed for it; but the sheriff is not liable for loss of personal property after the sheriff has delivered it to the purchaser. *Dreisbach v. Braden*, 181 P. 262, 265-66 (Cal. Ct. App. 1919).

When a bid is made and accepted at a sheriff's sale, the

sheriff must enforce the bid. *State ex rel. Matney v. Spencer*, 79 Mo. 314, 316 (Mo. 1883). The property may be re-bid after a purchaser at a sale refuses to pay. The first bidder is responsible for any amount in excess of the second bid. *Lamkin v. Crawford*, 8 Ala. 153, 158 (Ala. 1845). If the sheriff conveys property to the purchaser without payment of the purchase money, the sheriff will be liable to the creditor for the amount of the debt, and to the owner of the property for any surplus of the price over the amount of the debt. However, if the amount realized is less than the amount of the execution, the sheriff is not liable to the creditor. *Kumler v. Brandenburg*, 38 N.W. 704, 704-05 (Minn. 1888). The sheriff cannot be held liable for invalid title that passes in connection with a sheriff's sale, because the sheriff is not required to be a warrantor of title. *Estes v. Doty*, 90 S.W.2d 754, 755 (Tenn. 1936).

F. Invalid or Irregular Sale

A sheriff should not sell property once the sheriff is aware that the sale would be improper. For example, if the sheriff knows that a writ of process is void on its face, the sheriff must refrain from selling the property or else be liable for any damages resulting from the sale. *Sproul v. Monteith*, 185 P. 270, 271 (Colo. 1919).

If a sheriff advertises property for sale at a designated place and time, the sheriff must sell it at that place and time. If the sheriff sells it at a different place, the sheriff will be liable to the owner of the property for any actual damages sustained. *Ryan v. Young*, 147 Ala. 660, 665, 41 So. 954, 955 (Ala. 1906). The sheriff can also be held liable for selling property at an improper time.

The sheriff cannot be held liable at a sheriff's sale simply because the price realized for the property is inadequate. *Powell v. Governor*, 13 Ala. 516, 520 (Ala. 1848). If

the property is sold for less than fair market value, the sheriff will be held liable only if the low sale price was by reason of his or her gross negligence or fraud. The sheriff should be careful not to sell more property of the debtor than is necessary to satisfy the debt. A sheriff who sells property belonging to someone other than the debtor will be liable for damages. *State ex rel. Webb v. King*, 73 S.W.2d 460, 461 (Mo. Ct. App. 1934). However, if the sheriff can show that the true owner of the property had knowledge of the seizure of the property, and an opportunity to act, and yet failed to give the sheriff notice of the true owner's claim, the sheriff will not be liable for the sale. *Stephens v. Head*, 119 Ala. 511, 513, 24 So. 738, 739 (Ala. 1898). In addition, if the writ of execution specifically identifies the property that the sheriff seizes and sells, the sheriff cannot be held liable to the true owner unless the writ is obviously invalid.

G. Levying on Jointly Owned Property

The sheriff should be careful to determine whether property being sold is owned by tenants-in-common. A sheriff who sells all of the property of co-tenants under process against one of them is liable to the co-tenant not named in the process for the resulting loss. *R.A. Myles & Co. v. A.D. Davis Packing Co.*, 17 Ala. App. 85, 87, 81 So. 863, 864 (Ala. Civ. App. 1919).

H. Levying on Landlord/Tenant Property

When levying on goods found in commercial rental property, the sheriff should attempt to determine whether the landlord has a lien for rent on the property. If the sheriff knows that the landlord has a lien and yet proceeds with the sheriff's sale, the sheriff has a duty to pay the landlord the rent out of the proceeds of the sale of the goods. *Smith v. Huddleston*, 103 Ala. 223, 225-26, 15 So. 521, 521 (Ala. 1893).

The Alabama Legislature adopted the Uniform Residential Landlord and Tenant Act during the 2006 session. In accordance with this Act, a landlord is no longer able to obtain a lien on residential rental property. Ala. Code § 35-9-60.

8. Holding Money and Property

A. In General

All funds that the sheriff receives as the result of official capacity are held as a fiduciary for the owner. This fiduciary duty extends to any money that the sheriff receives as a result of the execution of a judgment on property or any tax revenues collected for the Department of Revenue. The sheriff must prepare a report showing all fiduciary funds, and this report must be filed at the first session of court each year. Ala. Code §§ 19-3-81 and 83.

B. Funds Received From Executing Writs of Levy

The sheriff is required to submit an annual report disclosing the amount of all funds received as the result of executing writs of levy. Ala. Code § 19-3-83. The report should contain a statement describing the circumstances under which the funds were received. Ala. Code § 19-3-81. Failure to provide the court with this report may result in a contempt of court judgment being issued against the sheriff. Ala. Code § 19-3-86.

C. Fiduciary Funds Held by an Attorney

When an attorney is holding funds awarded as damages in one of his or her client's lawsuits, a dispute may arise as to the percentage of the funds that properly belong to the attorney. If the client or another party brings a lawsuit against the attorney to recover the funds, the attorney may

request that the court or sheriff hold the funds in a fiduciary capacity pending the court's judgment. The transfer of the funds to court or the sheriff during litigation will release the attorney from being liable for statutory damages and interest on the funds. The court may require the party claiming the money or property to establish their right to the funds. The court at their discretion may award costs, including the sheriff's expenses for preserving the property. Ala. Code § 6-6-740.

D. Funds Payable to the Department of Revenue

The Department of Revenue may issue a writ of levy directly to the sheriff without posting an indemnity bond. Ala. Code § 40-1-15. Any time a sheriff executes a levy on property, the proceeds received must first be used to pay any taxes that has a lien on the property. Ala. Code § 40-1-24. Failure to remit the money the sheriff receives from an execution, may result in a judgment against the sheriff in the amount of the funds received plus a twenty percent penalty. Ala. Code § 40-1-17. In addition, if the sheriff knowingly converts these funds to his or her own use, the sheriff commits an act of theft and will be prosecuted and upon conviction punished as if he or she had stolen it. Ala. Code § 40-1-23.

9. Eminent Domain

Eminent domain is the authority of the state, municipality, or public utility to acquire private property for a public purpose. Ala. Const. Art. I, § 23 & Art. XII, § 235; Ala. Code § 18-1A-270. Typically the establishment of roads or power lines may require such a taking. The Constitution and Code of Alabama requires that the taking authority pay the landowner just compensation. *See* Ala. Code § 18-1A-1 *et seq.*

The party wishing to acquire the property must first offer to buy the property, but if no purchase is negotiated, the

party must file a proceeding in probate court. Ala. Code §§ 18-1A-55 and 71. The role of the sheriff is to deliver notices and perfect service on the parties as governed by the Alabama Rules of Civil Procedure and as provided in Ala. Code § 18-1A-70 *et seq.*

The condemning authority may enter upon the land for a reasonable time to make surveys and tests, sampling to determine whether the property is suitable for public use. Entry for this purpose does not constitute trespass. Ala. Code § 18-1A-50.

10. State Agency Writs

The sheriff is responsible for executing process of levy issued by the following administrative agencies:

- (1) The Department of Industrial Relations - Ala. Code § 25-4-134(b)(5).
- (2) The Department of Revenue - Ala. Code § 40-2-11(16).
- (3) The Alcoholic Beverages Control Board - Ala. Code § 28-3-14.
- (4) The Commissioner of Insurance - Ala. Code § 27-2-7(7).
- (5) The Board of Bar Commissioners - Ala. Code § 34-3-80.
- (6) The State Board of Medical Examiners - Ala. Code § 34-24-361(e)(4).
- (7) The Medical Licensure Commission - Ala. Code § 34-24-311.
- (8) The Board of Nursing - Ala. Code § 34-21-25.
- (9) The Board of Optometry - Ala. Code § 34-22-8(a).
- (10) The State Licensing Board for General Contractors - Ala. Code § 34-8-4(b).
- (11) The Board of Barber Examiners - Ala. Code

§ 34-5-8.

- (12) The State Pilotage Commission - Ala. Code § 33-4-41. (Limited by statute to the Sheriffs of Mobile and/or Baldwin counties).
- (13) The State Highway Department - Ala. Code § 23-1-56(c).
- (14) The Public Service Commission - Ala. Code § 37-2-112.
- (15) The State Oil and Gas Board - Ala. Code § 9-17-8(a).
- (16) The Department of Conservation and Natural Resources - Ala. Code § 9-11-12 with reference to Ala. Code § 33-5-10.
- (17) The State Forestry Commission - Ala. Code § 9-13-24, with reference to Ala. Code § 33-5-10.

CHAPTER VIII

ELECTIONS²⁰

1. Office of Sheriff

The sheriff is an elected official of the county. The sheriff's primary duty is law enforcement, but the sheriff has some responsibilities in almost all of the electoral functions. As with other duties of the sheriff, electoral duties may be carried out by deputies. See Ala. Code § 36-22-3.

2. Appointment of Poll Workers

The sheriff is a member of the appointing board, which is responsible for appointing poll workers at each election. Ala. Code §§ 17-1-2(1); 17-8-1. In the event the sheriff is a candidate with opposition, the appointing board shall select a replacement. Ala. Code § 17-8-3.

3. Precincts

Whenever the county commission files new precinct boundaries or polling places with the probate judge, the judge is to have the sheriff post copies at the courthouse door and at two public places in each precinct or district affected. Ala. Code § 17-6-4(b).

4. Election Supplies

The election supplies for the polling places are given by the probate judge to the sheriff, who is responsible for their delivery to the inspectors. These election supplies include the ballots, blank poll lists, certificates of results, oaths, and other

²⁰ See Chapter 14 of *Alabama Election Handbook, 20th Ed.*

necessary stationery or blank forms. Ala. Code § 17-6-47.

A. Paper Ballot Locations

Paper ballot locations are no longer used except in small municipal elections.

B. Electronic Voting Equipment Locations

Electronic vote counting machines follow a combination of statutes and administrative procedure rules.

The administrative procedures for electronic vote counting machines are in the appendix of the *Alabama Election Handbook*, 20th ed.

While it is the duty of the sheriff to have delivered the proper voting supplies and voter lists. Ala. Code §§ 17-13-9, 17-6-47, the county government body is to provide for installing as many electronic vote counting machines as are needed in each precinct. Ala. Code § 17-6-4(a).

C. Voter Information

The sheriff is responsible for obtaining from the judge of probate three or more sets of instructions to be posted at each precinct. One set is to be posted near the entrance of the voting place, a second near the sign-in table, and a third in a conspicuous place according to the physical layout of the polling place. Any remaining sets of instructions may be placed in plainly visible locations to assist voters in accordance with the circumstances presented by the physical layout of the voting place. Ala. Code § 17-6-46(b).

In counties with large numbers of voting precincts these instructions are often included in the precinct election supplies. In such situations, the chief inspector may post the

voting instructions at the respective precinct.

5. Voting Place Administration

The sheriff or a deputy sheriff must be present at all polling places, including on-site absentee voting locations, to preserve good order and to ensure that every elector is able to vote without interference or interruption. Ala. Code §§ 17-9-1, 17-13-26.

The sheriff or a deputy may specially deputize a sufficient force to act at all polling places on election day. Ala. Code § 17-9-1.

No person except poll workers, watchers, voters, judge of probate, the sheriff, or deputies is to be within 30 feet of the door of the building of the polling place on election day. Ala. Code § 17-9-50. Further, no loitering is permitted in the polling place. Ala. Code § 17-17-17.

Electors must not be arrested during their attendance at elections, or while going to an election or returning from an election. There is an exception for treason, felony, or breach of the peace or for a violation on election day of any of the provisions of the election law. Ala. Code § 17-17-1.

Because most sheriffs do not have the personnel needed to keep one deputy at each polling place on election day and because disorderly conduct at the polls rarely occurs, the most commonly used procedure for preserving order is for the sheriff or a uniformed deputy to visit each polling place several times during the day. When the sheriff or a deputy is not present, one poll worker is designated with the responsibility for the preservation of order. In addition, poll workers are instructed to telephone the sheriff immediately if difficulties arise.

6. Absentee Balloting

Absentee poll workers are appointed and notified in the same manner as regular poll workers. Ala. Code § 17-11-11. The sheriff has no absentee election duties other than the appointment and notification of absentee poll workers and providing security.

7. Canvassing

The sheriff, along with the judge of probate and circuit clerk, constitute the canvassing board for general elections. Ala. Code § 17-1-2(6). The sheriff has four important duties in the canvassing function: delivering returns, serving on the canvassing board, maintaining records, and resolving ties.

A. Delivering Returns

The sheriff is the returning officer of the county. Ala. Code § 17-8-10. The inspector (precinct returning officer) must deliver the returns to the sheriff within 2 hours after the election. Ala. Code § 17-12-8. Ala. Admin. Code Rule 307-X-1-10

After collecting all of the precinct returns, the inspector is to return and deliver the ballots and returns to the sheriff, or sheriff's designee, at the office of the judge of probate at the county seat or at such other place as designated by the judge of probate. The ballots and returns are not to leave the sheriff's possession, except as provided by state and federal law. Ala. Code § 17-13-12.

For primary elections, after delivery to him/her by the inspector, the sheriff will then deliver the returns to the chair or co-chair of the county executive committee or other governing body of each political party in an envelope addressed to the chair, containing the certificate of the results,

no later than 10:00 a.m. on Wednesday, the day after the election. Ala. Code § 17-13-14.

B. Voting Containers

After the result has been canvassed and declared by the county executive committee, the sheriff shall securely keep the voted ballots container and the records of election container in accordance with state and federal law. The voted ballots container and records of election container shall not be opened except in one or the other of the following events:

(1) In the event of a contest, where the opening of the container has been authorized under authority of the chair of the executive committee trying the contest.

(2) Where a container has been returned but no certificate of the result of the election has been sent the chair outside of the container, the container may be opened by the sheriff in the presence of the chairs, or their designees, of the county committees for the political parties participating in the primary election, and the committees, for canvassing purposes, may obtain the result at any particular district, ward, or precinct from the contents of the container, using the certificate of result contained therein, if any, or otherwise, so far as necessary in order to obtain it from the container; after which the papers shall be returned into the container, and the container shall be resealed by the sheriff in the presence of the chairs, or their designees, of the county committees for the political parties participating in the primary election. Ala. Code § 17-13-15.

C. Provisional Ballots

Upon the closing of the polls, the sealed ballot box

containing the provisional ballots shall be returned unopened to the sheriff who shall keep it secured. Any provisional ballot applications shall be delivered to the county's board of registrar's office the morning after the election. The board of registrars will then notify the sheriff as to which precinct's provisional ballot box is to be delivered for canvassing at noon Tuesday, seven days after the election.

D. Maintaining Records

The sheriff must keep the ballots in the voted ballot box for six months provided that there is no federal office on the ballot and if no election contest is underway. After that period of time, they may be destroyed unless within six months of having them in custody the sheriff is notified that the election of some officer for which the election was held will be contested. If this situation arises, the sheriff must preserve the box containing the ballots cast for the contestant until such contest is finally determined or such box is demanded by a legally constituted custodian during such contest. Ala. Code § 17-12-7. The "clerk's poll list" shall be sealed in an envelope labeled "records of election" and the inspector and any poll watchers present shall sign across the seal and placed in a "records of election" container. This container shall be delivered to the sheriff and retained in accordance with state and federal law. Ala. Code § 17-9-15(2). All records taken by inspectors from an electronic voting machine shall be delivered to the sheriff after an election and preserved by the sheriff for the appropriate length of time and then destroyed. Ala. Code § 17-16-1(a). If a federal office was on the ballot, all records, ballots and papers must be kept for 22 months. 52 U.S.C. § 20701.

The voted ballot containers and records of election containers shall remain sealed for the time provided by law for the filing of contests and then shall have the seal broken only on the order of that body that now has charge of and

control over voted ballot containers and records of election containers in that county. Upon completion of investigation, the voted ballot containers and records of election containers shall again be sealed and across the containers shall be written the signature of the person or persons having broken the seal. Ala. Code § 17-16-1(a).

E. Serving on the Canvassing Board

The probate judge, sheriff, and circuit clerk serve as members of the canvassing board of their county. The sheriff may be represented by a deputy on the canvassing board. Ala. Code § 17-12-15. The canvassing board canvasses the county vote in general, special, and constitutional amendment elections. Ala. Code § 17-1-2(6).

If the office of the probate judge or the clerk of the circuit court is vacant, or if either or both are candidates in the election being canvassed, the appointing board must fill the vacant positions at the time poll workers are appointed. If the appointing board does not fill a vacancy or if any member of the canvassing board fails to attend the canvassing meeting, the sheriff must appoint a qualified elector of the county to fill the vacant position. Whether appointed by the sheriff or the appointing board, persons chosen to fill a vacant position on the canvassing board must be qualified electors. Ala. Code § 17-12-15.

If all members of the canvassing board belong to the same political party, the sheriff must summon three reputable, qualified electors of the county who are members of the opposite political party to observe the proceedings. Ala. Code § 17-12-15.

F. Resolving Ties

In all elections, if the two candidates for county or

precinct office tie for the highest number of votes, the sheriff determines the winner by lot (from among those tied) in the presence of the candidates. Ala. Code § 17-12-23.

CHAPTER IX

RULES OF THE ROAD

1. In General

The sheriff has the duty of enforcing all of Alabama's motor vehicle laws found in Title 32, Chapters 5A through 5C of the Alabama Code, known as the Alabama Rules of the Road. Ala. Code § 32-5-310. The majority of offenses that occur under this statute are misdemeanors. Ala. Code § 32-5A-3.

2. Motor Vehicle Licenses

The state department of revenue is required by law to provide the sheriff of each county with an alphabetical list of the names, addresses, and license tag numbers of each person to whom a license tag is issued in Alabama. Ala. Code § 32-6-72. The sheriff must maintain and keep current this list for the benefit of public information and inquiry. Ala. Code § 32-6-72.

3. Drivers Under the Influence (DUI)

One of the sheriff's most serious obligations regarding motor vehicle laws is the protection of the public from drivers under the influence of alcohol and controlled substances. Any driver who operates a motor vehicle under the influence of alcohol, to the extent that it interferes with the vehicle's safe operation, is guilty of an offense in the state of Alabama, regardless of the degree of intoxication. Ala. Code § 32-5A-

191²¹; *Ex parte Buckner*, 549 So. 2d 451, 452 (Ala. 1989).

The sheriff is permitted to temporarily detain a driver whom the sheriff believes may be under the influence of alcohol. *Sides v. State*, 574 So. 2d 856, 858 (Ala. Crim. App. 1990). The sheriff may also arrest any driver at the scene of an accident if the sheriff has reasonable grounds to believe that the driver contributed to the accident by driving under the influence. Ala. Code § 32-5-171. No warrant of arrest is needed, and the sheriff may arrest such a person without a warrant even if he or she didn't personally see the violation.

Any person who operates a motor vehicle upon an Alabama highway has given implied consent to undergo a chemical test to determine blood alcohol level if that person has been lawfully arrested on a DUI charge. Ala. Code § 32-5-192(a). An exception is that an offense committed on private property requires the motorist's actual consent before the test may be administered. *Lunceford v. City of Northport*, 555 So. 2d 246, 249 (Ala. Crim. App. 1988)²². The accused is not required to be actually driving the vehicle; only that the person be in actual physical control of the vehicle. *Adams v. State*, 585 So. 2d 161, 163 (Ala. 1991).

The arrest of an individual for any offense other than driving under the influence is not a basis for the administration of a chemical test. Unless a driver voluntarily consents to a DUI test, the test may be given only after the defendant has been specifically arrested for driving under the

²¹ Act 2018-517 will bring some changes to this section on July 1, 2023 in the area of interlock device requirements by the deletion of subsection (y) and the redesignating subsections (z) and (aa) as subsection (y) and (z) respectively.

²² See a more recent analysis of this exception in *Brown v. State*, 893 So. 2d 1274 (Ala. Crim. App. 2004).

influence. *Veasey v. State*, 531 So. 2d 320, 321 (Ala. Crim. App. 1988). In addition, the officer writing the citation must indicate whether the offense charged is based upon a specified percentage by weight of alcohol in the blood or simply upon the broader definition of “driving under the influence of alcohol.” The officer may properly charge the defendant with either, or both, offenses. *Sandlin v. State*, 575 So. 2d 1221, 1222 (Ala. Crim. App. 1990). When the accused makes a timely request, the law enforcement officer must allow the accused reasonable opportunity to obtain an independent sobriety test and law enforcement must provide transportation to the test site for the test to be administered. *Lockard v. Town of Killen*, 565 So. 2d 679, 680 (Ala. Crim. App. 1990)²³.

In order for a chemical test to be admissible in court as evidence of intoxication, the following factors must be present:

- (1) The motorist must be lawfully arrested for driving under the influence of alcohol or a controlled substance;
- (2) The law enforcement officer must have reasonable grounds to believe that the motorist was driving under the influence;
- (3) The test must be designated by the proper law enforcement agency;
- (4) The test must be performed according to methods approved by the state board of health; and,
- (5) The test must be administered by an individual possessing a valid permit issued by the

²³ But see *Ex parte Yelverton*, 929 So. 2d 438 (Ala. 2005), which clarified that a defendant’s due process rights are not violated if no independent test is administered in the absence of a timely request by a defendant.

department of forensic sciences.

Boyd v. Montgomery, 472 So. 2d 694, 698-99 (Ala. Crim. App. 1985).

Ala. Code § 32-5A-194 authorizes the introduction of blood alcohol test results into evidence; however, the Code does not provide an exclusive list of chemical tests which may be used as evidence for proving intoxication. *Kent v. Singleton*, 457 So. 2d 356, 358-59 (Ala. 1984). A test used in determining intoxication will only be admissible in court if there is sufficient evidence supporting the test's reliability and acceptance by the scientific community. *Sides v. State*, 574 So. 2d 859, 859 (1990).

Popular tests that have been upheld in Alabama Courts include those made by photoelectric intoximeter devices and gas chromatography devices. *Ex parte Bush*, 474 So. 2d 168 (Ala. 1985); *Moorman v. State*, 574 So. 2d 953 (Ala. Crim. App. 1990)²⁴. Preliminary tests such as the Alco-Sensor have not previously been admissible in court as evidence because they fail to provide a quantitative analysis of the weight of alcohol in the blood. *Boyd v. City of Montgomery*, 472 So. 2d 694, 697 (Ala. Crim. App. 1985). Results of the Horizontal Gaze Nystagmus Test have been deemed admissible by the Court of Criminal Appeals, provided the proper foundation is laid. *Brunson v. State*, 580 So. 2d 62, 64 (Ala. Crim. App. 1991). Tests such as the "one-leg stand test" and the "walk-and-turn test" are not novel scientific tests that require expert testimony. *Seewar v. Summerdale*, 601 So. 2d 198,

²⁴ But see *Ex parte Mayo*, 652 So. 2d 201 (Ala. 1994) (regarding the necessity of proper calibration). See also *Green v. Alabama Power Co.*, 597 So. 2d 1325 (Ala. 1992) (the importance of temporal relationships in a chain of custody analysis applying the "totality of the circumstances" test for the admission of test results).

200 (Ala. Crim. App. 1992).

4. Traffic Accidents

Traffic accident investigations are commonly handled by the local police department or state highway patrol, rather than by the sheriff. However, if a sheriff is called to the scene of an automobile accident, the sheriff must complete an accident report form as required by law. Ala. Code § 32-10-7. After completing the required form, the sheriff must send a copy of the report to the Director of Motor Vehicles within 24 hours after completing the investigation. Ala. Code § 32-10-7.

Additionally, any law enforcement officer may, subsequent to a traffic accident, issue a traffic citation to the driver of a vehicle involved in the accident if a personal investigation at the scene reveals prima facie evidence to believe that the driver committed a traffic offense. Ala. Code § 32-5-171(b).

5. Safety Belts

It is the policy of the State of Alabama that all precautionary measures be taken to save the lives of the state's citizens from vehicle accidents. Ala. Code § 32-5B-3. Each front seat occupant of a passenger car shall have a safety belt properly fastened about his or her body at all times when the vehicle is in motion. Ala. Code § 32-5B-4(a). Individuals may be stopped and issued a citation for not wearing a seat belt. Ala. Code § 32-5B-4. Individuals may be fined up to \$25 for violation of this provision. Ala. Code § 32-5B-5.

6. Child Safety Restraints

Individuals transporting a child under the age of six years must provide for the protection of the child by properly fastening a safety belt about the child's body at all times when

the vehicle is in motion and use of a special restraint system for the child. Ala. Code § 32-5-222(a). The restraint system shall include:

- (1) Infant only seats and convertible seats used in the rear facing position for infants until at least one year of age or 20 pounds.
- (2) Convertible seats in the forward position or forward facing seats until the child is at least five years of age or 40 pounds.
- (3) Booster seats until the child is six years of age.
- (4) Seat belts until 15 years of age.

Ala. Code § 32-5-222(b). Individuals may be fined up to \$25 for violation of this provision and may be cited exclusively without other cause. Ala. Code § 32-5-222(d).

7. Criminal Littering

Alabama's criminal littering statute encompasses several types of offenses. The most obvious offense defined by this statute is that of a person who knowingly deposits litter in any manner on public or private property without permission to do so. Ala. Code § 13A-7-29(a)(1). The word "litter" is broadly defined by the statute to include almost any type of material. However, an absence of intent on the part of the actor, or a lack of awareness as to the commission of the offense are not defenses to the crime if the material dropped on a highway is destructive or injurious. Ala. Code § 13A-7-29(a)(4), (c).

One situation commonly faced by law enforcement officers is that of litter remaining after a wrecked or damaged car is removed from the highway. Any person who undertakes to remove a wrecked car from an Alabama highway must remove the glass and any other injurious substance that was dropped by the car. Failure to remove the

material is a crime under § 13A-7-29(a)(4) of the Alabama Code.

The minimum fine for the first conviction for littering is up to \$500. The punishment for subsequent convictions shall include either a fine of up to \$1,000 and up to 100 hours of community service in the form of picking up litter, or by a fine of not less than \$2,000 and not more than \$3,000. Ala. Code § 13A-7-29(d).

8. Vehicular Stops

A. Restricted Driver's License -- Generally

The Director of Public Safety shall have authority to impose restrictions suitable to the licensee's driving ability with respect to the type of special restrictions or control devices that are required to assure the safe operation of a motor vehicle by the licensee. Ala. Code § 32-6-12(a). The Director may issue a special restricted license or may set forth such restrictions upon the usual license form. Ala. Code § 32-6-12(b). It is a misdemeanor for any person to operate a motor vehicle in any manner inconsistent with the restrictions imposed in such a restricted license issued to him. Ala. Code § 32-6-12(d).

B. Motorcycles

No person may operate a motorcycle on public roads without possessing a Class M license. Ala. Code § 32-5A-240(b)(1). Motorcyclists under age 18 are subject to the same restrictions and exceptions as drivers under age 18. Ala. Code § 32-12-22(b)(2).

C. Restrictions on Under Age 18 Drivers

A person under the age of 18 may not have a stage II

restricted regular driver's license until the person has held a stage I learner's license for at least a six-month period. A person who is 16 years of age must have a restricted driver's license. That person may not operate a vehicle under the following conditions:

- (1) Between 12 o'clock midnight and 6 o'clock a.m. with the following exceptions:
 - a. Accompanied by a parent or legal guardian;
 - b. Accompanied by a licensed driver who is at least 21 years of age or the consent of the parent or legal guardian of the driver is given;
 - c. Driving to or from work;
 - d. Driving to or from a school-sponsored event;
 - e. Driving to or from an event sponsored by a religious organization;
 - f. Driving for a medical, fire, or law enforcement emergency; or
 - g. Driving to or from a hunting or fishing activity and has a valid hunting or fishing license in his or her immediate possession.
- (2) There is more than one passenger in the vehicle not including the parents or legal guardians of the licensee, accompanying family members, or a licensed driver who is at least 21 years of age.
- (3) While operating any handheld communication device nonessential to the functioning of the vehicle.

A license possessed by a 17-year-old shall be deemed a stage III unrestricted driver's license if the license is over six months old and the driver has not been convicted of a moving violation within the preceding six months.

Exempted from restricted driver's license are:

- (1) Persons 16 and older who are married or head of a household;
- (2) Persons whose minority has been legally relieved; and
- (3) Persons over 18 years of age.

Ala. Code § 32-6-7.2(f).

D. Insurance

No person shall operate, register, or maintain registration of a motor vehicle designed to be used on public highway unless the motor vehicle is covered by a liability insurance policy, motor vehicle liability bond, or deposit of cash. Ala. Code § 32-7A-4(a).

Every operator of a motor vehicle shall carry in the vehicle an insurance card as evidence of insurance. The proof of insurance must be displayed upon the request by any law enforcement officer. The insurance card may be in electronic form, but the use of an electronic device to display evidence of insurance does constitute consent for the law enforcement officer to access any other content on the electronic device. Ala. Code § 32-7A-6. Failure to comply is a Class C misdemeanor. Ala. Code § 32-7A-16.

Additionally, drivers are required to retain their vehicle's registration receipt within their vehicle and, upon demand, present it for inspection by a law enforcement officer. Ala. Code § 40-12-260(b). This receipt may be retained in an electronic format. However, use of an electronic device to display the receipt does not constitute consent for an officer to access other content on the device. Ala. Code § 40-12-260(b)(3).

9. Abandoned Vehicles

Procedures for the removal and sale of abandoned vehicles are set out in §§ 32-8-84 and 32-13-1 through 6 of the Code of Alabama. A law enforcement officer may cause a vehicle to be removed to the nearest garage or other place of safety if it is left unattended on a public road for at least 48 hours, if the vehicle is subject to an impoundment order for outstanding violations, or if the owner is arrested, impaired by an accident, or for any other reason that causes a need for immediate removal as determined by the officer. Ala. Code § 32-13-2(a). Within five calendar days of such a removal, the officer must provide written notice, including complete description of the vehicle identification number and license number to the Alabama Law Enforcement Agency. Ala. Code § 32-13-2(c). In such cases, the officer is liable for gross negligence only. Ala. Code § 32-13-2(b)(1).

10. Waterways

In 1994, the Boating Safety Reform Act, or The Roberson-Archer Act, was passed. The Roberson-Archer Act extends the highway D.U.I. laws to the water, including suspension and revocation of boat operating privileges, and allows for minimum fines and mandatory sentencing. See § 32-5A-191.3. The Act includes a statute for vehicular homicide on the water, defines careless, reckless and other prohibited operations for all vessels including personal watercraft, and creates a point system for violators. The Act also contains new requirements for safety equipment such as personal flotation devices and emergency cut-off switches, and requires all operators age 12 and older to obtain an operator's certification. Boater education must also be taught in all public high schools as part of the Driver's Education course.

The Boating Safety Enhancement Act of 2001 further

toughens the BUI statutes by aligning them to the highway DUI laws, bringing a uniform set of fines and punishments to both the highways and the waterways. It also raises the age to operate a vessel alone to 14 and changes some of the fines for vessel violations²⁵.

²⁵ Act 2001-695

CHAPTER X

HEALTH, ENVIRONMENT, AND PUBLIC SAFETY

1. Conservation

A. In General

As a law enforcement officer, the sheriff plays an active role in protecting and conserving natural resources. The state of Alabama grants a forest law enforcement officer statewide police power in the enforcement of game and fish laws. See Ala. Code § 9-13-10. The sheriff is authorized to make arrests for the violation of game and fish laws, subject to the same restrictions that apply to other types of arrests. *Daniel v. Hodges*, 125 So. 2d 726, 729 (Ala. Ct. App. 1960). In addition, the sheriff may be designated or appointed by the governor or state forester as a forest warden, and must report to the State Forester and the district attorney any violations of Title 9, Chapter 13 of the Alabama Code. Ala. Code § 9-13-5.

B. Hunting Laws

The popularity of hunting as a sport in Alabama ensures that the sheriff will be an active participant in the enforcement of the state's game laws. No person may hunt within the state without a valid hunting license, unless the hunting is carried out on land owned by the hunter or his immediate family or a tenant who hunts on lands leased by him or any resident on active military duty here on leave. Ala. Code § 9-11-51. Hunting without a license is considered a Class C misdemeanor and is punishable by a fine of not less than \$75 and not more than \$250 per offense. Ala. Code § 9-11-51. The sheriff is empowered to seize any vehicle or hunting equipment used in illegal activity. *Schultz v. State*, 437 So. 2d 670, 673 (Ala. Crim. App. 1983).

One of the sheriff's chief duties concerning hunting laws is the investigation of accidental hunting deaths. Any hunting death involving a firearm or a bow and arrow must be reported by the sheriff and coroner to the Director of the Game and Fish Division of the Department of Conservation and Natural Resources within 72 hours of the death. Ala. Code § 9-11-21(b).

C. Fishing Laws

The State of Alabama has title ownership to all fish in the public fresh waters of the state. Ala. Code § 9-11-81. Therefore, the right to remove fish from public waters is a privilege granted by the state rather than a right. State law places specific regulations upon the type of fish that may be caught, the number of fish allowed per fisherman, the method of fishing, and the method of transporting the fish. *See* Ala. Code §§ 9-11-82 - 213. The sheriff has authority to arrest any individual found violating these regulations. *See e.g.*, Ala. Code § 9-11-91.1(c).

2. Public Health

A. In General

The sheriff has the duty of removing or abating any unsanitary condition, source of infection, offensive or indecent material, or afflicted person within the sheriff's county, by force if necessary, upon the delivery of a warrant from a health official. Ala. Code § 22-1-7. The violation of health or quarantine laws, except those for which a special penalty is prescribed, is a misdemeanor. Ala. Code § 22-1-8. If the sheriff incurs any expenses in carrying out a public health code provision, the sheriff has a right of action against the offending person to recover payment of reasonable expenses. Ala. Code § 22-2-13.

If a person who has been legally placed in detention by a county health officer attempts to make an escape, that person may be forcibly detained. Ala. Code § 22-12-20. If the person escapes, the sheriff must arrest that person upon the issuance of a warrant by the court. Ala. Code § 22-12-20.

If the violator of the health law is a hotel owner or manager who has continued in flagrant violation of the law, the health officer may order the hotel to close. Ala. Code § 34-15-10. The sheriff must enforce the closure of the hotel until the closing order has been revoked in writing. Ala. Code § 34-15-10.

B. Quarantine

When any person exposed to a disease refuses or where reasonable evidence indicates exposure to disease refuses testing or treatment as required by law, the county health officer may petition the probate judge of the county in which the person is located to commit that person to the custody of the Alabama Department of Public Health for quarantine. Ala. Code § 22-11A-24. A person cannot be quarantined unless the court deems the action necessary to prevent the person from doing substantial and immediate harm to himself or others. Ala. Code § 22-11A-25. Once the probate judge has issued the petition, the sheriff must serve a copy of the petition upon the person and bring that person before the probate judge immediately. Ala. Code § 22-11A-27.

C. Rabies Control

Each county board of health is required by law to designate a veterinarian to serve as a rabies officer within that county. Ala. Code § 3-7A-11(a). State law requires that the sheriff be an aide to the rabies officer and cooperate with the rabies officer in enforcing the state rabies law. Ala. Code § 3-7A-11(c).

D. Alcoholic Beverages

The duties of a sheriff regarding the enforcement of alcoholic beverages regulations depends in a large part upon the county's designation as a wet or dry county. Regulations concerning the possession, sale, and use of alcoholic beverages in wet counties are found in Title 28, Chapter 3, of the Alabama Code. Similar regulations regarding dry counties are found in Chapter 4 of Title 28. In general, sheriffs are charged with the duty of cooperating with district attorneys in bringing violators of prohibition statutes to justice. Ala. Code § 28-4-315.

In a dry county, the manufacture, possession, or distribution in any manner of an appliance for the manufacture of prohibited beverages is a felony and is punishable by imprisonment at the penitentiary for not less than one year, and not more than five years. Ala. Code § 28-4-52. The sheriff who discovers an individual violating this law is authorized to make a warrantless arrest. *Nat'l Surety Co. v. Boone*, 151 So. 447, 450 (Ala. 1933). In addition, any person furnishing evidence of this violation which leads to a conviction is entitled to a \$25 reward under state law. The sheriff may properly claim this reward. Ala. Code § 28-4-54.

The sheriff is not allowed to serve or deliver alcoholic beverages to a prisoner for any reason whatsoever, unless a doctor has certified in writing that the beverage is necessary for the prisoner's health. Ala. Code § 28-4-165. A violation of this law by the sheriff is a misdemeanor.

3. Fire Marshal

State law considers the sheriff to be an assistant to the Fire Marshal, and therefore the sheriff is subject to all of the duties and obligations of a Fire Marshal. Ala. Code § 36-19-3. These duties include, but are not limited to, the prevention

and investigation of fires, the maintenance of fire alarms and fire escapes, the means and adequacy of exits from public buildings, and the suppression of arson. Ala. Code § 36-19-2.

4. Military Authorities

Alabama State law preserves the right for military authorities to confiscate any property from individuals that belongs to the United States military. Ala. Code § 31-2-31. Any person who possesses military property without permission commits a misdemeanor if the value of the property is less than \$500. If the property is worth in excess of \$500, possession of the military property without permission is a felony. When a commanding officer is aware of any person in possession of military property in violation of the law, the officer may make a written request to the sheriff of the county in which the person is located to seize the property. The sheriff is entitled to compensation for expenses incurred in seizing and transporting the property. Ala. Code § 31-2-31.

5. Municipal Courts

A. In General

The municipal court has jurisdiction of all prosecutions for the breach of the ordinances of the municipality within its police jurisdiction. Ala. Code § 12-14-1(b). The municipal court generally has concurrent jurisdiction with the district court of all misdemeanors constituting violations of state law committed within the police jurisdiction of the municipality which may be prosecuted as a breach of municipal ordinances. Ala. Code § 12-14-1(c).

B. Sheriff's Duty to Obey Municipal Judge

The sheriffs of the counties of the state of Alabama shall obey the municipal judge having legal authority in

faithfully executing the warrants and processes committed to them for service according to their mandates. Ala. Code § 12-14-4. A city police officer, unaccompanied by any sheriff or constable, may properly execute a search warrant issued by a municipal judge. *Palmer v. State*, 426 So. 2d 950, 953 (Ala. Crim. App. 1983) (called into doubt on other grounds by *Ex parte Jenkins*, 26 So. 3d 464 (Ala. 2009)). See also *Anderson v. State*, 212 So. 3d 252 (Ala. Civ. App. 2016) (City police officer lacked authority to execute search warrant when issued by a district judge, directed to the county sheriff, and neither the sheriff nor the deputies were present).

C. General Duties of Municipal Court

Since the municipal court has jurisdiction over many of the daily activities of the sheriff, the sheriff should be aware of the general powers of the municipal court. The municipal court has the power to:

- (1) Admit to bail any person charged with violation of any municipal ordinance by requiring an appearance bond, with good security, to be approved by the respective municipal judge in an amount not to exceed \$1,000. Ala. Code § 12-14-5.
- (2) Extend the period of time required for the payment of fines, costs, fees, and to require attendance at educational, corrective, or rehabilitative programs, and to suspend driving privileges. Ala. Code § 12-14-10.
- (3) Suspend execution of sentence and place a defendant on probation for varying periods of time, not to exceed two years. Ala. Code § 12-14-13(a).
- (4) Issue arrest and search warrants for municipal ordinance violations returnable to the municipal court and for violations of state law

returnable to any state court. Ala. Code § 12-14-32. But see *Anderson v. State*, 212 So. 3d 252, *supra*.

6. Consumer Protection

A. In General

One of the primary responsibilities of the state regarding consumer protection is the regulation of the state's agriculture. The chief enforcement officer of these regulations is the Commissioner of Agriculture and Industries. After petitioning the circuit court, the commissioner may call upon the sheriff to seize products that are in violation of state law. Adulterated products have the possibility of resulting in substantial public harm; therefore, action must be taken quickly. See Ala. Code §§ 2-2-8 through 37²⁶.

B. Seizure of Misbranded or Condemned Produce

The seizure of an adulterated or misbranded product is accomplished by the court's issuance of a writ of attachment for condemnation. Any sheriff given a writ of attachment must execute the writ and return it within five days to the court that issued it. A copy of the writ of attachment showing the returns should be served upon the owner of the property. If the owner cannot be found, the sheriff should post the writ in a conspicuous place upon the premises where the goods were found and seized. Posting of the writ in this manner, accompanied by mailing a copy of the writ by registered mail to the owner's last known address, will constitute sufficient

²⁶ Pursuant to 2021-460, the state regulates micro markets and vending machines engaged in retail food service. Ala. Code § 2-2-19.

notice to the owner. Ala. Code § 2-2-31.

C. Livestock

The sheriff must take possession of any livestock or animal found upon the premises of another or found running at large upon public lands and highways. The sheriff taking possession of the livestock must notify the owner in person or leave written notice at the owner's usual place of residence, within 24 hours after taking possession of the livestock. Ala. Code § 3-5-4. The owner of the livestock may then secure possession of the livestock by paying a fee of \$1.00 for each head of livestock taken up by the officer. Ala. Code § 3-5-5. The owner is required to reimburse the person who made provisions for the feeding of the animal while it was out of the owner's possession. Ala. Code § 3-5-5.

If the sheriff cannot find the owner of the livestock, he or she must file a written notice with the district court within 2 days. As set out in Ala. Code § 3-5-7(b), the notice must contain:

- (1) The name and address of the person taking up the livestock or animal, or, if an officer, the name, address and official designation of the officer taking up the livestock or animal;
- (2) A description of the livestock or animal as to kind, sex, marks, brand, color and apparent age;
- (3) Where the livestock or animal was taken up and where it is impounded;
- (4) The amount of damage claimed;
- (5) The amount of charges claimed for taking up and caring for the livestock or animals; and,
- (6) The amount of the officer's fee and the cost of feeding and caring for such livestock or animal during such detention if the livestock or animal is taken up by an officer or person.

Upon the filing of this notice by the sheriff, the district court will post notice in three public places of the county notifying the owner of the livestock to appear in court and claim ownership. If the owner does not appear in court, the court may order the sale of the livestock with the proceeds to be used as reimbursement for the animals' care and feeding while in the officer's possession. Ala. Code § 3-5-8.

D. Registration of Livestock

The sheriff must be provided by the Department of Agriculture and Industries with forms that relate to the legal recognition of livestock brands. Ala. Code § 2-15-24. These forms should be distributed to livestock owners upon request. The Department must maintain a list of all registered livestock brands and must provide a copy of the list to the sheriff. Ala. Code § 2-15-25(a).

Any dealer must obtain a permit. Ala. Code § 2-15-41. A "dealer" is a person who is engaged in the business of buying livestock as defined in Section 2-15-20 for resale or slaughter or who engages in the business of transporting, hauling or driving livestock as defined in Section 2-15-20 along any public road or highway of Alabama for resale, market or slaughter or who engages in the business of slaughtering such livestock. Ala Code. § 2-15-40.

The transporting of livestock without accompanying evidence of ownership is unlawful, and the sheriff may demand to see a bill of sale for livestock being transported. Ala. Code § 2-15-43.

E. Illegal Possession of Fighting Dogs and Cockfighting

The possession of any dog with the intent to engage that dog in fighting with another dog is a Class C felony in the

State of Alabama. Any dog used to fight other dogs in violation of state law must be confiscated as contraband by the sheriff and must not be returned to the owner. Ala. Code § 3-1-29. Any dog confiscated by the sheriff shall be taken to the local humane society. Upon order of the court, the dog may be humanely destroyed if the court determines that its continued existence would pose a threat to public health. Ala. Code § 3-1-29.

It is unlawful to keep a cockpit or hold cockfights. Ala. Code § 13A-12-4.

F. Dangerous Dog Investigations (Emily's Law)

A person may make a sworn statement before a city magistrate or sheriff alleging that a dog is dangerous. Such a statement should include the owner's name, if known, the location of the dog, and the reasons that the dog is believed to be dangerous. Ala. Code § 3-6A-4.(a)(1). This statement should be delivered to the animal control officer who is to conduct an investigation. However, if the county does not have an animal control officer or if the statement claims the dog has caused serious physical injury or death to a person, the investigation must be made by a law enforcement officer. Ala. Code §§ 3-6A-4(a)(2), 3-6A-8.

If the dog's owner chooses, the dog may be humanely euthanized in lieu of an investigation. Ala. Code § 3-6A-4(c)(2).

If an investigation leads the officer to believe that the allegation is founded, the officer should file a summons for the owner of the dog, if known, in district court. Ala. Code § 3-6A-4(c)(1)a. Additionally, the dog must be impounded. The owner has an opportunity to choose a veterinarian with which to impound the dog, or the dog is to be impounded in the county pound or with a shelter or veterinarian under

contract with the county. Ala. Code § 3-6A-4(c)(1)b. Finally, the officer should send a copy of the investigation report to the county attorney. Ala. Code § 3-6A-4(c)(1)c.

Any dog owner subject to a dangerous dog investigation who refuses to surrender the dog upon request by an animal control or law enforcement officer is guilty of a Class C misdemeanor. Ala. Code § 3-6A-5(g).

If an investigation leads the officer to believe that the allegation is unfounded, the officer should notify the complainant of the findings and submit the investigation report to his or her supervisor. Ala. Code § 3-6A-4(d).

Any person who knowingly makes a false dangerous dog report to an animal control or law enforcement officer is guilty of a Class C misdemeanor. Ala. Code § 3-6A-5(h).

A copy of all dangerous dog investigations should be kept by the sheriff's office or animal control office. Ala. Code § 3-6A-4(e).

CHAPTER XI

LIABILITY

1. Introduction

The duties of an Alabama sheriff are dictated, in large part, by the Code of Alabama. For example, Alabama sheriffs have a duty to execute and return process and orders of the courts of Alabama, attend upon the circuit and district courts held in their respective counties, and ferret out crime in their respective counties. Ala. Code § 36-22-3(a). An Alabama sheriff also “has the legal custody and charge of the jail in his county and all prisoners committed thereto.” Ala. Code § 14-6-1²⁷ (declared unconstitutional under §14 of the Alabama Constitution to the extent that it purports to hold sheriffs liable for the actions of their jailers; see *Parker v. Amerson*, 519 So. 2d 442, 446 (Ala. 1987). A multitude of lawsuits are regularly filed against Alabama sheriffs related in some way to the performance of or failure to perform these and other duties. Although no statewide studies have been conducted, anecdotal evidence suggests that out of all of the obligations of Alabama sheriffs, no single obligation of Alabama sheriffs is more likely to spawn litigation than the sheriff’s operation and control of the jail in his county.

As state officials, Alabama sheriffs may be entitled to various types of “immunity” or protection from lawsuits filed against them. An Alabama sheriff's entitlement to immunity is based upon the principle that the public's interest in protecting public officials from litigation and personal financial liability for damages caused by lawsuits outweighs the potential harm to those who may be injured by those

²⁷ Ala. Code § 14-6-1 grants immunity to jailers who act in compliance with the law. See below at fn 28 for limitations to this immunity.

actions of public officers. Because of this principle, the public is often left to the political process, rather than the court system, in order to obtain “compensation” from or to punish a public official. Although the principle upon which an Alabama sheriff’s immunity is based is relatively easy to understand, determining whether an Alabama sheriff is actually entitled to immunity from suit in a specific situation is often complicated. An Alabama sheriff’s entitlement to immunity from suit is based upon a variety of factors, including but not limited to (1) whether the lawsuit was filed in state court or in federal court, (2) whether the claims asserted are based upon rights created by state or federal law, (3) whether the claims are asserted against the Alabama sheriff in his official or individual capacity, and (4) what specific type of relief is requested in the complaint. Upon receiving notice of any lawsuits filed against them, Alabama sheriffs should immediately seek the assistance of an attorney knowledgeable about the immunities and defenses to lawsuits that are often available to Alabama sheriffs as state officials²⁸.

2. Official Capacity v. Individual Capacity Claims Against Alabama Sheriffs

When a lawsuit is filed against an Alabama sheriff in state or federal court, one of the first questions to be asked relates to the capacity in which the sheriff is being sued. Alabama sheriffs may be sued in their “official capacity,” in their “individual capacity,” or both. “[T]he difference between an official capacity suit and an individual capacity suit is a big difference.” *Colvin v. McDougall*, 62 F.3d 1316,

²⁸ Corrections officers not entitled to immunity from state-law claims under Alabama’s Jailer Liability Protection Act or common law doctoring of state-agent immunity if deliberately indifferent to an inmate’s serious medical needs. *Foster v. Maloney*, 2019 WL 5076357 (11th Cir. 2019).

1318 (11th Cir. 1995). Individual capacity suits (also known as personal capacity suits) “seek to impose personal liability upon a government official for actions he takes under color of state law.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). In contrast, official capacity suits “generally represent only another way of pleading an action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690 n.55 (1978)). The defenses to lawsuits vary according to the capacity in which an Alabama sheriff is sued, and certain immunities may apply in one instance but not the other. *Young v. Myhrer*, 651 Fed. Appx. 878 (11th Cir. 2019) in interpreting Ala. Code § 14-6-1, refused to extend the more extensive sovereign immunities and legal protections of sheriffs and their deputies to jailers, as the state statute specifically requires a jailer to have been in “compliance with the law” in order to receive immunity for non-deliberate violations of Alabama law.

3. Immunities Generally Available to State Law Claims

“State law” claims asserted against Alabama sheriffs include, but are not limited to, claims based upon a sheriff’s negligence, wantonness, breach of contract, or violation of some specific statutory duty under state law. Alabama sheriffs, in their official capacities, may be entitled to sovereign immunity (also recently referred to as “State immunity” by the Alabama Supreme Court) for claims asserted against them based upon state law. Pursuant to Article V, Section 112 of the Alabama Constitution of 1901, Alabama sheriffs are executive officers of the State of Alabama. As executive officers of the State of Alabama, Alabama sheriffs are extensions of the state, not the counties in which they serve. “An action against a sheriff is ‘essentially a suit against the state.’” *King v. Colbert County*, 620 So. 2d 623, 626 (1993). *But see Etowah Co. Comm. v. Grant*, 10 So. 3d 1009, 1013 (Ala. Civ. App. 2007) (“[T]he Constitution clarifies that

there should be a sheriff 'for each county.' Ala. Const. 1901, Art. V, § 112. Therefore, it is not inconsistent to view the Sheriff and his deputies as state employees who are in the service of the county.”). Because sheriffs are extensions of the state, Alabama sheriffs are generally entitled to sovereign immunity from state law claims pursuant to Article I, Section 14, of the Alabama Constitution of 1901, which provides “[t]hat the State of Alabama shall never be made a defendant in any court of law or equity.” Although the law is somewhat unsettled, sovereign immunity also generally applies to individual capacity claims brought against Alabama sheriffs as long as the claims are essentially claims brought against the state. *See Phillips v. Thomas*, 555 So. 2d 81, 83 (Ala. 1989); *see also Ex parte Woodward*, 859 So. 2d 425 (Ala. 2003); *Ex parte Hudson*, 866 So. 2d 1115, 1124 n.8 (Ala. 2003) (See, J., dissenting). The Alabama Supreme Court has defined exceptions to the sheriff's constitutional immunity. An action may be brought against a sheriff:

- (1) To compel him or her to perform the sheriff's duties;
- (2) To compel him or her to perform ministerial acts;
- (3) To enjoin him or her from enforcing unconstitutional laws;
- (4) To enjoin him or her from acting in bad faith, fraudulently, beyond the sheriff's authority, or under mistaken interpretation of the law; or
- (5) To seek construction of a statute under the Declaratory Judgment Act if the sheriff is a necessary party for the construction of the statute.

Hereford v. Jefferson County, 586 So. 2d 209, 210 (Ala. 1991). *See also Taylor v. Hughes*, 920 F.3d 729 (11th Cir. 2019) (Jail guards not immunized from liability if they violated a detainee's constitutional rights).

In the event that an Alabama sheriff is not entitled to sovereign immunity, he may nonetheless be entitled to a qualified, or “discretionary function,” immunity from state law claims asserted against him for acts taken by him within the general scope of his authority. The Alabama Supreme Court has defined “discretionary function” immunity as the “immunity from tort liability afforded to public officials acting within the general scope of their authority in performing functions that involve a degree of discretion.” *Grant v. Davis*, 537 So. 2d 7, 8 (Ala. 1988). The determination of whether an Alabama sheriff is entitled to discretionary function immunity is decided on a “case-by-case” basis. See *McDuffie v. Roscoe*, 679 So. 2d 641, 643 (Ala. 1996). Discretionary function immunity will not protect Alabama sheriffs from liability for acts that are considered purely ministerial in nature. *Smith v. Arnold*, 564 So. 2d 873, 876 (Ala. 1990). Ministerial acts are those involving “[l]ess in the way of personal decision or judgment or [in which] the matter for which judgment is required has little bearing of importance upon the validity of the act.” *Smith v. Arnold*, 564 So. 2d 873, 876 (Ala. 1990).

4. Immunities Generally Available to Federal Law Claims

“Federal law” claims asserted against Alabama sheriffs are generally based upon allegations that the constitutional rights of an individual or a class of individuals (such as inmates housed in the county jail) have been violated because of the action or lack thereof of an Alabama sheriff. 42 U.S.C. § 1983 (“Section 1983”) is a federal statute that creates an avenue through which individuals may seek redress for violations of their constitutional rights. *Graham v. Connor*, 490 U.S. 386, 393–94 (1989). “Section 1983 claims,” as they are regularly referred to, may include a variety of allegations that any number of constitutional rights of an individual were violated, including but not limited to allegations that an

Alabama sheriff used excessive force, wrongfully deprived an individual of property or liberty, failed to provide adequate medical care to inmates, failed to train or supervise his deputies or detention officers, or failed to have policies and procedures for his employees to follow.

Alabama sheriffs sued in their official capacities based upon federal law are generally entitled to “Absolute Eleventh Amendment Immunity” from such claims brought against them in federal court. Because Alabama sheriffs are considered to be executive officers of the State of Alabama, claims against them in federal court based upon federal law are generally barred by the Eleventh Amendment of the U.S. Constitution, which states that “[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States . . .” See *Lancaster v. Monroe County*, 116 F.3d 1419, 1429-30 (11th Cir. 1997)

Likewise, Alabama sheriffs, in their official capacities, are not “persons” subject to suit under 42 U.S.C. § 1983. Because Alabama sheriffs are executive officers of the State of Alabama, federal law claims in state court against Alabama sheriffs in their official capacities are essentially claims against the State of Alabama. See *Carr v. City of Florence*, 916 F.2d 1521, 1525 n.4 (11th Cir. 1990). A damages action against a state official, in his official capacity, is tantamount to a suit against the state itself. In *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989), the Supreme Court held that neither a state nor a state official sued in his official capacity is a “person” for purposes of a Section 1983 claim. Further, deputies (but not jailers) are likewise protected to the same extent as the sheriff since “the deputy is the alter ego of the sheriff.” *Young v. Myhrer*, 651 Fed. Appx. 878, *supra* at 880.

“Qualified immunity” may protect Alabama sheriffs from suit for federal law claims made against them in their

individual capacities. “Government officials performing discretionary functions are entitled to qualified immunity ‘insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Hartley by Hartley v. Parnell*, 193 F.3d 1263, 1268 (11th Cir. 1999)²⁹. If an Alabama sheriff is sued for acts taken while performing discretionary functions and it was not “clearly established” at the time of the event that the Alabama sheriff’s action was a violation of federal law, then the Alabama sheriff may be entitled to qualified immunity. See *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Cagle v. Sutherland*, 334 F.3d 980, 988 (11th Cir. 2003).

Sheriffs are subject to suit under federal discrimination laws (including Title VII of the Civil Rights Act of 1964). 42 U.S.C. §2000e *et seq.* This law prohibits discrimination on the basis of sex, race, and religion. In *Smith v. Tillman*, the Supreme Court of Alabama recognized that Title VII claims “are in that category of actions to which a state has no immunity.” *Smith v. Tillman*, 958 So. 2d 333, 336 (2006)³⁰. Therefore, the sheriff enjoys no immunity from a lawsuit alleging federal claims for discrimination.

5. Liability for Acts or Omissions of Deputies

A sheriff is liable for the acts, defaults, or misconduct of a deputy when committed in the performance of official duties. *Mosely v. Kennedy*, 245 Ala. 448, 450, 17 So. 2d 536, 537

²⁹ This case was distinguished by *CC v. Monroe Cty. Bd. Of Educ.*, 2009 WL 4456356 (custom or policy may factor into notions of “deliberate indifference” to constitutional rights). However, that opinion was vacated by the 11th Circuit in *CC ex rel Andrews v. Monroe Cty. Bd. Of Educ.*, 427 Fed. Appx. 781 (2011).

³⁰ Distinguished on other grounds by *Alabama Credit Union v. Credit Union of Alabama Federal Credit Union*, 2007 WL 9711261 (N.D. Ala. 2007)

(Ala. 1944). The sheriff's liability extends to "de facto" deputies who have been authorized by the sheriff to act, but have not yet qualified as deputies under state law.

The liability imposed on sheriffs for the acts of their subordinates is statutory. In absence of a statute imposing vicarious liability on the sheriff, the sheriff is not liable for the defaults or misfeasance of subordinate assistants unless the sheriff has been negligent in their appointment or supervision. *Langis v. Byrne*, 222 Ala. 183, 184, 131 So. 444, 445 (Ala. 1930).

Unless a statute provides otherwise, the liability of a sheriff for the acts of a deputy extends to acts involving an abuse of power. A sheriff may be held liable for an assault committed by a deputy while performing official duties, or when the deputy negligently allows a prisoner to escape. A sheriff is liable for a deputy's failure to serve process and for the deputy's taking possession of goods under a void execution. *Stephens v. Head*, 138 Ala. 455, 465, 35 So. 565, 568 (Ala. 1903). As a general rule, however, a sheriff is not liable for acts of a deputy that are committed outside the scope of the deputy's official duties.

6. Defaults and Wrongful Acts in Execution of Process

A. In General

A sheriff is liable for damages resulting from a failure to execute papers delivered to the sheriff for execution. The liability of the sheriff for failure to execute extends to subpoenas, attachments, summonses, executions against property, writs of assistance, writs of replevin, writs of restitution, and warrants of arrest.

B. Availability of Property for Levy

If, in making a levy on property, the sheriff fails to seize so much of the defendant's goods as a reasonable and prudent person would deem sufficient to satisfy the debt, the sheriff may be held liable to the creditor, provided that the party suffers actual monetary damages. *Governor v. Powell*, 9 Ala. 83, 86-87 (Ala. 1846). However, if a prudent person would have considered the property to be sufficient to satisfy the writ, the sheriff will not be held liable if the actual sale of the property does not bring sufficient proceeds to cover the debt. In such an event, the sheriff must immediately levy on other property of sufficient value to satisfy the writ. *Powell v. Governor*, 9 Ala. 36, 39 (Ala. 1846). The sheriff must use due diligence in searching for property on which to levy, but a sheriff is not liable for failing to seize property which the sheriff could not have found using due diligence. *Newcomb Brothers Wall Paper Co. v. Wiggins*, 201 Ala. 551, 552, 78 So. 905, 906 (Ala. 1918). The existence of a prior lien on property is not an excuse for the sheriff's failure to levy on the property, unless the sheriff can show that the prior lien exceeded the value of the property. *Smith v. Heineman*, 118 Ala. 195, 203, 24 So. 364, 366 (Ala. 1897).

The failure of a sheriff to execute process does not impose an absolute liability upon him or her. For example, when an officer has no authority to execute a writ, the officer cannot be held liable for failing to do so. *Governor v. Lindsay*, 14 Ala. 658, 661 (Ala. 1848). Similarly, a sheriff cannot be held liable for failing to execute a void writ. However, the sheriff must be absolutely sure that the writ is invalid, because failure to execute a valid writ will subject the sheriff to liability.

C. Defaults of Party Issuing Process

Contributory negligence on the part of the injured

party may relieve a sheriff of liability for negligence in levying under a writ. For example, if the law requires that a creditor provide an indemnity bond and the creditor fails to give an indemnity bond after the sheriff makes a good-faith demand for it, the sheriff will not be held liable for failing to execute the process. However, if the debtor possesses property which is clearly subject to the writ, and there is nothing to refute the presumption that the debtor owns it, the refusal of the creditor to give an indemnity bond will not relieve the officer of liability.

Agreements between the parties suspending execution of a writ or settling the claim on which the execution has been issued, which do not discharge or satisfy the debt, do not relieve the sheriff of liability for failing to proceed, when the sheriff has received no instructions from the plaintiff's attorney not to proceed. *Crenshaw v. Harrison*, 8 Ala. 342, 343 (Ala. 1845). When an execution against two defendants is placed in the hands of a sheriff, the sheriff cannot escape liability for failing to levy merely because the plaintiff has released one of the defendants.

The sheriff is not liable for failure to execute process in his or her hands when prevented from doing so by an invalid bond, stay order, or injunction. The fact that the execution of process has been enjoined relieves the sheriff of liability for failure to execute it, even if the execution is in the sheriff's hands before a perpetual injunction is granted. *McCall v. McRae*, 10 Ala. 313, 314 (Ala. 1846).

D. Wrongful Acts Committed in Execution of Process

A sheriff should be careful not to seize or levy property under a writ which is on its face invalid or issued by the wrong authority. A sheriff who seizes or levies property wrongfully is liable to the owner of the property for the

resulting loss. A sheriff who seizes property outside of his jurisdiction is liable in trespass to the owner. *Stephenson v. Wright*, 111 Ala. 579, 586, 20 So. 622, 623 (Ala. 1895).

If the sheriff seizes only property which is described in the writ, the sheriff will generally not be held liable for the resulting damages. Even if the writ mistakenly describes property which does not belong to the defendant, the sheriff will be protected from liability in seizing that property. *Harri v. Isaac*, 111 Mont. 152, 157, 107 P.2d 137, 140 (Mont. 1940). If the defendant has possession of property specified in the writ, and the sheriff has no reason to suspect that the defendant is not the true owner of the property, an action cannot be maintained against the sheriff for seizing the property unless the sheriff refuses to restore the property to the true owner upon request. *Pilcher v. Hickman*, 132 Ala. 574, 577, 31 So. 469, 469 (Ala. 1901). The same rule applies when goods of a third person are mixed with goods of the defendant, so that the sheriff has no way of distinguishing which goods belong to the defendant. If, however, a writ does not specify the particular property to be seized, the sheriff will be liable to the owner of any goods wrongfully seized. The sheriff will also be liable to the defendant for any unreasonable or unnecessary levy on more of the defendant's goods than is necessary to satisfy the debt. *Barfield v. Barfield*, 77 Ga. 83 (Ga. 1886). If the debtor has filed a valid claim of exemption on the property seized, the sheriff will be liable for wrongfully seizing the property. *Cook v. Baine*, 37 Ala. 350, 353 (Ala. 1861).

E. Wrongful Acts of Deputies Concerning Service of Process

A sheriff is liable for acts of a deputy made in connection with the execution of process begun while the deputy is in office, even if the wrongful act itself occurs after the deputy is out of office. Similarly, once an execution of process has begun during the sheriff's term of office, the

sheriff is liable for any wrongful acts a deputy commits in connection with the process even if they occur after the sheriff has left office. *Morton v. White*, 16 Me. 53, 54 (Me. 1839). A sheriff is not, however, liable for acts of a predecessor's deputy with respect to process placed in the deputy's hands by that predecessor. *Barden v. Douglass*, 71 Me. 400, 402 (Me. 1880).

F. Measure of Damages and Elements of Recovery

The sheriff is liable to the owner of property wrongfully seized for the value of the property if the property is not restored to the owner. *Warren v. Kelley*, 80 Me. 512, 533-34, 15 A. 49, 55 (Me. 1888). If the owner does recover the property, the sheriff will be liable only for the owner's expenses in recovering the property and special damages, such as loss of use or depreciation of value. *Ross v. Sweeters*, 119 Cal. App. 716, 721, 7 P.2d 334, 337 (Cal. Ct. App. 1932). The sheriff will not be liable for the owner's attorney's fees in connection with recovering the property unless the sheriff acted with malice or oppression. *Brinker v. Leinkauff*, 64 Miss. 236, 240, 1 So. 170, 170-71 (Miss. 1887). For example, if the sheriff seized property knowing that the property was exempt from levy, the owner of the property may recover punitive damages against the sheriff. *Johnston v. Collier*, 161 Ala. 204, 210, 49 So. 761, 763 (Ala. 1911).

G. Liabilities Arising Out of Duty to Return Process

The sheriff must return any process or writ placed in his or her hands for service or execution. Ala. Code § 36-1117. A sheriff who fails to make a proper return of process, or who makes an insufficient or defective return of process, may be liable for the actual losses sustained by the parties. *Governor v. Baker*, 14 Ala. 652, 655 (Ala. 1848). Ala. Code § 6-6-680 sets

forth certain limitations on recovery for the sheriff's failure to return certain process.

The liability of a sheriff for failure to return a writ within the proper time is not absolute. A sheriff may excuse a default by showing that the delivery of the writ was made to the plaintiff because the plaintiff preferred to return the writ personally. However, a sheriff cannot escape liability for default on the ground that the sheriff had more pressing business to perform. *Birmingham Dry-Goods Co. v. Bledsoe*, 117 Ala. 495, 498, 23 So. 153, 154 (Ala. 1897).

7. Liabilities Arising Out of Custody of Property

A. Loss or Injury to Property

A sheriff who has property in his or her custody is not an insurer of its safety, and as a general rule the sheriff will not be liable for property in his or her custody which is lost, destroyed, or damaged unless the loss is due to neglect. *Eldridge v. Spence*, 16 Ala. 682, 685 (Ala. 1849). The sheriff has a duty to use ordinary care to protect custodial property from damage. *Price v. Pace*, 50 Idaho 353, 358, 296 P. 189, 191 (Idaho 1931). The negligent acts of a custodian whom the sheriff places in charge of the property can result in liability for the sheriff. *Price v. Pace*, 50 Idaho 353, 359, 296 P. 189, 191 (Idaho 1931).

B. Particular Matters Affecting Liability

In determining the liability of the sheriff for damages to custodial property, the court will look at the extent of injury to the owner, the validity of the judgment or process, and the acts or omissions of the parties. The sheriff cannot escape liability for lost property by levying other property that fails to satisfy the plaintiff's debt. *Eldridge v. Spence*, 16 Ala. 682, 686 (Ala. 1849).

C. Release of Property Subject to Levy

A sheriff must take a bond before releasing property that the sheriff has seized. *Campbell v. Tucker*, 228 Ala. 658, 659, 154 So. 825, 825 (Ala. 1934). If the sheriff wrongfully releases a levy and surrenders the attached property, the sheriff will be liable to the party at whose instance the process was issued for the resulting damage. *Sparks v. Buckner*, 14 Cal. App. 2d 213, 219-20, 57 P.2d 1395, 1398-99 (Cal. Ct. App. 1936).

D. Extent of Liability

A sheriff who wrongfully releases or negligently loses property levied on is liable to the plaintiff in the amount of actual injury. However, if the property seized was not sufficient to satisfy the debt, the measure of damages is the value of the property. *Campbell v. Tucker*, 26 Ala. App. 100, 102, 154 So. 821, 823 (Ala. Civ. App. 1933).

8. Liabilities Arising Out of the Sale of Property

A. In General

A sheriff may be held liable to a purchaser for failure to deliver the property sold, or for a failure to execute a deed for it; but the sheriff is not liable for loss or personal property after the sheriff has delivered it to the purchaser. *Dreisbach v. Braden*, 40 Cal. App. 407, 414-15, 181 P. 262, 265-66 (Cal. Ct. App. 1919).

When a bid is made and accepted at a sheriff's sale, the sheriff must enforce the bid. *State ex rel Matney v. Spencer*, 79 Mo. 314, 316 (Mo. 1883). If the sheriff conveys property to the purchaser without payment of the purchase money, the sheriff will be liable to the creditor for the amount of the debt, and to the owner of the property for any surplus of the price over the amount of the debt. However, if the amount realized

is less than the amount of the execution, the sheriff is not liable to the creditor. *Kumler v. Brandenburg*, 39 Minn. 59, 60, 38 N.W. 704, 704 (Minn. 1888). The sheriff cannot be held liable for invalid title which passes in connection with a sheriff's sale, because the sheriff is not required to be a warrantor of title. *Estes v. Doty*, 169 Tenn. 683, 685, 90 S.W.2d 754, 755 (Tenn. 1936).

B. Invalid or Irregular Sale

A sheriff should not sell property once the sheriff is aware that the sale would be improper. For example, if the sheriff knows that a writ of process is void on its face, the sheriff must refrain from selling the property or else be liable for any damages resulting from the sale. *Albright v. Mills*, 86 Ala. 324, 328, 5 So. 591, 593 (Ala. 1889); *C & S Fin. Servs. v. Bradley*, 501 So. 2d 1218, 1219 (Ala. 1987).

If a sheriff advertises property for sale at a designated place and time, the sheriff must sell it at that place and time. If the sheriff sells it at a different place, the sheriff will be liable to the owner of the property for any actual damages sustained. *Ryan v. Young*, 147 Ala. 660, 664, 41 So. 954, 955 (Ala. 1906). The sheriff can also be held liable for selling property at an improper time.

The sheriff cannot be held liable at a sheriff's sale simply because the price realized for the property is inadequate. *Powell v. Governor*, 13 Ala. 516, 520 (Ala. 1848). If the property is sold for less than fair market value, the sheriff will be held liable only if the low sale price was by reason of his or her gross negligence or fraud. The sheriff should be careful not to sell more property of the debtor than is necessary to satisfy the debt. A sheriff who sells property belonging to someone other than the debtor will be liable for damages. *State ex rel. Webb v. King*, 73 S.W.2d 460, 461 (Mo. Ct. App. 1934). However, if the sheriff can show that the true

owner of the property had knowledge of the seizure of the property, and an opportunity to act, and yet failed to give the sheriff notice of the true owner's claim, the sheriff will not be liable for the sale. *Stephens v. Head*, 119 Ala. 511, 513, 24 So. 738, 739 (Ala. 1898). In addition, if the writ of execution specifically identifies the property that the sheriff seizes and sells, the sheriff cannot be held liable to the true owner unless the writ is obviously invalid.

C. Levying on Jointly Owned Property

The sheriff should be careful to determine whether property being sold is owned by tenants-in-common. A sheriff who sells all of the property of co-tenants under process against one of them is liable to the co-tenant not named in the process for the resulting loss. *R.A. Myles Co. v. A.D. Davis Packing Co.*, 17 Ala. App. 85, 86, 81 So. 863, 864 (Ala. Civ. App. 1919).

D. Levying on Landlord/Tenant Property

When levying on rental property, the sheriff should attempt to determine whether the landlord has a lien for rent on the property. If the sheriff knows that the landlord has a lien and yet proceeds with the sheriff's sale, the sheriff will be liable to the landlord for the amount of the rent. *Smith v. Huddleston*, 103 Ala. 223, 225-26, 15 So. 521, 521 (Ala. 1893).

9. Liabilities Arising Out of Collection, Custody, or Disposition of Money

A. Sheriff's Fiduciary Duty

A sheriff has a fiduciary duty to the owners of all property which is committed to the sheriff in his or her official capacity for safe-keeping. *Scott v. Caldwell*, 160 Fla. 861, 866, 37 So. 2d 85, 87 (Ala. 1948). The sheriff should not accept

anything other than cash when discharging an execution or receiving payment in a sheriff's sale. If the sheriff does not receive cash in payment, the sheriff will be liable to the plaintiff for the amount of money the sheriff should have received in cash. *Grace v. Wooley*, 26 Ala. App. 83, 84, 153 So. 659, 660 (Ala. Civ. App. 1934).

The sheriff cannot extinguish his or her fiduciary responsibility by placing the property in the hands of a third party. For example, if the sheriff deposits fiduciary funds in a bank, and the bank is not a lawful depository for funds in the sheriff's possession, the sheriff will be liable for the funds if the bank fails. *Jefferson County ex rel. Hawkins v. Downs*, 226 Ala. 427, 429, 147 So. 626, 627 (Ala. 1933). A sheriff may release his or her liability for the funds by paying them to an authorized agent of the owner, such as the owner's attorney. *Custer v. Agnew*, 83 Ill. 194, 195 (Ill. 1876). Before relinquishing the money into the hands of the third party, the sheriff should confirm the third party as a proper agent for the owner. Otherwise, the sheriff will be held liable for any payment of money made to an unauthorized person. *Custer v. Agnew*, 83 Ill. 194, 195-96 (Ill. 1876).

B. Accrual of Interest on Money Held by Sheriff

When a sheriff receives funds into his or her official custody which are deposited into an interest bearing account, the sheriff should make certain that the accrued interest on the funds is paid to the owner. Additionally, if the sheriff fails to return the funds to their owner at the proper time, the sheriff will be held liable for the funds wrongfully withheld plus interest on the funds. *Grace v. Wooley*, 26 Ala. App. 83, 84, 153 So. 659, 660 (Ala. Civ. App. 1934).

10. Liabilities Arising Out of Taking Bond or Security

The sheriff must take a bond any time that a statute

requires the sheriff to do so. *Harbin v. O'Rear*, 219 Ala. 173, 174, 121 So. 547, 547 (Ala. 1929). If the bond requires sureties, the sheriff must be certain that the sureties are sufficient before accepting the bond. *E.I. DuPont De Nemours & Co. v. Combs*, 246 Ky. 802, 804, 56 S.W.2d 523, 524 (Ky. 1933). Otherwise, the sheriff will be responsible for the actual losses sustained as a result of the insufficient sureties. *Robinson v. People*, 8 Ill. App. 279, 282 (Ill. Ct. App. 1881).

CHAPTER XII

ETHICS³¹

1. Purpose

The Ethics law was first adopted in 1973 and significantly revised in 1995 and again in 2010. The law applies to all public officials and employees, including sheriffs and all of those employed in their offices. The Ethics law prohibits the use of public office or employment for personal gain to either the public official or employee, a member of their family, or a business with which he is associated.

2. Training

One of the significant provisions of the reforms passed in 2010 is the inclusion of mandatory ethics training. Ala. Code § 36-25-4.2 provides:

At the beginning of each legislative quadrennium, the State Ethics Commission shall provide for and administer training programs on the State Ethics Law for members of the Legislature, state constitutional officers, cabinet officers, executive staff, municipal mayors, council members and commissioners, county commissioners, and lobbyists.

....

³¹ Guidelines for Public Officials reviewed by Thomas B. Albritton, Executive Director, and Cynthia Raulston, Assistant General Counsel, Alabama Ethics Commission. All questions regarding the Alabama Ethics Law should be directed to the Alabama Ethics Commission.

The training program for the state constitutional officers, cabinet members, and executive staff, as determined by the Governor, shall be held within the first 30 days after the Governor has been sworn into office. An additional training program shall be held if any changes are made to Chapter 25, Title 36, Code of Alabama 1975, and shall be held within three months of the effective date of such changes. The specific date of the training program shall be established by the Executive Director of the State Ethics Commission with the advice of the Governor and other constitutional officers.

....

All public employees required to file the Statement of Economic Interests required by Section 36-25-14, Code of Alabama 1975, no later than 120 days after the effective date of this act (January 1, 2011), shall participate in an online educational review of the Alabama Ethics Law provided on the official website of the commission. Employees hired after January 1, 2011, shall have 90 days to comply with this subsection. Evidence of completion of the educational review shall be provided to the commission via an electronic reporting system provided on the official website.

3. Key Definitions

A. Public Official

“Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or

municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-13-40." Ala. Code § 36-25-1(27).

B. Public Employee

"Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income." Ala. Code § 36-25-1(26).

C. Family Member of the Public Official

"The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official." Ala. Code § 36-25-1(15).

D. Family Member of the Public Employee

"The spouse or a dependent of the public employee." Ala. Code § 36-25-1(14).

E. Conflict of Interest

"A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict

of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs." Ala. Code § 36-25-1(8).

F. Thing of Value

"Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value." Ala. Code § 36-25-1(34)(a).

G. Lobbying

"Lobbying includes promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government." Ala. Code § 36-25-1.1.

4. Pertinent Law

Ala. Code § 36-25-5

(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the

object constituting such personal gain.

...

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

(d) No person shall solicit a public official or public employee to use or cause to be used equipment, facilities, time, materials, human labor, or other public property for such person's private benefit or business benefit, which would materially affect his or her financial interest, except as otherwise provided by law.

...

Ala. Code § 36-25-5.1(a)

No lobbyist, or subordinate of a lobbyist or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit

or receive a thing of value from a lobbyist, subordinate of a lobbyist or principal. Notwithstanding the foregoing, a lobbyist or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.

Ala. Code § 36-25-7

(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

...

Ala. Code § 36-25-8

No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.”

Ala. Code § 36-25-11

Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.”

Ala. Code § 36-25-13

(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(b) Notwithstanding the provisions of subsection (a), no public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer, before the board, agency, commission,

department, or legislative body of which he or she is a former member for a period of two years following the term of office for which he or she was elected, irrespective of whether the member left the office prior to the expiration of the term to which he or she was elected. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(c) No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee or worked pursuant to an arrangement such as a consulting agreement, agency transfer, loan, or similar agreement for a period of two years after he or she leaves such employment or working arrangement. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(d) Except as specifically set out in this section, no public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency. Notwithstanding the prohibition in this subsection a person serving full-time as the director or a department or division chief who has retired from a governmental agency may enter into a contract with the governmental agency of which the person was an employee for the specific purpose of providing assistance to the

governmental agency during the transitional period following retirement, but only if all of the following conditions are met:

(1) The contract does not extend for more than three months following the date of retirement.

(2) The retiree is at all times in compliance with Section 36-27-8.2.

(3) The compensation paid to the retiree through the contract, when combined with the monthly retirement compensation paid to the retiree, does not exceed the gross monthly compensation paid to the retiree on the date of retirement.

(4) The contract is submitted to and approved by the Director of the Ethics Commission as satisfying the above conditions prior to the date the retiree begins work under the contract.

(e) Notwithstanding subsection (d), a municipality may rehire a retired law enforcement officer or a retired firefighter formerly employed by the municipality at any time to provide public safety services if all of the following conditions are satisfied:

(1) A local law is enacted authorizing the rehire of retired law enforcement officers or firefighters formerly employed by the municipality.

(2) The municipality rehiring a retiree provides a copy of the local law referenced in subdivision (1) to the Director of the Ethics Commission.

(3) Upon a determination to rehire a retired law enforcement officer or firefighter, the municipality immediately provides notice to the Director of the Ethics Commission that the former employee is being

rehired.

(f) No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.

...

Ala. Code § 36-25-17

(a) Every governmental agency head shall within 10 days file reports with the commission on any matters that come to his or her attention in his or her official capacity which constitute a violation of this chapter.

(b) Governmental agency heads shall cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted by the commission.

5. Persons That Must File a Statement of Economic Interest

A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

- (1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.
- (2) Any person appointed as a public official and

any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is seventy-five thousand dollars (\$75,000) or more annually, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index.

- (3) All candidates, provided the statement is filed on the date the candidate files his or her qualifying papers or, in the case of an independent candidate, on the date the candidate complies with the requirements of Section 17-9-3.
- (4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards).
- (5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.
- (6) Chief clerks and chief managers.
- (7) Chief county clerks and chief county managers.
- (8) Chief administrators.
- (9) Chief county administrators.
- (10) Any public official or public employee whose primary duty is to invest public funds.
- (11) Chief administrative officers of any political subdivision.
- (12) Chief and assistant county building inspectors.
- (13) Any county or municipal administrator with power to grant or deny land development permits.
- (14) Chief municipal clerks.
- (15) Chiefs of police.
- (16) Fire chiefs.

- (17) City and county school superintendents and school board members.
- (18) City and county school principals or administrators.
- (19) Purchasing or procurement agents having the authority to make any purchase.
- (20) Directors and assistant directors of state agencies.
- (21) Chief financial and accounting directors.
- (22) Chief grant coordinators.
- (23) Each employee of the Legislature or of agencies, including temporary committees and commissions established by the Legislature, other than those employed in maintenance, clerical, secretarial, or similar positions.
- (24) Each employee of the Judicial Branch of government, including active supernumerary district attorneys and judges, other than those employed in maintenance, clerical, secretarial, or other similar positions.
- (25) Every full-time public employee serving as a supervisor.

Ala. Code § 36-25-14(a).

6. Filing Deadline

A statement of economic interest must be filed with the commission no later than April 30 of each year covering the preceding calendar year. Ala. Code § 36-25-14(a).

7. Information to Be Included

The statement of economic interest must include the name, residential address, business; name, address and business of the living spouse, and dependents of the public official or public employee required to file, as well as the

name of living adult children, the names of parents and siblings, name of living parents of the spouse. Ala. Code § 36-25-14(b)(1).

The statement must also contain a list of occupations to which one-third or more of working time was given during the previous working year by the public official, public employee, or his or her spouse. Ala. Code § 36-25-14(b)(2).

The statement must also contain a total combined household income of the public official or public employee from sources such as salaries, fees, dividends, profits, commissions, and other compensation. The income is to be listed and broken down into categories depending on the amount. Ala. Code § 36-25-14(b)(3).

If the public official or employee or his spouse has during the last reporting year engaged in a business which provided legal, accounting, medical or health related, real estate, banking, insurance, educational, farming, engineering, architectural management, or other professional services, then the filing party is required to report the number of clients of the business in each of several categories. Ala. Code § 36-25-14(b)(4).

8. Penalties for Non-compliance

Ala. Code § 36-25-14(d) provides that if a statement of economic interests is not filed as required, the Ethics Commission “shall notify the public official or public employee concerned as to his or her failure to so file and the public official or public employee shall have 10 days to file the report after receipt of the notification. The commission may, in its discretion, assess a fine of ten dollars (\$10) a day, not to exceed one thousand dollars (\$1,000), for failure to file timely.” Additionally, Ala. Code § 36-25-14(e) provides that persons who violate the statement of economic interest filing

requirements shall, upon conviction, be guilty of a Class A misdemeanor.

Ala. Code § 36-25-27(a)(1) provides: “[A]ny person subject to this chapter who intentionally violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class B felony.”

Ala. Code § 36-25-27(a)(2)-(5), (7) provide that any person who knowingly violates any disclosure requirement, makes or transmits a false report or complaint, makes false statements to the commission, or intentionally fails to disclose information required by this chapter, shall, upon conviction, be guilty of a Class A misdemeanor. Any person who intentionally violates this chapter relating to secrecy shall, upon conviction, be guilty of a Class C felony. Ala. Code § 36-25-27(6).

9. Statute of Limitations

Ala. Code §§ 36-25-27 provides:

- (h) Any felony prosecution brought pursuant to this chapter shall be commenced within four years after the commission of the offense.
- (i) Any misdemeanor prosecution brought pursuant to this chapter shall be commenced within two years after the commission of the offense.

The purpose of this section is to provide sheriffs and their employees the guidelines and prohibitions set out in the Alabama Ethics Law, which became effective October 1, 1995. It should be made clear that this is only intended as a brief overview and that there could be additional prohibitions contained in the Ethics Act that may apply to your particular circumstance. If there are specific questions about any of the

statutes within the Ethics Act and their application, you are encouraged to inquire about the permissibility of any conduct by contacting the Alabama Ethics Commission at P.O. Box 4840, Montgomery, AL 36103-4840; Telephone: (334) 242-2997; Facsimile: (334) 242-0248; Website: www.ethics.alabama.gov; E-Mail: info@ethics.alabama.gov.

CHAPTER XIII

STATE AND FEDERAL AGENCIES

1. **Alabama Law Enforcement Agency**

In 2015, the Alabama Law Enforcement Agency was established to consolidate the state's law enforcement functions under the centralized direction of the Secretary of Law Enforcement. ALEA is now responsible for the functions of a number of former agencies and divisions including the Alabama Department of Homeland Security, Alabama Fusion Center, and Alabama Criminal Justice Information Center, as well as the Alabama Department of Public Safety and Alabama Bureau of Investigation, which are, along with the Office of the Secretary, the three primary components of ALEA.

The Agency's phone number is (334) 676-6000, while its website is www.alea.gov.

2. **Emergency Management**

The Alabama Emergency Management Agency coordinates emergency state assistance to local communities when they are affected by a disaster such as tornadoes, floods, or hurricanes. Ala. Code §§ 31-9-1 through 40. AEMA also works with the Federal Emergency Management Agency (FEMA) to administer federal assistance during a presidential-declared disaster, and with local EMA's and the media to provide information about how you and your family can protect yourself from natural disasters. The declaration of an emergency may be proclaimed by the Governor or by joint resolution of the Legislature if the Governor in such proclamation or the Legislature finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural disaster of major proportions has

actually occurred within the state and that the safety and welfare of the inhabitants of the state require an invocation of the Alabama Emergency Management Act. If the state of emergency affects less than the entire state, the Governor or the Legislature designates in the proclamation or resolution those counties to which the state of emergency applies. Preparedness, response, and recovery programs are practiced on a regular basis to make sure that Alabama is prepared for the next natural or technological emergency.

The Agency may be reached by phone at (205) 280-2200. More information is available at the agency website: ema.alabama.gov.

3. National Guard

The Alabama National Guard is comprised of both Army and Air National Guard components. The Constitution of the United States specifically charges the National Guard with dual federal and state missions. In fact, the National Guard is the only United States military force empowered to function in a state status. Those functions range from limited actions during non-emergency situations to full scale law enforcement of Martial Law when local law enforcement officials can no longer maintain civil control.

The National Guard may be called into federal service in response to a call by the President or Congress. When National Guard troops are called to federal service, the President serves as Commander-In-Chief. The Federal mission of Alabama's Army National Guard is to maintain properly trained and equipped units available for prompt mobilization for war, national emergency, or as otherwise needed. The Governor may call individuals or units of the Alabama National Guard into state service during emergencies or to assist in special situations which lend themselves to use of the National Guard. The Alabama Army

National Guard's State mission is to provide trained and disciplined forces for domestic emergencies or as otherwise required by State laws.

4. Attorney General

The Attorney General is a constitutional officer whose duties and powers are set out in Title 36, Chapter 15, of the Code of Alabama (1975). As the State's attorney, he provides legal representation for the State of Alabama and its officers, departments, and agencies. The Attorney General defends the State in all lawsuits in which the State is named as a defendant. He represents the State in all court proceedings wherein the constitutionality of a state statute is challenged.

In addition to defending the State, the Attorney General may initiate court action, both civil and criminal, to protect the State's interests or to enforce State law. The Attorney General represents the State in all criminal actions in the appellate courts of the State of Alabama and in habeas corpus proceedings in the federal courts. He has the authority to direct the prosecution of any state criminal case. The Attorney General issues legal advice in the form of formal or informal written opinions to authorized public officials and agencies.

5. Federal Bureau of Investigation

The Federal Bureau of Investigation (FBI), a division of the U.S. Department of Justice, is one of the most powerful and influential law enforcement organizations in the world. With more than 13,000 special agents scattered across the country in both large cities and small towns or based at headquarters in Washington, D.C., the FBI is responsible for enforcing hundreds of federal criminal laws. Its cases include kidnappings and bank robberies, efforts to locate fugitives, and analyses of frauds against the government. It also has

jurisdiction over counterintelligence matters (finding and apprehending foreign spies working in the United States).

Part of the mission of the FBI is to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. This includes fingerprint and DNA analysis, professional training, reports and statistics, and many other services. For example, the Latent Print Support Unit (LPSU) provides oversight and management of various programs and initiatives in support of the Integrated Automated Fingerprint Identification System (IAFIS).

6. Office of Partner Engagement (OPE)

In April 2002, the FBI's Office of Law Enforcement Coordination (OLEC) was established to build bridges, create new partnerships, and strengthen and support existing relationships between the FBI and other federal agencies, as well as with state, local, tribal, and campus law enforcement; national and international law enforcement associations; and others within the law enforcement community. In 2014, the OLEC was merged with the Office of Partner Engagement (OPE).

The OPE serves as the FBI's primary liaison for the law enforcement community, particularly law enforcement associations, representing the perspectives of chiefs, sheriffs, and law enforcement associations within the FBI. The OPE manages outreach programs, including a police executive fellowship program; engages law enforcement partners seeking greater levels of engagement based on mutual law enforcement priorities; and serves as an information broker of FBI capabilities to include Bureau programs, resources, and services.

Alabama FBI Offices

FBI Birmingham
1000 18th Street N.
Birmingham, AL 35203
(205) 326-6166

FBI Mobile
200 N. Royal Street
Mobile, AL 36602
(251) 438-3674

7. U.S. Attorney

The United States Attorneys serve as the nation's principal litigators under the direction of the Attorney General. There are 93 United States Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. United States Attorneys are appointed by, and serve at the discretion of, the President of the United States, with advice and consent of the United States Senate. One United States Attorney is assigned to each of the judicial districts, with the exception of Guam and the Northern Mariana Islands where a single United States Attorney serves in both districts. Each United States Attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction.

United States Attorneys conduct most of the trial work in which the United States is a party. The United States Attorneys have three statutory responsibilities under 28 U.S.C. § 547 (2022):

- the prosecution of criminal cases brought by the federal government;
- the prosecution and defense of civil cases in which the United States is a party; and
- the collection of debts owed the Federal government which are administratively uncollectible.

Although the distribution of caseload varies between districts, each has every category of cases and handles a

mixture of simple and complex litigation. Each United States Attorney exercises wide discretion in the use of his/her resources to further the priorities of the local jurisdictions and needs of their communities. *See Mission, Office of the United States Attorneys, www.justice.gov/usao/mission.*

The Department of Justice divides Alabama into three districts. Those districts are as follows:

- A. Northern District**
Prim F. Escalona
1801 4th Ave. N
Birmingham, AL 35203
(205) 244-2001
200 Davis Circle SW, Suite 300
Huntsville, AL 35801
(256) 534-8285
www.justice.gov/usaondal

- B. Middle District**
Sandra J. Stewart
131 Clayton Street
Montgomery, AL 36104
(334) 223-7280
www.justice.gov/usaomdal

- C. Southern District**
Sean P. Costello
63 S. Royal St., Suite 600
Mobile, AL 36602
(251) 441-5845
<http://www.justice.gov/usaosdal>

8. U.S. Marshal

The mission of the United States Marshals Service is to protect the Federal courts and ensure the effective operation

of the judicial system. The U.S. Marshals Service, established in 1789, is the oldest federal law enforcement agency. The Marshals Service is responsible for providing protection for the federal judiciary, transporting federal prisoners, operating the Federal Witness Program, executing court orders and arrest warrants, protecting endangered federal witnesses, and managing assets seized from criminal enterprises. In addition, the Marshals Service pursues and arrests the majority of all federal fugitives. *U.S. Marshals Service Fact Sheet*, U.S. Dep't of Justice (2022), <https://www.usmarshals.gov/sites/default/files/media/document/2022-Overview.pdf>.

The Department of Justice divides Alabama into the same three districts as the U. S. Attorney General's Offices. Below are names and addresses for the Marshall in Charge of each district:

A. Northern District

Chester Martin Keely
Hugo L. Black U.S. Courthouse
1729 N 5th Ave., Room 240
Birmingham, AL 35203
(205) 829-6611

B. Middle District

Jesse Seroyer, Jr.
Frank M. Johnson Jr. U.S. Courthouse Complex
1 Church Street, Suite A-100
Montgomery, AL 36104
(334) 922-6960

C. Southern District

Mark F. Sloke
John Archibald Campbell U.S. Courthouse
113 St. Joseph St., Room 413
Mobile, AL 36602
(251) 690-2841

9. Drug Enforcement Administration (DEA)³²

The Drug Enforcement Administration (DEA) is the lead Federal agency in enforcing narcotics and controlled substances laws and regulations. It was created in July 1973, by Reorganization Plan No. 2 of 1973 (5 U.S.C. app.).

The Administration enforces the provisions of the controlled substances and chemical diversion and trafficking laws and regulations of the United States, and operates on a worldwide basis. It presents cases to the criminal and civil justice systems of the United States -- or any other competent jurisdiction -- on those significant organizations and their members involved in cultivation, production, smuggling, distribution, laundering of proceeds, or diversion of controlled substances appearing in or destined for illegal traffic in the United States. DEA immobilizes these organizations by arresting their members, confiscating their drugs, and seizing their assets; and creates, manages, and supports enforcement-related programs -- domestically and internationally -- aimed at reducing the availability of and demand for controlled substances.

The Administration's responsibilities include:

- assistance to State and local law enforcement agencies in addressing their most significant drug and drug-related violence problems;
- investigation of major narcotic violators who operate at interstate and international levels;
- seizure and forfeiture of assets derived from, traceable

³² United States Government Manual (2022), <https://www.usgovernmentmanual.gov/Agency?EntityId=eKdR7UfgZCM=&ParentEId=3jAPUb4n5pE=&EType=F2blCKa+e1g=&S=bLTdOJBuwo4=>.

- to, or intended to be used for illicit drug trafficking;
- enforcement of regulations governing the legal manufacture, distribution, and dispensing of controlled substances;
- management of a national narcotics intelligence system;
- coordination with Federal, State, and local law enforcement authorities and cooperation with counterpart agencies abroad; and
- training, scientific research, and information exchange in support of drug traffic prevention and control.

The Administration maintains liaison with the United Nations, INTERPOL, and other organizations on matters relating to international narcotics control programs. It has offices throughout the United States and in 68 foreign countries.

10. United States Department of Homeland Security

Formed in response to the terrorist attacks of September 11, 2001, the U.S. Department of Homeland Security is a cabinet department of the federal government tasked with defense of the United States within its borders. Toward this end, the agency's missions include counter-terrorism, border security, immigration enforcement, cyber-security, and disaster management. Accordingly, the Department includes a number of agencies including U.S. Customs and Border Protection, the Transportation Security Administration (TSA), the United States Secret Service, and the Federal Emergency Management Agency (FEMA).

11. Secret Service³³

The mission of the Secret Service is to safeguard the nation's financial infrastructure and payment systems to preserve the integrity of the economy and to protect national leaders, visiting heads of state and government, designated sites, and national special security events. The Secret Service is part of the United States Department of Homeland Security. 18 U.S.C. § 3056 (2022). Until March 1, 2003, it was part of the United States Department of Treasury. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat 2135 (2002).

A. Cyber Fraud Task Force

In 1995, the Secret Service New York Field Office established the first Electronic Crimes Task Force (ECTF), which was substantially modeled on the existing Secret Service-led Financial Crimes Task Forces (FCTFs). In 2001, the U.S. Secret Service was mandated by the USA PATRIOT Act to establish a nationwide network of Electronic Crimes Task Forces (ECTFs). The concept of the ECTF network is to bring together not only federal, state, and local law enforcement, but also prosecutors, private industry and academia. The common purpose is the prevention, detection, mitigation, and aggressive investigation of attacks on the nation's financial and critical infrastructures. Since that time, the Secret Service has created 39 additional ECTFs, including two overseas.

In 2018, the Secret Service began evaluating strategic options to improve the organization of Secret Service task forces by combining existing ECTFs and FCTFs. These combined 44 task forces, now referred to as Cyber Fraud Task Forces (CFTFs), are strategically located to combat cybercrime

³³ United States Secret Service, www.secretservice.gov.

through prevention, detection, mitigation, and investigation.

B. Alabama Cyber Fraud Task Force

The Alabama Cyber Fraud Task Force seeks to prioritize investigative cases that involve some form of electronic crime.

For information regarding the next quarterly meeting of the Alabama Electronic Crimes Task Force, contact the U.S. Secret Service, Birmingham Field Office at (205) 731-1144.

C. Resources for Law Enforcement

The U.S. Secret Service eInformation Network provides an information-sharing platform for the Secret Service and its partners in the law enforcement and financial services industries.

The eInformation Network enables the Secret Service to communicate with its partners through several unique online resources. These websites may only be accessed by registered members.

D. U.S. Secret Service US Dollars Note Search Site

The USDollars Note Search Site is a secure website designed to provide qualified financial institutions and law enforcement the ability to conduct a search of the Secret Service counterfeit note database. The site is available at <https://www.usdollars.usss.gov>.

E. U.S. Secret Service Field Office

Birmingham, Alabama
(205) 731-1144

Index

Alabama Criminal Justice Information System (ACJIS)	49	Bail	44
Alabama Uniform Crime Report	51	Schedule.....	61
Generally	49	Bailiff.....	10, 54
Released Without Charge	51	Budget	
Records	52	Deputies.....	9
Alcohol		Management	22
Beverages	192	Civil Process	
Custody.....	101	Execution	152
DUI	177	Generally	145
Arrest		Cockfighting	197
Citizen	99	Commitments	
Domestic Violence	88	Civil	141
Electors.....	171	Criminal.....	142
Extradition.....	105	Mental	64
Procedure.....	100	Compensation	
Records.....	25	Disability or Death	19
Refusing to Aid a Peace Officer.....	83	Military Authorities ...	193
Resisting.....	98	Retirement	15
Rights	96	Salary.....	7
Warrant	94	Supernumerary	16
Without Warrant	90	Work Release	126
Assault		Conservation	
Definition.....	80	Fishing.....	190
Liability	208	Generally	189
Attorney General		Hunting.....	189
Responsibilities	237	Criminal Trespass	80
Service of Process	149		

Deputies	
APOST.....	10
Death Benefits	19
Duties	9
Immunities to Federal	
Law Claims	205
Liability of	
Sheriff.....	207
Off-Duty Work.....	53
Discovery.....	62
DNA.....	106
Dogs	198
Domestic Violence	88
Drug Enforcement	
Agency	242
Elections	
Canvassing	172
Electronic Voting	
Equipment	
Locations.....	170
Generally.....	169
Poll Workers.....	169
Precincts.....	169
Records.....	174
Returns	172
Sheriff's	5
Supplies.....	169
Voter Information.....	170
Emergency Management	
Agency	235
Eminent Domain	165
Ethics	
Generally	219
Penalties.....	231
Pertinent Law.....	222
Statement of Economic	
Interest	228
Statute of	
Limitations.....	232
Training	219
Evictions.....	152
Evidence.....	85
Execution, Writs of	
.....	157
Extradition	
Generally	105
Use of Jails	73
F.B.I.	
DRUGFIRE	107
Responsibilities.....	237
Fiduciary Funds	
Attorney.....	164
Duties	158, 217
Fingerprints	
Records	50
Sex Offenders.....	27
Youthful Offenders	140
Fire Marshal.....	192

Firearm		Jury	
Identification	107	Grand	103
Off-Duty Work.....	53	Oath.....	104
Pistol Permit	45	Responsibilities.....	102
Sentence Enhancement ..	74	Trial	63, 101
Garnishments.....	154	Juveniles	
Health		County Council.....	143
Children	133	Custody.....	133
Jail	114	Detention Facility .	73, 135
Mental Commitments		In General	133
.....	64	Records	24
Offenses.....	84	Levy	
Public.....	190	Default	209
Quarantine.....	191	Department of	
Rabies	191	Revenue.....	165
Homeland Security	243	Property	165, 209, 214
Homicide		Right to Exemption ...	156
Criminally Negligent ...	80	Writs of Execution.....	157
On Water.....	186	Liability	
Jail		Bond	6
DNA	106	Deputies.....	212
Escape.....	83, 122	Execution	158, 210
Facilities	112	In General	201
Food.....	44, 115, 128	Money	164, 217
In General	111	Off-Duty Work.....	53
Juvenile	133, 137	Repossessions	151
Records.....	24, 118	Use of Vehicles.....	11
Regional	113	License	
Removal	120	Drivers	87, 177, 183
Sentencing		Hunting.....	189
Commission	108	Pistol.....	45, 48
Telephones.....	43	Surety	6
Work Release.....	126	Livestock	196

Military Authorities.....	193	Prisoners	
Miranda Warnings.....	96	Alcohol.....	192
Motor Vehicles		Arrest	90
Accidents	181	Food.....	115
Insurance.....	87, 185	Health.....	114
License.....	87, 177, 183	Jail.....	111
Seat Belts.....	88, 181	Liability.....	201
Waterways.....	186	Probation	121
Municipal Court		Records	118
Bond	45, 61	Reimbursement.....	44
In General	193	Release	120
National Guard	236	Resistance	98
Off-Duty Security Work.....	53	Sentences	119
Parole	121	Work Release	126
Peace Officers' Standards and Training		Probation	
Operation.....	22	Generally	121, 128
Training.....	21	Municipal Court	193
Photographs		Officers.....	128
Juveniles.....	133	Sentencing Standards ..	77
Records.....	50, 137	Sex Offender.....	107
Youthful Offender	140	Violations.....	65, 97
Physician's Reports.....	52	Youthful Offenders	140
Pistol		Property	
Budget	22	Bond	158
License.....	45, 48	Criminal Code.....	66
		Eminent Domain	165
		Execution of Judgment ...	159
		Exemption	156
		Extent of Liability	214
		Fiduciary Duty	216
		Garnishments.....	154
		Holding.....	164
		Levy	209
		Liabilities Arising Out of	
		Custody	213
		Military Authorities ...	193

Misbranded or Condemned Produce.....	195	Secret Service	244
Release.....	214	Self-Defense	
Repossession	151	Another, of	70
Search Warrant	55	Arrest, Making an	70
Stolen.....	52	Legal Presumptions	67
Use Off-Duty	53	Oneself, of.....	67
Wrongful Acts		Property	70
Committed in		Sentencing Commission...	108
Execution of		Sex Offender	
Process	208	Fingerprints.....	27
Public Health	189	Probation	107
Records		Sexual Harassment Policy....	53
Access.....	25	Sheriff 's Sale	
ACJIS.....	49	Invalid or Irregular	
DNA	106	162, 215
Elections.....	174	Jointly Owned.....	163, 216
Execution of		Landlord/Tenant	
Judgments	155	163, 216
Fingerprints	50	Liability	161, 216
Jail	25, 118	Perishable	160
Juvenile	24, 137	Personal	160
Maintenance.....	137	Real.....	161
Photographs	50, 139	Sheriff, Office of	
Property	52	Bonds.....	6
Warrants	51	Constitutional Base	3
Robbery	82	Coroner	15
Search and Seizure		Deputies.....	9
Issuance of Search		Disability or Death	19
Warrant.....	55	Election	5
"Knock & Announce"		Funding.....	11
Rule	57	Immunity	69
Search Warrant	55	Impeachment	12
		Location of.....	8

Oath.....	5
Powers.....	3
Qualifications.....	3
Reimbursements.....	11
Resignation.....	12
Responsibilities Upon Leaving Office.....	18
Retirement.....	15
Salary.....	7
Staffing Office.....	9
Term of.....	5
Vacancy and Removal.....	12
Vehicles.....	11
 Subpoenas.....	 151
SDT.....	151
 Supernumerary Sheriff	
Eligibility.....	17
In General.....	16
Widow's Allowance.....	18
 Toxicology.....	 106
 United States Attorney.....	 239
 United States Marshal.....	 240
 Vehicular Stops.....	 87, 183
 Warrants	
Arrest.....	58
Search.....	58
 Work Release.....	 127