



THE OFFICE OF SHERIFF IN GEORGIA

A HANDBOOK FOR GEORGIA SHERIFFS

REVISED 2020

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**Note: The underlined text indicates an addition or revision from the previous edition published in 2016.*

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FOREWORD

Current Edition

This current edition of *The Office of Sheriff in Georgia* is a handbook providing a broad overview of the vast legal and constitutional duties, responsibilities, and powers of the Office of Sheriff in Georgia. This edition has been edited and revised to reflect current case law and statutes with the goal of creating a concise publication for sheriffs as they transition into the role of sheriff and by others for reference. While the text provides a comprehensive and sometimes in-depth analysis and overview of the “office,” it is not intended to be, and should never be used as a substitute for seeking specific legal counsel. All matters of any consequence should be evaluated with the notice and assistance of the county attorney, the GSA’s attorneys or other legal counsel.

Historical Background

The precursor to this publication, *Handbook for Georgia Sheriffs*, originated in the 1980's from a joint effort by the Georgia Sheriffs’ Association and the Carl Vinson Institute of Government at the University of Georgia. The handbook summarized the main laws governing the operation of sheriffs’ offices in Georgia, and included explanations of applicable constitutional and legal provisions, law enforcement detention and court responsibilities. In 2000, the handbook was revised and updated through the efforts of the Georgia Sheriffs’ Association and contributions of Sheriff Howard Sills of Putnam County, Retired Sheriff Bill Lemacks of Clayton County and others. Since then, the handbook has been edited, revised and updated by attorneys with the law firm of Walker, Hulbert, Gray & Moore, LLP, in Perry, Georgia, who serve as general counsel to the Georgia Sheriffs’ Association, along with numerous current and retired Sheriffs who reviewed the handbook and offered their editorial assistance.

Walker, Hulbert, Gray & Moore, LLP
Perry, Georgia
General Counsel, Georgia Sheriffs’ Association
2020

CHAPTER 1 – THE OFFICE OF SHERIFF: A HISTORICAL PERSPECTIVE

The Office of Sheriff is one of the oldest offices known to the common law system of jurisprudence.

1 - 1 The Origin of the Office of Sheriff

The Office of Sheriff is an office of great dignity and greater antiquity.¹ English sheriffs (or “shire-reeves”) were the King’s “reeves” (officers or agents) in the “shires” (counties), at least after the Norman Conquest in 1066. Although chosen locally by the shire’s inhabitants, the sheriff did “all the king’s business in the county,” and was “the keeper of the king’s peace.”²

The sheriff was the deputy of the king in his shire and was accountable to no one but the king to whom he was responsible for the royal levies of men for the army, money for the treasury, and for the preservation of the king’s peace, for good order and for justice. Annually, or at shorter intervals, he made a progress throughout his domain, stopping at the more important towns to inquire into all matters of interest to the sovereign. He was accompanied by his court, composed as was the king’s court, of representative nobles, freeholders, and burghers, before whom his officers brought persons accused of crime. Trial was had under the supervision of the sheriff and if conviction resulted the sheriff imposed the sentence and executed it. Although in rank some noblemen might be higher, in temporal power and authority within his shire and within his term of office the sheriff was legally superior to them all. He was the representative of the king, accountable only to the king, and the king’s authority lay in him.³

As the basic forms of English government were transplanted in our country, it also became the common understanding here that the sheriff, though limited in jurisdiction to his county and generally elected by county voters, was in reality an officer of the State, and ultimately represented the State in fulfilling his duty to keep the peace.⁴

¹W. Anderson, *A Treatise on the Law of Sheriffs, Coroners and Constables* 1 (1941).

²*McMillian v. Monroe Cty., Ala.*, 520 U.S. 781, 793, 117 S. Ct. 1734, 1741, 138 L. Ed. 2d 1 (1997).

³*Andreski v. Industrial Comm.*, 261 Wis. 234, 239 (Wis. 1952).

⁴*McMillian*, 520 U.S. at 781, 117 S. Ct. at 1741.

1 - 2 The Modern Office of Sheriff

The modern Office of Sheriff carries with it, both in England and America, all of the common law powers, duties and responsibilities attendant upon an office of such antiquity and high dignity, except, insofar as the same have been legally modified within the constitutional ambit of legislative enactments. It is not only the power, but the duty, of sheriffs in their various jurisdictions to preserve the peace, enforce the laws and arrest and commit to jail felons and other infractors of statutory or common law, and to execute and carry out the mandates, orders and directions of the courts.⁵

In the exercise of executive and administrative functions, in conserving the public peace, in vindicating the law, and in preserving the rights of the government, the sheriff represents the sovereignty of the State and he has no superior in his county.⁶ The Office of Sheriff is the most important of all the executive officers of the county.⁷

Within the field of his responsibility for the maintenance of law and order, the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of his county, though he may be removed by the governor for cause. No other county official supervises his work or can require a report or an accounting from him concerning his performance of his duty. He chooses his own ways and means of performing it. He divides his time according to his own judgment of what is necessary and desirable but is always subject to call and is eternally charged with maintaining the peace of the county and the apprehension of those who break it. In the performance of this duty he is detective and patrolman, as well as executive and administrator, and he is emphatically one of those who may serve though they only stand and wait. These qualities and characteristics of the office need be recited not because they are novel but because they are so old that they are easily forgotten or unappreciated.⁸

⁵W. Anderson, *A Treatise on the Law of Sheriffs, Coroners and Constables* 4 (1941).

⁶W. Anderson, *A Treatise on the Law of Sheriffs, Coroners and Constables* 5 (1941).

⁷"Proposals to Revise the Virginia Constitution: I. Thomas Jefferson to "Henry Tompkinson" (Samuel Kercheval), 12 July 1816," Founders Online, National Archives, last modified June 29, 2016, <http://founders.archives.gov/documents/Jefferson/03-10-02-0128-0002> [Original source: The Papers of Thomas Jefferson, Retirement Series, vol. 10, May 1816 to 18 January 1817, ed. J. Jefferson Looney. Princeton: Princeton University Press, 2013, no pagination.]

⁸*Andreski v. Industrial Commission*, supra at 240.

1 - 3 The Office of Sheriff in Georgia

Georgia was one of the original thirteen colonies and the common law and statutes of England constituted the law of force in the colony prior to Georgia's independence. The English

common law, as it existed prior to May 14, 1776, was adopted as the law of this State by the Act of February 25, 1784.⁹ Thus, the Office of Sheriff carries with it, in America, all of its common law duties and powers, except as modified by statute.¹⁰

Every public office is the creation of some law, either statutory or constitutional in origin.¹¹ The Office of Sheriff in Georgia is a constitutional office.¹² The constitutionality of the office in Georgia stems from the constitutional provisions extended to certain offices in existence when the first Georgia Constitution was ratified and because the sheriff is listed in the Georgia Constitution of 1983 as one of four independently elected county officers.¹³

“The clerk of the superior court, judge of the probate court, sheriff, tax receiver, tax collector, and tax commissioner, where such office has replaced the tax receiver and tax collector, shall be elected by the qualified voters of their respective counties for terms of four years and shall have such qualifications, powers, and duties as provided by general law.”¹⁴

The Georgia Constitution establishes the tenure of the Office of Sheriff, but imposes no other limitation upon the power of legislation in relation to it. It is silent as to his duties, and submits them therefore to the direction and control of state legislature, which is invested with the power of making all laws which are not repugnant to the Constitution.¹⁵ It was the intent of the General Assembly that the Office of Sheriff be the basic law enforcement office of the counties of this state.¹⁶

⁹Hannah v. State, 212 Ga. 313, 321, 92 S.E.2d 89, 95 (1956);

¹⁰Elder v. Camp, 193 Ga. 320, 322, 18 S.E.2d 622, 625 (1942).

¹¹Carter v. Burson, 230 Ga. 511, 517, 198 S.E.2d 151, 155 (1973).

¹²Bd. of Comm'rs of Dougherty Cty. v. Saba, 278 Ga. 176, 177, 598 S.E.2d 437, 439 (2004); Manders v. Lee, 285 F.3d 983, 996 (11th Cir. 2002), reh'g en banc granted, opinion vacated, 300 F.3d 1298 (11th Cir. 2002), and on reh'g en banc, 338 F.3d 1304 (11th Cir. 2003).

¹³Ga. Const. art. IX, § 1, ¶ III; Elder v. Camp, 193 Ga. 320, 322, 18 S.E.2d 622, 625 (1942); Foster v. Vickery, 202 Ga. 55, 60, 42 S.E.2d 117, 120 (1947); Carter v. Burson, 230 Ga. 511 (1973).

¹⁴Ga. Const. art. IX, § 1, ¶ III.

¹⁵State v. Dews, R. M. Charl. 397, 404 (Ga. Super. Ct. 1835).

¹⁶Veit v. State, 182 Ga. App. 753, 756, 357 S.E.2d 113, 115 (1987).

CHAPTER 2 - ELECTION TO THE OFFICE OF SHERIFF IN GEORGIA

The Sheriff is an elected constitutional officer.

The sheriff shall be elected by the qualified voters of their respective counties for terms of four years and shall have such qualifications, powers, and duties as provided by general law.¹ Generally, sheriffs are elected, qualified, commissioned, and hold their offices for the same term as the clerks of superior courts.²

2 - 1 Qualification Requirements for County Office

Every candidate for county office who is certified by the county executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought.³

General law requires that all county officers be citizens of the state and must have resided in the county for at least 12 months prior to the election and be a qualified voter.⁴

2 - 2 Qualification Requirements for the Office of Sheriff

Besides satisfying the general requirements for a county officer, a prospective Georgia sheriff must meet the following qualifications at the time of qualifying as a candidate for the Office of Sheriff:

- Is a citizen of the United States;
- Is a resident of the county in which he or she seeks the Office of Sheriff for at least two years immediately preceding the date of qualifying for election to the office;
- Is a registered voter;
- Attained the age of at least 25 years;
- Obtained a high school diploma or its recognized equivalent;

¹Ga. Const. art. IX, § 1, ¶ III.

²O.C.G.A. § 15-16-1(b).

³O.C.G.A. § 21-2-6(a); O.C.G.A. § 45-2-3.

⁴O.C.G.A. § 45-2-1(1).

- Not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States;
- Is fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record, which fingerprints are to be taken under the direction of the judge of the probate court of the county in which such person is qualifying and must be taken on or before, but no later than, the close of business on the third business day following the close of such qualification period. If the search of such fingerprint files results in the discovery of any criminal record that reveals that the person has been convicted, or the record shows no disposition of the record, of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States, the probate judge shall notify the election superintendent of such record immediately;
- Files with the officer before whom such person is qualifying a complete written history of his or her places of employment for a period of six years immediately preceding his or her qualification date, giving the period of time employed and the name and address of his or her employer; and,
- Is a registered peace officer or is a certified peace officer, or attains the same within six months after such person takes Office.⁵

In addition to the qualifications set forth above, each person offering his or her candidacy for the Office of Sheriff shall, at the time such person qualifies:

- Swear or affirm before the officer before whom such person has qualified to seek the office of sheriff that he or she meets all of the above qualifications and that he or she has complied or will comply with the fingerprinting requirements no later than the close of business on the third business day following the close of such qualification period.⁶
- File an affidavit with the election superintendent of the county by the close of business on the third business day following the close of the qualification period stating: that such person is a high school graduate or has obtained the recognized equivalent in education training as established by the Georgia Peace Officer Standards and Training Council; and, when and from what school such person graduated from high school or obtained such recognized equivalent in education training;⁷ and,
- File a certified copy of his or her birth certificate with the election superintendent of the county.⁸

⁵O.C.G.A. § 15-16-1(c)(1)(A)-(J).

⁶O.C.G.A. § 15-16-1(c)(2).

⁷O.C.G.A. § 15-16-1(c)(3).

⁸O.C.G.A. § 15-16-1(c)(3).

Each person offering to run for the office of sheriff and who is otherwise qualified shall be allowed, six months prior to qualifying and at his or her own expense, to attend the basic mandate course for peace officers. The Georgia Peace Officer Standards and Training Council shall work to ensure that space is available for such individuals to attend the course.⁹

2-2(a) Current Sheriffs are Exempt from Certain Qualifications

Any person who is currently serving as a duly qualified and elected sheriff of one of the several counties of this state is deemed to have met the requirements relating to age, high school diploma or equivalent, criminal history, employment history, residential history, and registered or certified peace officer.¹⁰

2-2(b) Persons Ineligible to Serve as Sheriff

One who has met the general requirements for a county officer, as well as the specific qualifications demanded of a prospective sheriff, may still be precluded from holding the Office of Sheriff. The following classes of persons, for example, are ineligible to serve as sheriff regardless of their other qualifications:

- Holders or receivers of public money who have failed to account for it;¹¹
- Any person convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States (even if the person has been convicted as a first offender, receives a pardon, or has pled nolo contendere);¹²
- Persons holding any office of profit or trust under the government of the United States other than that of postmaster and officers and enlisted men of the reserve components of the armed forces of the United States, or of either of the several states, or of any foreign state;¹³
- Persons of unsound mind and persons who, from advanced age or bodily infirmity, are

⁹O.C.G.A. § 15-16-1(c)(4).

¹⁰O.C.G.A. § 15-16-1(d).

¹¹O.C.G.A. § 45-2-1(2); O.C.G.A. § 21-2-8.

¹²O.C.G.A. § 15-16-1(c)(1)(F); O.C.G.A. § 42-8-63.1(c); Barbour v. Democratic Executive Comm. of Crawford Cty., 246 Ga. 193, 193, 269 S.E.2d 433, 434 (1980); Georgia Peace Officer Standards & Training Council v. Mullis, 248 Ga. 67, 67, 281 S.E.2d 569, 570 (1981).

¹³O.C.G.A. § 45-2-1(4).

unfit to discharge the duties of the office;¹⁴

- Persons who have been adjudged a “subversive person;”¹⁵ and,
- Persons who, under the laws of this state, any other state, or the United States, have been convicted and sentenced, in any court of competent jurisdiction, for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude¹⁶

Additionally, the Georgia Constitution generally prohibits an individual from holding the Office of Sheriff and qualifying for another state, county, or municipal elective office or qualifying for the U.S. House of Representatives or U.S. Senate.¹⁷

2 - 3 Qualification Fees

The governing authority of the county, not later than February 1 of any year in which a general primary, nonpartisan election, or general election is to be held, and at least 35 days prior to the special primary or election in the case of a special primary or special election, shall fix and publish a qualifying fee for each county office to be filled in the upcoming primary or election.¹⁸ For the Office of Sheriff, the qualification fee shall be 3 percent of the minimum salary provided by general law for the office, exclusive of supplements, cost-of-living increases, and longevity increases.¹⁹ The qualifying fee for a candidate in a primary shall be paid to the county at the time the candidate qualifies.²⁰ The qualifying fee for all other candidates shall be paid to the superintendent or Secretary of State at the time the notice of candidacy is filed by the candidate.²¹

¹⁴O.C.G.A. § 45-2-1(5).

¹⁵O.C.G.A. § 21-2-7; "Subversive person" means any person who commits, attempts to commit, or aids in the commission or advocates, abets, advises, or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, to destroy, or to assist in the overthrow or destruction of the government of the United States or of this state or any political subdivision of either of them by revolution, force, or violence; or who is a knowing member of a subversive organization or a foreign subversive organization. O.C.G.A. § 16-11-6(5).

¹⁶O.C.G.A. § 21-2-8.

¹⁷Ga. Const. art. II, § 2, ¶ V; O.C.G.A. § 21-2-136.

¹⁸O.C.G.A. § 21-2-131(a)(1)(A).

¹⁹O.C.G.A. § 21-2-131(a)(1)(B); O.C.G.A. § 15-16-20.

²⁰O.C.G.A. § 21-2-131(b)(1).

²¹O.C.G.A. § 21-2-131(b)(2).

2 - 4 Qualification Time Table

2-4(a) Qualification as a Party Nominee in a County Primary

All candidates for party nomination in a county primary shall qualify as such candidates in accordance with the procedural rules of their party.²² A candidate for any party nomination in a county primary may qualify by payment of a qualifying fee or the submission of a pauper's affidavit.²³

In the case of a general county primary, the candidates or their agents shall commence qualifying at 9:00 A.M. on the Monday of the eleventh week immediately prior to the county primary and shall cease qualifying at 12:00 Noon on the Friday immediately following such Monday, notwithstanding the fact that any such days may be legal holidays.²⁴

Each candidate for party nomination shall accompany his or her notice of candidacy with an affidavit stating:

- His or her full name and the name as the candidate desires it to be listed on the ballot;
- His or her residence, with street and number, if any, and his or her post office address;
- His or her profession, business, or occupation, if any;
- The name of his or her precinct;
- That he or she is an elector of the county of his or her residence eligible to vote in the primary election in which he or she is a candidate for nomination;
- The name of the office he or she is seeking;
- That he or she is eligible to hold such office;
- That the candidate has never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude under the laws of this state or any other state or of the United States;
- That he or she will not knowingly violate the Georgia Election Code, or rules or regulations adopted thereunder; and,
- Any other information as may be determined by the Secretary of State to be necessary to comply with federal and state law.²⁵

²²O.C.G.A. § 21-2-153(b).

²³O.C.G.A. § 21-2-153(a).

²⁴O.C.G.A. § 21-2-153(c)(1)(A).

²⁵O.C.G.A. § 21-2-153(e).

2-4(b) Qualification as an Independent

Candidates may qualify for an election by virtue of: nomination in a primary conducted by a political party; or, filing a nomination petition an independent candidate.²⁶ Except that such petition shall not be required if an independent candidate is an incumbent qualifying as a candidate to succeed himself or herself.²⁷

The names of nominees of political parties nominated in a primary shall be placed on the election ballot without their filing the notice of candidacy.²⁸ In order to be eligible to have their names placed on the election ballot, independent candidates shall file their notice of candidacy and pay the prescribed qualifying fee in the office of the superintendent of his or her county either during the period beginning at 9:00 A.M. on the Monday of the thirty-fifth week immediately prior to the election and ending at 12:00 Noon on the Friday immediately following such Monday, notwithstanding the fact that any such days may be legal holidays, or during the period beginning at 9:00 A.M. on the fourth Monday in June immediately prior to the election and ending at 12:00 Noon on the Friday following the fourth Monday in June, notwithstanding the fact that any such days may be legal holidays, in the case of a general election.²⁹ The hours of qualifying each day shall be from 8:30 A.M. until 4:30 P.M. with one hour allowed for the lunch break.³⁰

Independent candidates required to file a notice of candidacy shall accompany his or her notice of candidacy with an affidavit stating similar information as required by a candidate for party nomination.³¹

2 - 5 Tenure

There are no tenure restrictions on the sheriff. A sheriff may serve for as many consecutive terms as the voters of the county allow. Telfair County is the only exception in Georgia where the sheriff may serve only two terms, per local legislation.

2 - 6 Oath of Office

The sheriff must take two separate oaths before assuming office. The first oath is required of all civil officers of the state and is a pledge by the prospective sheriff that he or she is qualified

²⁶O.C.G.A. § 21-2-130(2)(A).

²⁷O.C.G.A. § 21-2-132(e).

²⁸O.C.G.A. § 21-2-132(a).

²⁹O.C.G.A. § 21-2-132(d)(3).

³⁰O.C.G.A. § 21-2-132(d).

³¹O.C.G.A. § 21-2-132(f).

to hold the office according to the Constitution and laws of Georgia.

*I do further swear that I am not the holder of any unaccounted for public money due this state or any political subdivision of this state, that I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which by laws of the State of Georgia I am prohibited from holding, and that I am otherwise qualified to hold the office of Sheriff according to the Constitution and laws of Georgia.*³²

The second oath pertains only to the Office of Sheriff and must be taken and signed before the judge of superior court or the judge of the probate court. The oath states:

*“I do swear that I will faithfully execute all writs, warrants, precepts, and processes directed to me as sheriff of this county, or which are directed to all sheriffs of this state, or to any other sheriff specially, which I can lawfully execute, and true returns make, and in all things well and truly, without malice or partiality, perform the duties of the Office of Sheriff of _____ County, during my continuance therein, and take only my lawful fees. So help me God.”*³³

The oaths shall be filed in the office of the judge of the probate court and shall be entered on the minutes of the superior court.³⁴

It is a violation of a sheriff's oath of office for any sheriff to engage either directly or indirectly in a private security, private investigation, bail bonding, or wrecker towing business in the county in which the sheriff has jurisdiction. “Engaging indirectly” in such a business includes the engagement in a prohibited business by the spouse or an un-emancipated child of a sheriff.³⁵

2 - 7 Bond

The sheriff must give bond for no less than \$25,000.³⁶ The law requires at least two sureties on the bond, one of which must be a corporate surety (that is, a bond signed by some surety or guarantee company authorized to do business in this state) liable for the full amount of the statutory bond penalty.³⁷

³²O.C.G.A. § 45-3-1.

³³O.C.G.A. § 15-16-4.

³⁴O.C.G.A. § 45-3-5.

³⁵O.C.G.A. § 15-16-4.1.

³⁶O.C.G.A. § 15-16-5.

³⁷O.C.G.A. §§ 45-4-5, 45-4-7.

The purpose of the bond is to indemnify the public against injury and to ensure the faithful performance of the sheriff's duties, as well as the proper conduct of the deputies and jailers.³⁸ Premiums on the bond are paid out of county funds.³⁹

The sheriff's bond must be approved by the probate judge, with one exception, noted later. Once approved, it is deposited in the office of the clerk of the superior court for examination by the presiding superior court judge. If it meets the requirements of the law and if the sureties are sufficient, the superior court judge will declare the bond proper and enter the bond and the sureties in the minutes of the court.⁴⁰ After the superior court judge has approved the bond, it is returned to the office of the probate judge where it is recorded and filed.⁴¹

If the bond has not been given in accordance with the law, or if the sureties are insufficient, the sheriff will be required to give other bonds to remedy the inadequacy.⁴² The superior court judge can accept such supplemental bonds without the approval of the probate judge or the intervention of the clerk of the superior court.⁴³

An exception to the above procedure is when a superior court term is held in the county before the probate judge has approved the sheriff's bond. In that case, the superior court judge may approve the bond without its first being approved by the probate judge.⁴⁴ In such instances, the superior court judge is required by law to consider the opinion of the probate judge as to the solvency and the sufficiency of the sureties.⁴⁵

2 - 8 Commission

The governor of Georgia commissions each sheriff. The commission consists of a letter or an official paper, under the seal of the office of the governor, signed by the governor, and countersigned by one of his secretaries, authorizing the sheriff to perform the duties and to exercise the authority of the office.⁴⁶

³⁸O.C.G.A. § 15-16-5.

³⁹O.C.G.A. § 45-4-7.

⁴⁰O.C.G.A. § 15-16-6(a).

⁴¹O.C.G.A. §§ 15-16-7, 45-4-12.

⁴²O.C.G.A. § 15-16-6(a).

⁴³O.C.G.A. § 15-16-6(a).

⁴⁴O.C.G.A. § 15-16-6(b).

⁴⁵O.C.G.A. § 15-16-6(b).

⁴⁶O.C.G.A. § 45-3-31.

2 - 9 Sheriffs-Elect Academy

Every sheriff newly elected to a first term is required to complete a course of sheriffs-elect specialized training and instruction established and provided by the Georgia Sheriffs' Association with the assistance of the Georgia Public Safety Training Center. Any newly elected sheriff who is unable to attend such training course when it is offered because of medical disability or providential cause shall, within one year from the date such disability or cause terminates, complete a course of instruction as determined by the Georgia Sheriffs' Association and approved by the Georgia Peace Officer Standards and Training Council. Any newly elected sheriff who does not fulfill the obligations of this subsection shall lose his or her power of arrest.⁴⁷

2 - 10 Annual Training Requirements

No person shall be eligible to hold the Office of Sheriff unless he or she attends a minimum of 20 hours of training annually as may be selected by the Georgia Sheriffs' Association.⁴⁸ Any person who fails to complete the minimum annual in-service training required and who has not received a waiver of such requirement shall not perform any of the duties of sheriff involving the power of arrest until such training shall have been successfully completed. In addition, the governor may suspend any sheriff failing to complete the required annual in-service training from office for a period of 90 days, without pay. In the event of such a suspension, the county probate judge shall appoint a temporary replacement to assume the duties and responsibilities of the Office of Sheriff, unless a chief deputy has been named in accordance with state law.⁴⁹ The person appointed to serve during the period of suspension must meet all qualifications for the Office of Sheriff.⁵⁰

Any person employed or appointed as a peace officer shall provide confirmation of his or her training for the previous year to the Georgia Peace Officer Standards and Training Council. Failure to provide the council with confirmation of training in a timely manner or failure to obtain required training in a timely manner shall result in an emergency suspension of the officer's certification and shall continue in effect until the training requirements are confirmed or a waiver is issued.⁵¹

⁴⁷O.C.G.A. § 15-16-3(b).

⁴⁸O.C.G.A. §§ 15-16-3(e), 35-8-21(a).

⁴⁹O.C.G.A. § 15-16-8.

⁵⁰O.C.G.A. §§ 15-16-3(e)(4), 35-8-21(d).

⁵¹O.C.G.A. § 35-8-21(g).

2 - 11 Vacancies

All offices in the state, including the Office of Sheriff, shall be vacated:

- By the death of the incumbent;
- By resignation, when accepted;
- By decision of a competent tribunal declaring the office vacant;
- By voluntary act or misfortune of the incumbent whereby he is placed in any of the specified conditions of ineligibility to office;
- By the incumbent ceasing to be a resident of the state or of the county, circuit, or district for which he was elected;
- By failing to apply for and obtain commissions or certificates or by failing to qualify or give bond, or both, within the time prescribed by the laws and Constitution of Georgia; or
- By abandoning the office or ceasing to perform its duties, or both.⁵²

The Office of Sheriff shall by operation of law be deemed vacant upon certification by the Georgia Peace Officer Standards and Training Council to the judge of the probate court of the county that the certification required to be a peace officer has been revoked for the sheriff of said county.⁵³

Except as otherwise provided by local law, vacancies in the office of sheriff shall be filled by the chief deputy sheriff if a chief deputy has been appointed. In any county in which a chief deputy sheriff has not been appointed, the probate judge shall, within three days of the vacancy, appoint a qualified person to serve as the interim sheriff.⁵⁴

If less than six months of the sheriff's term of office remains at the time the vacancy occurs, the chief deputy sheriff or the interim sheriff, as the case may be, shall hold office for the unexpired term of the sheriff.⁵⁵

⁵²O.C.G.A. § 45-5-1(a).

⁵³O.C.G.A. § 15-16-8 (c).

⁵⁴O.C.G.A. § 15-16-8(a).

⁵⁵O.C.G.A. § 15-16-8(b)(1).

2 - 12 Special Election

If more than six months of the sheriff's term of office remains at the time the vacancy occurs, the election superintendent for the county shall call a special election to fill such vacancy. Such official shall give notice in one or more of the public newspapers of the county, if any; in the official legal organ of the county; at the courthouse; and at three or more of the most public places of the county at least 30 days prior to the date of such special election. Such special election shall be held at the next available special election date that is at least 60 days after the date the vacancy occurred.⁵⁶ The person elected at such special election shall hold office for the unexpired term. The election shall be conducted in accordance with the "Georgia Election Code."⁵⁷

2 - 13 Removal from Office

Every public official who holds elective office, either by election or by appointment, is subject to recall on the grounds that such public official has, while holding any public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her current office and adversely affects the rights and interests of the public if one or more additional grounds for recall exist.⁵⁸

"Grounds for recall" means that the official: (i) Has committed an act or acts of malfeasance while in office; (ii) Has violated his or her oath of office; (iii) Has committed an act of misconduct in office; (iv) Is guilty of a failure to perform duties prescribed by law; or (v) Has willfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed. Discretionary performance of a lawful act or a prescribed duty shall not constitute a ground for recall of an elected public official.⁵⁹

A wholly separate statute, provides for suspension and removal of any public official upon a felony indictment, which relates to the performance or activities of the office of any public official, or upon conviction for any felony.⁶⁰

In addition to the general law applicable to public officials, sheriffs are subject to the investigation and suspension powers of the governor, which does not require a criminal indictment or even any suspected criminal activity. The governor has broad investigation and

⁵⁶O.C.G.A. § 21-2-540.

⁵⁷O.C.G.A. § 15-16-8(b)(2).

⁵⁸O.C.G.A. § 21-4-4(c).

⁵⁹O.C.G.A. § 21-4-3(7)(B).

⁶⁰O.C.G.A. §§ 45-5-6; 45-5-6.1

suspension powers regarding any misconduct by a sheriff in the performance of any of his duties. Whenever the governor determines that an investigation of a sheriff of this state should be made as a result of criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office, he shall appoint two sheriffs who are members of the Georgia Sheriffs' Association who, along with the attorney general, shall constitute a committee to conduct an investigation.⁶¹

If the committee recommends the suspension of the sheriff, the governor shall be authorized to suspend the sheriff for a period of up to 60 days. In any case of a sheriff suspended for 60 days, the governor may extend the period of suspension for an additional 30 days.⁶² The chief judge of the superior court of the county of the sheriff's residence shall appoint a person who meets the qualifications for sheriffs to assume the duties and responsibilities of the office of sheriff during any period of suspension.⁶³

Upon a recommendation of suspension, the governor shall also be authorized to request the district attorney of the county of the sheriff's residence to bring a removal petition against the sheriff based upon the evidence reported by the committee. In the event the governor determines that further investigation is warranted, he or she may then order additional investigation by the committee, by the Georgia Bureau of Investigation, by other law enforcement agencies of this state, or by any special committee appointed by the governor for such purpose.⁶⁴

Not only can sheriffs be removed from office, but they can be fined for contempt if they fail to comply with their statutory duties⁶⁵ and even imprisoned if a jury determines sufficient cause.⁶⁶ However, imposition of any these sanctions against sheriffs requires formal proceedings in courts of law.⁶⁷ Any warrant for the arrest of a sheriff for any offense alleged to have been committed while in the performance of his or her duties may be issued only by a

⁶¹O.C.G.A. § 15-16-26(a).

⁶²O.C.G.A. § 15-16-26(c).

⁶³O.C.G.A. §§ 15-16-1; 15-16-26(d).

⁶⁴O.C.G.A. § 15-16-26(c).

⁶⁵O.C.G.A. §§ 15-16-10(b); 42-4-4(c).

⁶⁶O.C.G.A. § 15-13-14 (If any sheriff or other officer fails to make a proper return of all writs, executions, and other processes put into his hands or fails to pay over all moneys received on such executions on his being required to do so by the court, he shall be liable for contempt and may be fined, imprisoned, or removed from office in the manner prescribed by the Constitution and laws of this state.)

⁶⁷O.C.G.A. § 15-13-14; *Gipson v. Bowers*, 263 Ga. 379, 434 S.E.2d 490, 491 (1993) (Governor and the attorney general can take no official action to remove a sheriff unless there has been a criminal indictment).

judge of a superior court, a judge of a state court, or a judge of a probate court.⁶⁸

2 - 14 De Facto Sheriff

A person serving as sheriff, who in good faith attempted to qualify himself as required by law to perform the duties of his office, but has failed to comply with the law in attaining that office, is considered a bona fide sheriff for limited purposes under what is known as the de facto doctrine.⁶⁹ The law does not ignore the failure of a de facto sheriff to satisfy the statutory prerequisites for that office, and it allows for removal for that reason. However, the de facto sheriff is shielded from personal liability because of the de facto status by the statutory mandate that actions of a de facto officer shall be deemed valid.⁷⁰

⁶⁸O.C.G.A. § 17-4-40(c).

⁶⁹Cooper v. Ricketson, 14 Ga. App. 63, 80 S.E. 217, 219 (1913).

⁷⁰O.C.G.A. § 45-2-1; See, e.g., Bailey v. Kennett, 32 Ga. App. 255, 122 S.E. 804, 805 (1924)

CHAPTER 3 – CONSTITUTIONAL AND LEGAL DUTIES AND POWERS OF THE OFFICE OF SHERIFF IN GEORGIA

The Constitution of the State of Georgia, common law, and the General Assembly control the rights, powers and duties of the Sheriff.

Although Ga. Const. of 1983, Art. IX, Sec. I, Par. III(a)-(b) designates the sheriff as a “county officer,” the same paragraph grants the state legislature the exclusive authority to establish and control a sheriff’s powers, duties, qualifications, and minimum salary. In interpreting this constitutional provision, the Supreme Court of Georgia has stated that “[t]he sheriff is an elected, constitutional officer; he is subject to the charge of the General Assembly and is not an employee of the county commission.”¹

3 - 1 Duties of the Sheriff as enumerated in O.C.G.A. § 15-16-10

The main duties of a sheriff are law enforcement, the courts and the jail. The duties of the sheriff as enumerated in O.C.G.A. § 15-16-10 are:

- To execute and return the processes and orders of the courts;
- To attend, by himself or his deputy, upon all sessions of the superior court of the county and also upon sessions of the probate court whenever required, and while the courts are in session, never to leave the same without the presence of himself or his deputy, or both, if required;
- To attend at the place or places of holding an election at the county site, on the day of an election, from the opening to the closing of the polls;
- To publish sales, citations, and other proceedings as required by law and to keep a file of all newspapers in which his official advertisements appear;
- To keep an execution docket wherein he must enter a full description of all executions delivered to him and the dates of their delivery, together with all his actions thereon;

¹ Brown v. Dorsey, 276 Ga. App. 851, 855, 625 S.E.2d 16, 20 (2005); Grech v. Clayton Cty., Ga., 335 F.3d 1326, 1333 (11th Cir. 2003), citing Bd. of Comm'rs of Randolph Cty. v. Wilson, 260 Ga. 482, 482, 396 S.E.2d 903, 903 (1990)(“The sheriff ... is an elected, constitutional officer; he is subject to the charge of the General Assembly and is not an employee of the county commission.”); See also, Manders v. Lee, 338 F.3d 1304, 1310 (11th Cir. 2003).

- To keep a book in which shall be entered a record of all sales made by process of court or by agreement of the parties under the sanction of the court, describing accurately the property and the process under which sold, the date of the levy and sale, the purchaser, and the price;
- To receive from the preceding sheriff all unexecuted writs and processes and proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his or her predecessor's sales, when not done by his or her predecessor;
- To perform such other duties as are or may be imposed by law or which necessarily appertain to his or her office;
- To exercise the same duties, powers, and arrest authority within municipalities which such officer exercises in the unincorporated areas of counties; and
- To develop and implement a comprehensive plan for the security of the county courthouse and any courthouse annex. The sheriff shall be responsible to conduct a formal review of the security plan not less than every four years.²

If any sheriff or deputy fails to comply with any of these duties, he shall be fined for a contempt and is subject to removal.³

3 - 2 Additional Duties

The duties and responsibilities that the Office of Sheriff is charged with performing by statutory law are broad and varied as follows:

- Fulfill and enforce the laws governing raffles.⁴
- Receive, maintain, and make available a register of all known sex offenders as prescribed by law.⁵
- Receive, confine, feed, and care for all persons charged with violations of county ordinances, or indictable offenses, or otherwise confined to jail.⁶
- Maintain a record of all persons committed to the jail.⁷

²O.C.G.A. §15-16-10(a).

³O.C.G.A. § 15-16-10(b).

⁴O.C.G.A. § 16-12-22.1.

⁵O.C.G.A. §§ 42-1-12, 42-1-14, 42-1-15, 42-1-16, 42-1-17.

⁶O.C.G.A. § 42-4-4.

⁷O.C.G.A. § 42-4-7.

- Receive, transport, and maintain custody of incarcerated individuals for court.⁸
- Formulate professional bonding company policies, approve and monitor transactions of bonding companies.⁹
- Define surety regulations for new bonding companies operating less than 18 months in the county, determine acceptability of surety and process arrest bonds.¹⁰
- Levy against property where ordered by the court and accept bond in lieu of.¹¹
- Cooperate with the probate court and Department of Agriculture with the seizure and forfeiture of illegally operated fuel pumps.¹²
- Serve as constable to the magistrate court in certain counties.¹³
- Maintain custody of jurors when deemed necessary by the court.¹⁴
- Seize property in civil forfeiture proceedings.¹⁵
- Appoint a representative to the county Child Abuse Protocol Committee.¹⁶
- Serve as a member or designate a representative to serve as a member of the county Child Fatality Review Committee.¹⁷
- Designate the official organ of the county together with the probate judge and clerk of superior court.¹⁸
- Impound any livestock running at large or straying.¹⁹
- Remain subject to the rule and order of the courts even after retirement from office.²⁰

⁸O.C.G.A. § 24-13-60.

⁹O.C.G.A. § 17-6-15.

¹⁰O.C.G.A. § 17-6-15.

¹¹O.C.G.A. §§ 9-13-10; 9-13-14.

¹²O.C.G.A. § 10-1-159.

¹³O.C.G.A. § 15-10-27.

¹⁴O.C.G.A. § 15-12-171.

¹⁵O.C.G.A. § 9-16-12.

¹⁶O.C.G.A. § 19-15-2.

¹⁷O.C.G.A. § 19-15-3.

¹⁸O.C.G.A. § 9-13-142.

¹⁹O.C.G.A. § 4-3-4.

²⁰O.C.G.A. § 15-13-8.

- Assist the state fire commissioner in assembling evidence and as to the causes or criminal origin of fires and in apprehending persons guilty of arson.²¹
- Confiscate and destroy illegal fireworks.²²
- Seize any wildlife taken or possessed in violation of the state wildlife laws and regulations.²³
- Enforce the laws and regulations of the “Georgia Boat Safety Act.”²⁴
- Perform criminal background check for applicants for employment at nursing homes.²⁵
- Require any professional bondsman who is a resident of or doing business in the sheriff's county to register his or her bail recovery agents in that county. The professional bondsman must submit to the sheriff, in a form and manner to be determined by the sheriff, a list of all bail recovery agents whose services may be used by such bondsman.²⁶
- Take custody of persons with contagious tuberculosis causing imminent danger to the public when ordered by the court.²⁷
- Inquire into the truth of the allegations against nonresident property owners where the property is being condemned.²⁸
- File a return with the grand jury regarding the county monies received and expenditures made.²⁹
- Keep all courthouses, jails, public grounds and other county property preserving them from injury or waste and preventing intrusions on them.³⁰
- Cooperate and render extraterritorial assistance to other law enforcement agencies

²¹O.C.G.A. § 25-2-35.

²²O.C.G.A. § 25-10-6.

²³O.C.G.A. § 27-1-21.

²⁴O.C.G.A. § 52-7-25.

²⁵O.C.G.A. § 31-7-350 *et seq*;

<https://dch.georgia.gov/document/document/lcbackgroundcheckfrequentlyaskedquestionscomplete09302019pdf/download>.

²⁶O.C.G.A. § 17-6-56.

²⁷O.C.G.A. §§ 31-14-5; 31-14-7; 31-14-11.

²⁸O.C.G.A. § 32-3-9.

²⁹O.C.G.A. § 36-1-7.

³⁰O.C.G.A. § 36-9-8.

requesting assistance during local emergencies.³¹

- Approve any mutual aid agreements for local emergency services as prescribed under the “Georgia Mutual Aid Act.”³²
- Transport mental health patients as ordered by the court.³³
- Transport mental retardation patients undergoing habilitation as ordered by the court.³⁴
- Notify the governor of invasion, disaster, insurrection, riot, breach of the peace, combination to oppose the enforcement of the law by force or violence, or imminent danger thereof, or other grave emergency, when it appear that the unlawful combination or disaster has progressed beyond the control of civil authorities; the governor may then activate the state militia.³⁵
- Execute process and mandates of the military courts.³⁶
- Execute and collect all fines and penalties assessed by the military courts.³⁷
- Endorse applications for delinquent vehicles.³⁸
- Prepare police reports for lost, mutilated, or stolen license plates or revalidation decals.³⁹
- Maintain and keep current the list of specially issued license plates for Georgia Guard members.⁴⁰
- Take reports from persons who purchase for resale a motor vehicle or used part from which the identification markings or plates have been removed, altered, mutilated, or destroyed.⁴¹
- Work county accidents resulting in injury to or death of any person or property damage

³¹O.C.G.A. § 36-69-3.

³²O.C.G.A. § 36-69-3.1.

³³O.C.G.A. § 37-3-101.

³⁴O.C.G.A. § 37-4-61.

³⁵O.C.G.A. § 38-2-6.

³⁶O.C.G.A. § 38-2-1046.1.

³⁷O.C.G.A. § 38-2-1142.

³⁸O.C.G.A. § 40-2-40.

³⁹O.C.G.A. § 40-2-44.

⁴⁰O.C.G.A. § 40-2-66.

⁴¹O.C.G.A. § 40-4-41.

to an apparent extent of \$500.00 or more.⁴²

- Report in writing each month to the Department of Transportation the death of any person within their jurisdiction as the result of a traffic accident.⁴³
- Approve county participation in regional jail authority.⁴⁴
- Coordinate delivery of incarcerated individuals to probation boot camps.⁴⁵
- Receive notice of all paroled inmates.⁴⁶
- Maintain a register of all precious metal dealers.⁴⁷
- Post notices and ascertain occupant identities for land registration law compliancy.⁴⁸
- Remove obstructions on private ways as ordered by the court.⁴⁹
- Conduct sales of levied property and return proceeds to court.⁵⁰
- Eject intruders in land disputes unless the person in possession tenders to the sheriff a counter affidavit stating that he claims, in good faith, a legal right to the possession of the land or tenement.⁵¹
- Secure property under a writ of possession.⁵²
- Destroy as contraband or turn over to the telecommunication service provider any unlawful telecommunication device that has been seized.⁵³
- Participate in the “9-1-1” Advisory Board.⁵⁴
- Enforce the collection of all taxes that may be due the state under any law and ensure

⁴²O.C.G.A. § 40-6-273.

⁴³O.C.G.A. § 40-6-277.

⁴⁴O.C.G.A. § 42-4-93.

⁴⁵O.C.G.A. § 42-8-35.1.

⁴⁶O.C.G.A. § 42-9-47.

⁴⁷O.C.G.A. § 43-37-2.

⁴⁸O.C.G.A. § 44-2-72.

⁴⁹O.C.G.A. § 44-9-59.

⁵⁰O.C.G.A. §§ 9-13-161; 44-11-14.

⁵¹O.C.G.A. § 44-11-30.

⁵²O.C.G.A. § 44-14-236.

⁵³O.C.G.A. § 46-5-4.

⁵⁴O.C.G.A. § 46-5-136.

that all persons violating any of the tax laws of this state are prosecuted for all such violations.⁵⁵

- Assist in enforcing the “Motor Fuel Tax Law.”⁵⁶
- Review applications and determine whether applicants shall be approved for certification and authorized to act as certified process servers in the state.⁵⁷

3 - 3 Budget of the Office of Sheriff

The sheriff is an elected constitutional officer and not an employee of the county commission.⁵⁸ However, as a county officer, the sheriff’s budget is subject to the authority of the county commission.⁵⁹ County commissioners are under a duty to adopt a budget providing funding and equipment necessary to assist the sheriff in performing the official duties of his office. This budgetary duty includes making reasonable and adequate provision for the personnel and equipment necessary to enable the sheriff to perform his duties of enforcing the law and preserving the peace.⁶⁰ Once a county commission adopts a budget for an elected constitutional officer, such as a sheriff, the decision how to spend the funds allocated to that office falls solely to the sheriff in the exercise of his duties and the county commission may not dictate to the sheriff how the budget will be spent.⁶¹ Thus, although the county commission has power and duty to issue a budget, the commission may not dictate to sheriff how that budget will be spent in the exercise of his duties.⁶²

3 - 4 Budgetary Disputes

The county commission can amend or change estimates of required expenditures presented by the sheriff. The county commission also has the power to cut the budget of the sheriff. However, the county commission’s changes to the budget submitted by the sheriff may be

⁵⁵O.C.G.A. § 48-2-81.

⁵⁶O.C.G.A. § 48-9-15.

⁵⁷O.C.G.A. § 9-11-4.1(b)(2).

⁵⁸Bd. of Comm'rs of Dougherty Cty. v. Saba, 278 Ga. 176, 177, 598 S.E.2d 437, 439 (2004).

⁵⁹Saba, *supra*.

⁶⁰Wolfe v. Huff, 233 Ga. 162, 163, 210 S.E.2d 699, 701 (1974).

⁶¹Saba, citing, Griffies v. Coweta Cty., 272 Ga. 506, 508, 530 S.E.2d 718, 720 (2000); see also, Hill v. Clayton Cty. Bd. of Comm'rs, 283 Ga. App. 15, 16, 640 S.E.2d 638, 641 (2006), overruled on other grounds by Mayor & Aldermen of City of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189 (2012).

⁶²Chaffin v. Calhoun, 262 Ga. 202, 203, 415 S.E.2d 906, 907 (1992).

judicially reviewed for abuse of discretion. The focus of judicial review is whether the county commission fulfilled its duty to adopt a budget making reasonable and adequate provision for the personnel and equipment necessary to enable the sheriff to perform his duties of enforcing the law and preserving the peace. A county commission that adopts a budget that does not provide any funds to the sheriff for law enforcement purposes has abused its discretion.⁶³

In the event a dispute arises between a sheriff and the county commission over the budget, the county is responsible for the legal expenses incurred by the sheriff. The Georgia courts, citing O.C.G.A. § 45-9-21(e)(2), have consistently held that the county is responsible for legal expenses incurred by constitutional officers, including the Sheriff, in hiring individual counsel for representation in lawsuits involving budgetary disputes with the county commission.⁶⁴

3 - 5 Sheriffs' Salaries and Fees

The minimum annual salary of each sheriff in this state shall be fixed according to the population of the county in which he or she serves.⁶⁵ The minimum salaries for sheriffs are codified at O.C.G.A. § 15-16-20. Also, the schedules of salaries and fees are set forth in subsection 3-11 at the end of this chapter.

3 - 6 Place of Office and Records

Sheriffs must keep their offices at the same places and on the same terms as clerks of the superior court are required to do.⁶⁶ Therefore, the sheriff is required to maintain his or her office and equipment at the county courthouse.⁶⁷ If space at the courthouse is inadequate, the sheriff, in writing, may request the governing authority of the county to move his or her office to some other designated place in the county. The governing authority may designate another place owned by the county or a body politic within 500 feet from the courthouse. The judge of the superior court of the circuit in which the county is located, or the chief judge in those circuits having more than one judge, must give written consent before the sheriff is authorized to move his or her office to such place.⁶⁸

The sheriff may elect to store on computer any or all records, dockets, books, indices, or files.

⁶³Saba, supra.

⁶⁴Bd. of Comm'rs of Dougherty Cty. v. Saba, 278 Ga. 176, 177, 598 S.E.2d 437, 439 (2004); Griffies v. Coweta Cty., 272 Ga. 506, 508, 530 S.E.2d 718, 720 (2000); Haralson Cty. v. Kimball, 243 Ga. App. 559, 561, 533 S.E.2d 762, 765 (2000); Gwinnett Cty. v. Yates, 265 Ga. 504, 508, 458 S.E.2d 791, 795 (1995).

⁶⁵O.C.G.A. § 15-16-20.

⁶⁶O.C.G.A. § 15-16-9.

⁶⁷O.C.G.A. §§ 15-16-9; 15-6-61(a)(1).

⁶⁸O.C.G.A. § 15-6-86.

Provided, however, that any automated or computerized record-keeping method or system shall provide for the systemic and safe preservation and retrieval of all such records.⁶⁹ The records which the sheriff is required to keep and which are computerized shall be maintained and stored for computer retrieval in the Office of Sheriff.⁷⁰ The sheriff, as a county officer, is required to recommend to the governing body a retention schedule for records.⁷¹ This schedule shall include an inventory of the type of records maintained and the length of time each type of record shall be maintained in the office or in a record-holding area.⁷² Except as otherwise provided by law, all records of the Office of Sheriff shall be open to the public or the state or any agency thereof.⁷³

3 - 7 Source and Territorial Extent of Authority

In Georgia, sheriffs are constitutional officers whose powers and duties are not expressly enumerated in the constitution. Such powers and duties are proscribed by the common law as modified by acts of the legislature. Thus, the sheriff enjoys all of the common law powers and duties invested in the Office of Sheriff except as they are expressly modified by statute. Any statute intending to limit those powers and duties must be strictly construed.⁷⁴ That is, the courts must interpret such statutes with a mind toward preserving the scope of the sheriff's common law authority and responsibility and with the intent to minimize the limiting effect of these laws.

A sheriff's authority is generally limited to the county in which he or she holds office.⁷⁵ Although there are some exceptions. For instance, if a tract of land lies partly in two counties and the defendant's residence is in one of them, the sheriff of the county in which the defendant resides can seize and sell the whole tract.⁷⁶

The provisions against carrying concealed weapons do not apply to or affect any sheriffs, deputy sheriffs, or certain retired sheriffs and deputy sheriffs. In addition, these law enforcement officers are authorized to carry a pistol or revolver on or off duty anywhere within the state, and the provisions of the Code regarding the carrying of concealed weapons do not

⁶⁹O.C.G.A. § 15-16-10(d).

⁷⁰O.C.G.A. § 15-16-10.

⁷¹O.C.G.A. § 50-18-99; *see* Atty Gen. Op. 81-65.

⁷²O.C.G.A. § 50-18-99(d).

⁷³O.C.G.A. §§ 50-18-99(g), 50-18-70, *et seq.*; *see Howard v. Sumter Free Press*, 272 Ga. 521 (2000).

⁷⁴*Elder v. Camp*, 193 Ga. 320, 322, 18 S.E.2d 622, 625 (1942).

⁷⁵*Goetchius v. White*, 11 Ga. App. 456, 75 S.E. 674, 674 (1912).

⁷⁶*Fambrough v. Amis*, 58 Ga. 519, 520 (1877).

apply to the carrying of such firearms.⁷⁷

3 - 8 Disqualification or Inability of Sheriff to Act

Although there is no statute governing the question of disqualification in Georgia, it is clear that sheriffs should remove themselves from any case in which they have a personal interest. “The general scheme of the law is not to trust the sheriff to perform the functions of an officer where he has the interest of a party.”⁷⁸ The general rule in the United States is that sheriffs should dismiss themselves from any case involving blood relatives, or friends, or in which the sheriff is more than merely a formal party to the proceedings.⁷⁹

The few Georgia cases dealing with this question leave it to the discretion of the sheriff or, in the final analysis, the judge to decide whether the sheriff is interested in a case to such an extent that the sheriff should disqualify him or herself.

Quite a different problem arises when sheriffs are unable to perform the duties of office. Unlike the problem of disqualification in which the question is whether the sheriffs acted when they should have done nothing, the question in the inability-to-perform context is whether the sheriffs should be excused for doing nothing when they should have acted. The general rule does not excuse sheriffs for failure to perform duties for reasons of ill health or physical disability.⁸⁰ Sheriffs are obligated to provide a force of deputies to act for them when unable to perform their duties.⁸¹

3 - 9 Liability

Generally, all sheriffs, as well as all deputy sheriffs and jailers, shall be liable to all actions and disabilities which they incur in respect of any matter or thing relating to or concerning their respective offices.⁸² All deputy sheriffs shall be liable to be ruled and attached in the same way and manner as sheriffs.⁸³

Any sheriff shall be liable to an action for damages or an attachment for contempt of court, at the option of the party, whenever it appears that the sheriff has injured the party by (1) making

⁷⁷O.C.G.A. § 16-11-130(c).

⁷⁸*State v. Jeter*, 60 Ga. 489, 491 (1878).

⁷⁹70 Am. Jur. 2d *Sheriffs, Police and Constables* 59.

⁸⁰80 C.J.S. *Sheriffs and Constables* 41b.

⁸¹*Id.*

⁸²O.C.G.A. § 15-13-1.

⁸³O.C.G.A. § 15-13-9.

a false return; (2) neglecting to arrest a defendant; (3) neglecting to levy on the property of the defendant; (4) neglecting to pay over to the plaintiff or his attorney any monies collected by the sheriff by virtue of any *fi. fa.* or other legal process; or (5) neglecting to make a proper return of any writ, execution, or other process put into the hands of the sheriff.⁸⁴

Any sheriff who fails to make a proper return of all writs, executions, and other processes put into his hands or fails to pay over all monies received on such executions on his being required to do so by the court shall be liable for contempt and may be fined, imprisoned, or removed from office in the manner prescribed by the Constitution and laws of this state.⁸⁵

Additionally, sheriffs and deputy sheriffs shall be subject to the rule and order of the courts at any and all times after they have retired from their respective offices, in such cases and in like manner as they would have been had they remained in office.⁸⁶

3 - 9(a) Failure to Pay Over Money

Where money is in the hands of the sheriff, he may pay it over to the plaintiff by whose process it was raised, unless other claimants deposit their liens with him. Notice to retain is insufficient unless accompanied by a lien.⁸⁷ Any parties intervening shall, by appropriate pleading, set forth the ground of their claim to the fund.⁸⁸ All persons interested who are notified in writing by the sheriff or movant of the pendency of the rule shall be bound by the judgment of distribution.⁸⁹

If any sheriff fails, upon application, to pay to the proper person or his attorney any money the sheriff may have in hand which the sheriff may have collected by virtue of his office, the party entitled thereto or his attorney may serve such sheriff with a written demand for the same. If not then paid, for such neglect or refusal the sheriff shall be compelled to pay interest at the rate of 20 percent per annum upon the sum the sheriff has in hand from the date of demand, unless good cause is shown to the contrary.⁹⁰ A copy of the demand produced in court, verified by affidavit stating when and where the original was served upon the sheriff, shall be prima-facie evidence of the date and service thereof.⁹¹

⁸⁴O.C.G.A. § 15-13-2.

⁸⁵O.C.G.A. § 15-13-14.

⁸⁶O.C.G.A. § 15-13-8.

⁸⁷O.C.G.A. § 15-13-13(a).

⁸⁸O.C.G.A. § 15-13-13(c).

⁸⁹O.C.G.A. § 15-13-13(d).

⁹⁰O.C.G.A. § 15-13-3(a).

⁹¹O.C.G.A. § 15-13-3(b).

3 - 9(b) Rule Nisi Against the Sheriff

The judges of the superior courts, judges of the probate courts, and magistrates, respectively, upon application, may grant rules nisi against the sheriff, which rules nisi shall contain a full statement of the case in which the sheriff is called upon to show cause and also of the time and place of hearing. The sheriff shall be served with a copy thereof within a reasonable time before the hearing.⁹²

The sheriff shall fully respond in writing to the rule, which answer shall be under oath taken at the time the answer is filed. If the answer is not denied, the rule shall be discharged or shall be made absolute, depending on whether the court deems the answer sufficient.⁹³

The original movant may contest the truth of the answer, in which case an issue is made and shall be tried by a jury at the same term unless good cause for continuance is shown, which may be done only once by each party.⁹⁴ Upon the trial of the issue, the court shall discharge the rule or shall make the rule absolute, depending on whether the verdict of the jury is for or against the sheriff.⁹⁵ If the sheriff or deputy sheriff designedly absents him or herself from court, the presiding judge, when required by plaintiffs in execution or their attorneys, shall grant a rule absolute against the sheriff or deputy sheriff without the notice unless it is proved at such term of the court that the sheriff or deputy sheriff, from sickness, is not able to attend court.⁹⁶

If a rule absolute is obtained against the sheriff for the payment of money, the rule shall constitute the same lien upon the property, both real and personal, of the sheriff as an ordinary judgment at law.⁹⁷ The lien is attached from the date of rendition but shall be of equal date with other judgments rendered against the sheriff within the same term of court.⁹⁸ If not punctually paid, the demand shall thereafter draw interest at the rate of 20 percent per annum. The plaintiff may have either an attachment or an execution issued upon the rule absolute and may have either of the processes returned and the other issued, at his election.⁹⁹

⁹²O.C.G.A. § 15-13-4.

⁹³O.C.G.A. § 15-13-5.

⁹⁴*Id.*

⁹⁵*Id.*

⁹⁶O.C.G.A. § 15-13-6.

⁹⁷O.C.G.A. § 15-13-11.

⁹⁸O.C.G.A. § 15-13-12.

⁹⁹O.C.G.A. § 15-13-11.

3 - 9(c) Misconduct of Deputies and Jailers

The liability of the sheriff under state law for the misconduct of their deputies and jailers is limited to those instances where (1) the sheriff personally benefits financially from the act complained of; (2) the sheriff was personally aware of and had actual knowledge of the act complained of, had actual knowledge that the act was illegal, contrary to law, or the breach of a duty imposed by law, and either acted to cause or failed to prevent the act complained of; or (3) the sheriff failed to exercise ordinary care and diligence to prevent the condition or act which caused the injury complained of.¹⁰⁰

3 - 9(d) Federal Liability

It is important that sheriffs realize that state laws will not prohibit liability that is based on federal statutes and court rulings. The risks of liability are much greater under federal than under state law, and most of the lawsuits against public officials, including sheriffs, are brought under federal law. Lawsuits against sheriffs, like those against other state and local government officials, are primarily initiated under 42 U.S.C. § 1983 of the federal code.

The risks of liability under federal law are especially great for sheriffs. The vast majority of such liability litigation involves either law enforcement, the operation of jails and prisons, or personnel decisions. Because sheriffs are particularly concerned with all three of these, the threat of liability faced by them is clear.

The scope of this book, however, is not such that it can include an in-depth review and discussion of the issue of liability. In order to become and remain informed, sheriffs need to seek and heed additional information and advice. The sheriff should look to the county attorney as the primary source of such information and assistance. The county attorney should be involved at the beginning of any situation that concerns the liability of the sheriff or the sheriff's office, and the sheriff should also seek out the county attorney when attempting to take steps to reduce the chances of liability at some later time.

3 - 10 County Attorney/Legal Representation

In lieu of obtaining liability insurance or indemnity, or in addition thereto, the county may, in their discretion, adopt policies whereby the county will undertake to defend all or specified civil, criminal, or quasi-criminal actions brought or maintained against elected county officers, arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common law, or statutory rights.¹⁰¹ Generally, in such circumstances, the county, not the elected officer,

¹⁰⁰O.C.G.A. § 15-16-24; *see* O.C.G.A. § 15-16-5.

¹⁰¹O.C.G.A. § 45-9-21(a).

has exclusive power to employ counsel for the county officer.¹⁰²

In any civil case in which the county attorney has a conflict of interest which would ethically prevent the county attorney from representing both the county and the sheriff, upon a determination by the chief judge of the superior court of the circuit in which the county is located that an ethical conflict exists, the sheriff is authorized to employ individual legal counsel for representation in such matter, and the governing authority of the county shall pay the reasonable legal fees of such individual counsel. Note, however, that this shall not apply unless the governing authority of the county has first denied a written request by a county officer for counsel.¹⁰³

3 - 11 Schedules of Salaries and Fees for Georgia Sheriffs

3 - 11(a) Minimum salaries for sheriffs; amounts; increases; expenses

The minimum annual salary of each sheriff in this state is fixed according to the population of the county in which he or she serves. The schedule for minimum annual salaries is codified at O.C.G.A. § 15-16-20. The salaries listed below go into effect on January 1, 2021.

<u>Population</u>	<u>Minimum Salary</u>
<u>0-5,999</u>	<u>\$50,132.72</u>
<u>6,000-11,889</u>	<u>\$55,952.37</u>
<u>11,890-19,999</u>	<u>\$64,255.19</u>
<u>20,000-28,999</u>	<u>\$70,753.11</u>
<u>29,000-38,999</u>	<u>\$77,294.36</u>
<u>39,000-49,999</u>	<u>\$83,750.51</u>
<u>50,000-74,999</u>	<u>\$90,246.74</u>
<u>75,000-99,999</u>	<u>\$93,314.37</u>
<u>100,000-149,999</u>	<u>\$96,381.99</u>
<u>150,000-199,999</u>	<u>\$99,812.27</u>
<u>200,000-249,999</u>	<u>\$103,266.39</u>
<u>250,000-299,999</u>	<u>\$113,005.67</u>
<u>300,000-399,999</u>	<u>\$126,199.09</u>

¹⁰²Stephenson v. Bd. of Comm'rs of Cobb Cty., 261 Ga. 399, 401, 405 S.E.2d 488, 490 (1991).

¹⁰³O.C.G.A. § 45-9-21(e)(2); Bd. of Comm'rs of Dougherty Cty. v. Saba, 278 Ga. 176, 181, 598 S.E.2d 437, 442 (2004).

400,000-499,999

\$131,099.43

500,000 or more

\$136,011.72

Whenever state employees receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule must be increased by the same percentage or same amount.¹⁰⁴ In addition, minimum annual salaries and any applicable additional salaries are increased for longevity by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any sheriff.¹⁰⁵

The county governing authority may supplement the minimum annual salary of the sheriff in such amount as it may fix from time to time; but no sheriff's compensation supplement shall be decreased during any term of office.¹⁰⁶ However, the minimum salaries shall be considered as salary only. Expenses for deputies, equipment, supplies, copying equipment, and other necessary and reasonable expenses for the operation of a sheriff's office shall come from funds other than the funds specified as salary.¹⁰⁷ In addition to any salary, the governing authority of each county is authorized to provide, as an operating expense of the sheriff's office and payable from county funds, a monthly vehicle allowance to the sheriff of that county when the sheriff's personally owned vehicle is used in the carrying out of the duties of the sheriff's office. If a vehicle allowance is so provided, it shall be in an amount determined by agreement among the budget officer of the county, the county governing authority, and the sheriff.¹⁰⁸

3 - 11(b) Additional salary for performing certain services

In addition to the minimum salary provided in O.C.G.A. § 15-16-20, the sheriff of any county who performs the duties of a sheriff for a state court, probate court, magistrate court, juvenile court, or county recorder's court under any applicable general or local law of this state shall receive for his or her services in such court or courts a salary of not less than \$385.90 per month, to be paid from the funds of the county. A sheriff who serves in more than one such court shall receive only one such salary.¹⁰⁹

¹⁰⁴O.C.G.A. §§ 15-16-20(a)(2); 45-20-1, *et seq.*

¹⁰⁵O.C.G.A. § 15-16-20(b).

¹⁰⁶O.C.G.A. § 15-16-20(a)(3).

¹⁰⁷O.C.G.A. § 15-16-20(c).

¹⁰⁸O.C.G.A. § 15-16-20(e).

¹⁰⁹O.C.G.A. § 15-16-20.1

3 - 11(c) Monthly expense allowance

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each county is authorized to provide as contingent expenses for the operation of the Office of Sheriff, and payable from county funds, a monthly expense allowance of not less than the amount fixed in the following schedule:¹¹⁰

<i>Population</i>	<i>Minimum Monthly Expenses</i>
0-11,889	\$100.00
11,890-74,999	\$200.00
75,000-249,999	\$300.00
250,000-499,999	\$400.00
500,000 or more	\$500.00

3 - 11(d) Fees enumerated

For the services of the sheriff in civil cases, the following fees shall be charged:¹¹¹

(1) Serving copy of process and returning original, per copy	\$50.00
(2) Action from another county, to be paid in advance	\$50.00
(3) Summoning each witness	\$10.00
(4) Each levy or writ of fieri facias	\$50.00
(5) Search and return of nulla bona	\$20.00
(6) Serving summons of garnishment or rule against garnishee	\$50.00
If more than one, for each additional copy	\$6.00
(7) Commissions on sales of property:	
On sums of \$50.00 or less	8%
On excess above \$50.00 up to \$550.00	6%
For all sums exceeding \$550.00, on excess	3%
No commissions shall be charged unless property is actually sold.	
(8) Making out and executing titles to land	\$50.00
If presented by purchaser	\$20.00
(9) Executing bill of sale to personal property, when demanded by purchaser	\$20.00
(10) Forthcoming bonds	\$13.00

¹¹⁰O.C.G.A. § 15-16-20.2.

¹¹¹O.C.G.A. § 15-16-21(b).

(11)	Serving process against tenant over or intruder upon land to dispossess them	\$25.00
(12)	For dispossessing tenant or intruder	\$25.00
(13)	Taking and returning counter-affidavit when summary process to dispossess tenant or intruder is resisted	\$13.00
(14)	Settling each execution in his hands, settled without sale	\$20.00
(15)	Levying an attachment	\$50.00
(16)	Reserved	
(17)	Reserved	
(18)	Reserved	
(19)	Reserved	
(20)	Collecting tax fi. fas. \$100.00 or less, each	\$10.00
(21)	Collecting tax fi. fas. over \$100.00, each	\$20.00

For executing and returning any warrant or for serving a citation, the fees to which a sheriff is entitled as provided in this subsection shall be paid at the disposition of the criminal case. For summoning witnesses or taking bonds in criminal cases, the fees to which a sheriff is entitled as provided in this subsection shall be paid in advance prior to the sheriff's rendering such service. For the services of the sheriff in criminal cases, the following fees shall be charged:¹¹²

(1)	Removing prisoner when habeas corpus is sought for his relief	\$15.00
(2)	Removing prisoners under habeas corpus when no mileage is paid, per day	\$15.00
(3)	Attending persons taken by warrant to judge's chamber, for each time	\$4.50
(4)	Conducting prisoner before judge or court to and from jail	\$4.50
(5)	Executing and returning any warrant	\$25.00
(6)	Serving any citation issued pursuant to Article 10 of Chapter 10 of this title, relating to bad check prosecutions or any warrant	\$25.00
(7)	Summoning each witness	\$10.00
(8)	Taking bonds in criminal cases	\$20.00
(9)	Executing a warrant of escape	\$10.00
(10)	Service in every criminal case before a judge or a judge and jury	\$10.00

For feeding prisoners confined in the common jail, such fees are to be paid as may be fixed by the fiscal authorities of the county who are authorized by law to fix such fees. The jail fees

¹¹²O.C.G.A. § 15-16-21(c).

herein provided shall be paid monthly by the county, provided that local laws regulating county jails or fixing salaries for jailers or their fees shall not be repealed by this provision.¹¹³

All costs arising from services rendered in felony cases shall be paid from county funds whether the defendant is convicted or acquitted.¹¹⁴ Sheriffs shall be entitled to receive the fees provided for in this Code section for all arrests in all criminal cases tried or otherwise disposed of in the superior, city, state, and probate courts.¹¹⁵ All costs provided for under this Code section shall be paid at the clerk's office at the time of filing.¹¹⁶ Provided, however, no fee shall be assessed against the alleged victim of stalking, aggravated stalking, rape, sodomy, aggravated sodomy, statutory rape, child molestation, aggravated child molestation, sexual assault, sexual battery or aggravated sexual battery or against the alleged victim of any domestic violence offense for costs associated with the filing of criminal charges against the stalking offender, sexual offender, or domestic violence offender or for the issuance or service of a warrant, protective order, or witness subpoena arising from the incident of stalking, sexual assault, or domestic violence.¹¹⁷

3 - 11(e) Fees of sheriff for service outside of county; deposit by party requesting such service

For serving any process, summons, or notice in a county other than the county of his residence, a sheriff shall charge 10¢ per mile for each mile traveled outside the county of his residence, whether the service is made by the sheriff or by a deputy. The fees shall be taxed as a part of the costs in the case to which the process, summons, or notice pertains. The sheriff, before serving or having served the process, summons, or notice outside the county of his residence, shall have a right to require the party or his attorney requesting the service to deposit with him a sufficient amount to cover the mileage fees provided for in this Code section.¹¹⁸

¹¹³O.C.G.A. § 15-16-21(d).

¹¹⁴O.C.G.A. § 15-16-21(e).

¹¹⁵O.C.G.A. § 15-16-21(f).

¹¹⁶O.C.G.A. § 15-16-21(g).

¹¹⁷O.C.G.A. § 15-16-21(h).

¹¹⁸O.C.G.A. § 15-16-22.

CHAPTER 4 – DEPUTY SHERIFFS AND THE OFFICE OF SHERIFF

Sheriffs have the authority to hire deputies to assist them in carrying out their official duties.

Sheriffs have the authority to hire deputies to assist them in carrying out their official duties.¹ The position of deputy sheriff, although not required, is recognized by both statutory and case law in Georgia. Although they are not county officers,² deputy sheriffs may participate in the pension plan for Georgia peace officers³ and are considered employees of the county for purposes of workers' compensation.⁴

4 - 1 Deputy Salaries

Georgia common law is clear that deputy sheriffs are personnel and employees of the sheriff, not the county commission, and the sheriff, not the county commission, has the authority to set the salaries of his deputy sheriffs.⁵ By approving or disapproving the sheriff's budget request for salaries, whether done separately or as a lump sum, the county commission has performed its function.⁶ Furthermore, the Georgia Constitution prohibits any attempt by the county commission to pass local law affecting any elective county office, the salaries thereof, or the personnel thereof. In other words, the board of commissioners cannot discharge the sheriff's deputies.⁷

4 - 2 Appointment

In the past, the common law placed no restrictions on a sheriff's authority to appoint deputies.

¹O.C.G.A. § 15-16-23.

²Ga. Const. art. IX, § 1, ¶ 3.

³O.C.G.A. § 47-17-1(5)(A).

⁴O.C.G.A. § 34-9-1.

⁵Warren v. Walton, 231 Ga. 495, 500, 202 S.E.2d 405, 409 (1973); Pettus v. Smith, 174 Ga. App. 587, 588, 330 S.E.2d 735, 737 (1985)

⁶Bd. of Comm'rs of Randolph Cty. v. Wilson, 260 Ga. 482, 483, 396 S.E.2d 903, 904 (1990).

⁷Ga. Const. art. IX, § 2, ¶ 1(c)(1) (except the personnel subject to the jurisdiction of the county governing authority); see, Bd. of Comm'rs of Richmond Cty. v. Whittle, 180 Ga. 166, 178 S.E. 534, 536 (1935); Wilson, supra.

Sheriffs could name as many deputies as they saw fit and were not answerable to anyone for their decisions. Today, while the authority of the sheriff to appoint deputies remains substantial, it is no longer unlimited. The sheriffs must administer their offices within the limits of their budgets which are established by the county commission. Notwithstanding, the sheriff is authorized by statute to appoint "one or more" deputies,⁸ and does retain an absolute right to employ at least one deputy regardless of the power of the local county commission.

However, once positions in a sheriff's office have been made subject to a personnel or civil service system, a sheriff's authority to appoint deputies pursuant to O.C.G.A. § 15-16-23 is limited to vacancies created by the removal of employees in the manner provided under the applicable personnel or civil service system or vacancies created when employees resign or retire.⁹

4 - 3 Qualifications

A deputy sheriff must meet the minimum standards for peace officers as set out in the Peace Officers Standards and Training (POST) Act.¹⁰ A prospective deputy must satisfy the following minimum standards:

- Be at least 18 years of age;
- Be a citizen of the United States;
- Have a high school diploma or its recognized equivalent;
- Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;
- Be fingerprinted for the purpose of conducting a fingerprint-based search at the Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the existence of any criminal record;
- Possess good moral character as determined by investigation under procedure established by the council and fully cooperate during the course of such investigation;
- Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his or her

⁸O.C.G.A. § 15-16-23.

⁹Wayne Cty. v. Herrin, 210 Ga. App. 747, 753, 437 S.E.2d 793, 799 (1993)

¹⁰O.C.G.A. § 35-8-8.

exercising the powers or duties of a peace officer; and

- Successfully complete a job-related academy entrance examination provided for and administered by the council in conformity with state and federal law.¹¹
- In addition to meeting these pre-employment standards, deputies must satisfactorily complete a basic POST course prior to their appointment.¹²
- Deputies may take their POST instruction at any recognized institution approved by the POST Council.¹³

4 - 4 Bond

The deputy must post bond in the amount of \$5,000.00 payable to the sheriff and conditioned upon the faithful accounting for all public and other funds or property coming into the deputy's custody, control, care, or possession.¹⁴ It is a misdemeanor for the deputy to take any official action before the bond is filed.¹⁵

Although the deputy's bond must be taken and recorded in the same manner as the sheriff's bond, unlike the sheriff's bond it need not be approved by the probate judge.¹⁶ The deputy's bond is made payable to the sheriff,¹⁷ since it is the sheriff who is ultimately liable for the deputy's actions.¹⁸ For their own protection, therefore, sheriffs should take it upon themselves to investigate the sureties on a deputy's bond to ensure the bond's sufficiency.

4 - 5 Oath

All deputies, before proceeding to act, must take the same oath as the sheriff prescribed in O.C.G.A. § 42-4-2. In addition, it is recommended deputies swear to the oath for civil officers.¹⁹ Sheriffs may administer the oaths to their deputies. Deputies employed in particular cases for

¹¹O.C.G.A. § 35-8-8

¹²O.C.G.A. § 35-8-9.

¹³O.C.G.A. § 35-8-11.

¹⁴O.C.G.A. §§ 15-16-23, 45-4-2.

¹⁵O.C.G.A. § 45-4-22.

¹⁶Stephens v. State, 106 Ga. 116, 32 S.E. 13 (1898).

¹⁷O.C.G.A. §§ 15-16-23, 45-4-2.

¹⁸O.C.G.A. § 15-16-24.

¹⁹O.C.G.A. § 45-3-1.

limited periods of time do not have to take these oaths. All oaths, together with their endorsements, must be kept on file in the sheriff's office.²⁰ It is a misdemeanor for any deputy to undertake duties of his office without first taking and filing the oath.²¹ Special or limited purpose deputies are not required to take the oath of office.²² However, certain special deputies, such as bailiffs, must swear to or affirm a different oath tailored to their particular office.²³

4 - 6 Duties

A deputy sheriff is an agent of the sheriff and is generally empowered with the same duties and arrest powers as the sheriff.²⁴ While statutory law does not specifically define the specific duties of a deputy sheriff, the Georgia courts have held that deputy sheriffs have no duties save alone duties of the sheriff, which as his deputy and his agent they are by law authorized to perform.²⁵ The sheriff's duties include those that necessarily are a part of his office, such as the power to make arrests, to maintain the peace and to enforce the law.²⁶

4 - 7 Off-Duty Employment

An issue of continuing concern is the law enforcement responsibilities of sheriffs, deputies, and other personnel who are "moonlighting" (i.e., off-duty, in or out of uniform, and paid by other individuals or entities to perform other jobs, including, but not limited to, private security work). In several cases, the courts have held that "[a]ll law enforcement officers have the general duty to enforce the law and maintain the peace. They carry this duty twenty-four hours a day, on and off duty." Thus, when moonlighting personnel are confronted by members of the public who are threatening to breach the peace, officers have an official duty, in addition to any

²⁰O.C.G.A. § 45-3-7.

²¹O.C.G.A. § 45-3-9.

²²O.C.G.A. § 45-3-7.

²³O.C.G.A. § 15-12-140.

²⁴Watkins v. State, 207 Ga. App. 766, 770, 430 S.E.2d 105, 110 (1993), overruled on other grounds by West v. Waters, 272 Ga. 591, 533 S.E.2d 88 (2000); Veit v. State, 182 Ga. App. 753, 756, 357 S.E.2d 113, 115 (1987)

²⁵Nichols v. Prather, 286 Ga. App. 889, 895, 650 S.E.2d 380, 386 (2007).

²⁶Hill v. Clayton Cty. Bd. of Comm'rs, 283 Ga. App. 15, 16, 640 S.E.2d 638, 641 (2006), overruled on other grounds by Mayor & Aldermen of City of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189 (2012).

private employment duty, to take action.²⁷ This is a public policy our courts wish to further, and it means that even when law enforcement personnel are off-duty and privately employed, they still have the authority and duty to arrest individuals in the execution of their official duties. Of course, these officers must discharge their duties lawfully.²⁸

It should be noted that, off-duty employment must be approved in writing by the head of the agency. Any employee who fails to obtain approval is guilty of a misdemeanor.²⁹

4 - 8 Term of Office

The deputy sheriff has no definite term of office. The deputy is an employee of the sheriff and, except in counties where the sheriff's office is part of the civil service system, is subject to discharge by the sheriff without regard to any anticipated period of employment.³⁰

The deputy may, of course, be reappointed by the successor to the sheriff who first appointed him or her to office. Since there are no restrictions on the number of terms they can serve, deputy sheriffs could continue in office indefinitely through successive reappointments.

4 - 9 Removal

As a general rule, the sheriff is free to use discretion in the removal or dismissal of deputies. The Georgia courts are clear in holding that no matter how desirable uniformity of work regulations of various employees of various county offices in the seat of government may be, county commissions do not have authority, express or implied, to establish regulations for employees of another elected county officer.³¹

There are, of course, exceptions. One exception to the sheriff's unrestrained power to remove deputies may be found in those counties that include the sheriff's office in their civil service system. The creation of a civil service system for county employees is provided by statute in

²⁷Loumakis v. State, 179 Ga. App. 294, 297, 346 S.E.2d 373, 376 (1986); Carr v. State, 176 Ga. App. 113, 114, 335 S.E.2d 622, 623 (1985); Duncan v. State, 163 Ga. App. 148, 149, 294 S.E.2d 365, 366 (1982)

²⁸Duncan, *supra*.

²⁹O.C.G.A. § 16-10-3.

³⁰Drost v. Robinson, 194 Ga. 703, 710, 22 S.E.2d 475, 480 (1942); Wayne Cty. v. Herrin, 210 Ga. App. 747, 753, 437 S.E.2d 793, 799 (1993); Hewatt v. Bonner, 142 Ga. App. 442, 442, 236 S.E.2d 111, 112 (1977); Employees Ret. Sys. v. Lewis, 109 Ga. App. 476, 481, 136 S.E.2d 518, 522 (1964), disapproved of by Lucas v. Woodward, 240 Ga. 770, 243 S.E.2d 28 (1978).

³¹Mobley v. Polk Cty., 242 Ga. 798, 802, 251 S.E.2d 538, 541 (1979).

Georgia.³² Subsequent to the creation of such a system, the county governing authority may provide by ordinance or resolution that positions of employment within departments subject to the jurisdiction of elected county officers shall be subject to and covered by the civil service system upon written application by the elected official.³³ Accordingly, it is clear that employees of the sheriff's office can only be placed under a county civil service system if the sheriff makes written application to do so.³⁴

The typical civil service system requires a newly appointed individual to serve a probationary period of six months to one year. Under such a system, if the deputy's conduct while on probation is not satisfactory to the sheriff, the sheriff may not fire the deputy directly. The sheriff can only notify the civil service board that no permanent appointment will be made when the probation is concluded. The deputy can appeal this action and the final decision will rest with the board, not with the sheriff.³⁵

Under most civil service systems, once a deputy is hired to a "permanent position" (after completing the probationary employment), the sheriff may dismiss the deputy only for good cause.³⁶ On appeal by the deputy, again it is the board rather than the sheriff which will make the final determination as to the propriety of removal.

Another potential exception involves the removal of, or decision to not reappoint, a deputy based on political activities conducted by the deputy, particularly political activities opposing the incumbent sheriff or sheriff-elect. While state law gives unrestrained power to the sheriff to remove deputies, the sheriff cannot rely on unconstitutional reasons in refusing to reappoint deputies.³⁷

4 - 10 De Facto Deputies

Just as there are de facto sheriffs, there are also de facto deputy sheriffs.³⁸ Persons who for some reason are not fully qualified as deputies, yet who have been appointed by the sheriff to

³²O.C.G.A. § 36-1-21.

³³O.C.G.A. § 36-1-21(b).

³⁴Gwinnett Cty. v. Yates, 265 Ga. 504, 507, 458 S.E.2d 791, 794 (1995).

³⁵See, Foster v. Vickery, 202 Ga. 55, 61, 42 S.E.2d 117, 121 (1947).

³⁶Barrett v. Sanders, 262 Ga. App. 63, 66, 584 S.E.2d 676, 680 (2003); Mayo v. Fulton Cty., 220 Ga. App. 825, 825, 470 S.E.2d 258, 259 (1996).

³⁷Brett v. Jefferson Cty., Ga., 123 F.3d 1429, 1432 (11th Cir. 1997).

³⁸Hartshorn v. Bank of Gough, 17 Ga. App. 483, 87 S.E. 720 (1916).

act as deputies, are de facto deputies, and the sheriff and his sureties are liable for their actions.³⁹

Examples of de facto deputies would include persons who act as deputy sheriffs but who have failed to take and file oaths, or who have not paid their bond, or who have otherwise failed to qualify for office.⁴⁰

4 - 11 Civilian Employees

Except for the previously mentioned limitations imposed by a civil service system, sheriffs are relatively unrestrained in their power to hire and fire civilian employees (those employees without arrest powers).

4 - 12 Poses

The sheriff may, in emergency situations, summon a group of local citizens known as a posse to assist in a criminal case or to help in preserving the peace.⁴¹ Persons so summoned are bound by law to lend aid and assistance.⁴² Those persons called are neither peace officers nor private citizens but occupy a unique legal status as members of a posse. Such status ends when the emergency no longer exists. While under oath and operating with the sheriff, or acting under his orders, posse members are clothed with the same protection against personal liability which the law affords to the sheriff.⁴³

³⁹Powell v. Fid. & Deposit Co. of Md., 45 Ga. App. 88, 163 S.E. 239, 239 (1932).

⁴⁰O.C.G.A. § 45-3-10; Brett v. Jefferson Cty., Ga., 925 F. Supp. 786, 793 n.6 (S.D. Ga. 1996), aff'd in part, vacated in part, 123 F.3d 1429 (11th Cir. 1997).

⁴¹O.C.G.A. § 17-4-24.

⁴²Robinson v. State, 93 Ga. 77, 18 S.E. 1018 (1893)(Persons orally “deputized” by the sheriff to assist him in making an arrest for felony are neither officers nor mere private persons while co-operating with the sheriff and acting under his orders, but their legal position is that of a posse comitatus).

⁴³O.C.G.A. § 17-4-24; Robinson, supra.

CHAPTER 5 – THE OFFICE OF SHERIFF AS THE OFFICIAL JAILER

The Sheriff is the official jailer of the county.

5 - 1 The Office of Sheriff as the Official Jailer

Responsibility for the physical detention of offenders is held by the Department of Corrections and by each county in Georgia. In theory at least, the state and county detain different types of inmates. For example, the county generally confines (1) short-term inmates such as minor misdemeanants; and (2) inmates awaiting trial, sentencing, or assignment and removal to state facilities.¹ The state, on the other hand, generally confines convicted felons. Females serving a sentence for a misdemeanor may be transferred to the jurisdiction of the Department of Corrections if the sentencing judge certifies that the county facility is not adequate to maintain female inmates.²

Convicted felons, who theoretically should be housed only by the state, may be found serving part or all of their sentences in county jails because of a pending appeal or until there is space for them in the state system. Generally, the state shall assign a convicted person to a diagnostic and classification center within 15 days after receipt of sentence from the clerk of court.³ Nevertheless, the county jail must hold the inmate until such time as space is made available for their transfer to a state correctional institution, despite the statutory 15-day transfer requirement.⁴ If an inmate is not transferred within the 15 days, the state is required to reimburse the county in an amount set by the General Assembly.⁵ State inmates can serve their sentence at a county jail only as part of a state sponsored project, and only with the approval of the commissioner of corrections and the county sheriff.⁶

¹O.C.G.A. §§ 17-10-3(a)(1), 42-5-50, 42-5-51.

²O.C.G.A. § 42-5-51(a).

³O.C.G.A. §§ 42-5-50, 42-5-51.

⁴Clayton Cty. v. Evans, 258 Ga. 146, 147, 366 S.E.2d 282, 283 (1988); In re Irvin, 254 Ga. 251, 328 S.E.2d 215 (1985).

⁵O.C.G.A. §§ 42-5-50(c), 42-5-51(c).

⁶O.C.G.A. § 42-5-51(d).

5 - 1(a) Tubercular Inmates

Georgia law has made special provision for the detention of inmates with tuberculosis. Any person confined in a county jail who contracts tuberculosis will be delivered by the sheriff to a state hospital or other institution approved and supported by the Department of Corrections for the care of tubercular patients upon an order of a judge of the superior court of that county.⁷ Time spent in the hospital or other tubercular institution is credited toward the sentence being served by the tubercular patient.⁸

5 - 1(b) Inmates with Suspected Communicable Diseases

If any inmate, while in custody or in the process of being taken into custody, injures or contacts an officer in such a manner as to present a possible threat of transmission of a communicable disease, then the sheriff, who has charge of the inmate, may take all reasonable steps to determine whether or not the inmate had a communicable disease capable of being transmitted by the injury or contact involved. Such steps may include, but are not limited to, any appropriate medical examination of or collection of medical specimens from the inmate. If the inmate refuses to cooperate, the sheriff may apply to the superior court for an order authorizing the use of any degree of force necessary to complete such procedures. Upon a showing of probable cause that the injury presents the threat of transmission of a communicable disease, the court shall issue an order authorizing the use of reasonable measures to determine if a communicable disease has been transmitted. The cost of such procedures shall be borne by the jurisdiction having custody of the inmate.⁹

5 - 1(c) Federal Prisoners

The county jail may accept federal prisoners but is not required to do so. If the Sheriff does consent to house federal prisoners, he may receive the person if the consent of the authority having control of county matters is first obtained. The Sheriff must, of course, provide the same care and treatment to the federal prisoners as to state or county inmates. The same penalties for inhumane treatment apply regardless of whether the inmate housed is county, state, or federal.¹⁰ Once a county has agreed to house federal prisoners, it may not thereafter refuse to receive such prisoners without at least 20 days prior written notice to that effect from the sheriff to the custodian of the federal prisoners.¹¹

⁷O.C.G.A. § 42-4-6(a).

⁸O.C.G.A. § 42-4-6(b).

⁹O.C.G.A. § 42-1-6.

¹⁰O.C.G.A. § 42-4-9.

¹¹O.C.G.A. § 42-4-10.

5 - 2 Sheriffs' Duties as Jailer

The custody of a defendant, pending his trial under an indictment for a criminal offense, is in the sheriff of the county where the offense was committed. The responsibility for his safe and secure confinement in jail is that of the sheriff.¹²

Each county must build and maintain a jail sufficient for its anticipated needs. As an absolute minimum, each jail must have at least two ventilated cells - one for male inmates and one for female inmates.¹³

The sheriff is the official jailer of the county¹⁴ and is responsible for the health, safety, and welfare of all inmates. Georgia law requires the sheriff to furnish inmates with medical aid, heat, and blankets.¹⁵ If the budget does not provide adequate funds to handle such expenses, the sheriff may make the necessary purchases. The county is required by law to reimburse the sheriff for such expenditures.¹⁶

The sheriff is also responsible for protecting the rights of his or her inmates. In addition to the basic right to receive food, shelter, and medical aid, the courts have ruled that confined persons enjoy all the rights guaranteed under the U.S. Constitution that are not limited by the facility's interest in operating a safe, secure, and orderly facility. Public officials may be liable for any unlawful taking of or failure to protect those rights.¹⁷

The sheriff is responsible not only for the health and custody of inmates in the county jail, but also for maintaining and protecting the physical facilities of the jail itself.¹⁸ A sheriff who feels the county facility is inadequate, dangerous, or insecure may have inmates transferred to facilities in another county.¹⁹

If an inmate is transferred to another jail, he or she must be sent to the county having a secure jail, and the transferring county must pay the expected costs of confinement monthly, in

¹²Howington v. Wilson, 213 Ga. 664, 665, 100 S.E.2d 726, 727 (1957); Duffey v. Bryant, 950 F. Supp. 1168, 1178 (M.D. Ga. 1997).

¹³O.C.G.A. § 36-9-9.

¹⁴O.C.G.A. § 42-4-1.

¹⁵O.C.G.A. § 42-4-4.

¹⁶O.C.G.A. § 42-4-4.

¹⁷Irwin v. Arrendale, 117 Ga. App. 1, 159 S.E.2d 719 (1967).

¹⁸O.C.G.A. §§ 42-4-4(a)(2); 36-9-8.

¹⁹O.C.G.A. § 42-4-4(a)(3).

advance, to the county holding the inmate.²⁰ If the cost of keeping the inmate is not paid in advance, the sheriff of the receiving county may refuse to accept the inmate, pending payment.²¹

5 - 3 Jailers

The sheriff may appoint jailers to assist in the keeping of the jail.²² Before performing any of the duties of their office, prospective jailers shall take the following oath:²³

"I do swear that I will well and truly do and perform, all and singularly, the duties of jailer for the county of _____, and that I will humanly treat prisoners who may be brought to the jail of which I am keeper, and not suffer them to escape by any negligence or inattention of mine. So help me God."

By Georgia statute, jailers are prohibited from treating inmates inhumanely under penalty of removal from office and imprisonment for one to three years.²⁴ Similar punishments will be levied against any jailer convicted of oppressing inmates, or of coercing inmates to testify or to give evidence against others.²⁵

In addition to the oath for jailers, jail officers should take the oath the sheriff and deputies swear to for civil officers.²⁶

New jailers have six months from the date of initial employment to complete a training course for jail officers approved by the Georgia Peace Officers Standards and Training Council.²⁷ However, because jail officers are not POST mandated peace officers, as are deputy sheriffs, jail officers possess no arrest authority beyond that authority provided statutorily to a private citizen.²⁸

²⁰O.C.G.A. § 17-7-1.

²¹O.C.G.A. § 17-7-2.

²²O.C.G.A. § 42-4-1(a).

²³O.C.G.A. § 42-4-2.

²⁴O.C.G.A. § 42-4-5(b).

²⁵O.C.G.A. § 42-4-5(a).

²⁶O.C.G.A. § 45-3-1.

²⁷O.C.G.A. § 35-8-24(a).

²⁸O.C.G.A. § 17-4-60.

The Georgia Firearms and Weapons Act, indicates that a certified jail officer is permitted to carry a weapon during the course of his duties should the sheriff elect to issue a weapon.²⁹

5 - 4 Duties of the Jailer

A jailer must be present and on duty before an inmate can be committed or continued in the county jail.³⁰ There is no requirement to keep a jailer on duty when the jail is empty.

A jailer must accept all inmates lawfully brought before him or her (any inmate who is guilty of or charged with an indictable offense). This could include city inmates, pursuant to a contract between the county and the city for housing city inmates at the county jail, or local legislation authorizing the city to confine city prisoners at the county jail.³¹ If the jailer refuses to receive such inmates, he or she shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00.³² To receive an inmate does not necessarily mean incarceration in a particular jail, or even that the inmate is to be incarcerated at all. The inmate may be taken to another jail, released on bond, taken for medical treatment if needed, etc.³³ Receiving refers to taking charge of the inmate, not necessarily incarceration.

However, a sheriff is generally authorized to refuse acceptance of any person in the custody of municipal or county law enforcement agencies who has not received medical treatment for obvious physical injuries or conditions of an emergency nature. Upon refusal, it is the responsibility of the arresting agency to provide treatment and secure a medical release.³⁴ After the arrestee is medically cleared, the jail is obligated to receive custody of that person. If there is no healthcare facility within the county, the jail must take custody. The arresting agency is still responsible for the costs of obtaining the medical release.³⁵

Georgia law appears to prohibit a sole certified jailer of a county jail from serving simultaneously as a full-time dispatcher.³⁶

²⁹O.C.G.A. § 16-11-130(a)(2); Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§ 24.11, 24.12.

³⁰O.C.G.A. § 42-4-31(a).

³¹Griffin v. Chatham Cty., 244 Ga. 628, 261 S.E.2d 570 (1979).

³²O.C.G.A. § 42-4-12.

³³O.C.G.A. §§ 42-4-4; 17-7-1.

³⁴O.C.G.A. § 42-4-12.

³⁵O.C.G.A. § 42-4-12.

³⁶O.C.G.A. § 42-4-31(a).

5 - 5 Jail Management Procedures

To ensure that the jail is operated in accordance with all legal requirements, the sheriff should issue clearly stated written regulations setting forth the policies and procedures to be used by the staff in the care and treatment of inmates and in other aspects of jail administration.³⁷

Additionally, inmates should be informed of all jail rules and advised of any information essential to a satisfactory adjustment of the jail routine. Rules for the guidance and control of inmates should be established in writing. These rules should be furnished to the inmates and fully explained by the jail personnel. Procedures for handling disciplinary problems should be clearly set forth for the benefit of both the staff and the inmates. The inmates have the right to know what is expected of them and how deviance from the rules will be treated. All personnel must be required to follow the established guidelines.³⁸

Guidelines for these procedures are set forth in the *Georgia Standards for Adult Pretrial Detention Facilities* and *Model Jail Operations Policy and Procedure Manual*, prepared by the Georgia Sheriffs' Association. Special care should be taken in following these standards to avoid possible violation of the inmates' due process rights and to avoid administering an unlawful punishment.

5 - 5(a) Admission Procedures

An important area of jail administration is the admission procedure. Establishing and following proper admission standards aids in the protection of the individual's rights, protects the sheriff from liability for improper conduct by a jailer, and helps maintain proper security.

Initially, the sheriff must be satisfied that the person should be confined. Confinement must be authorized by a duly constituted authority, and evidence of such authority must accompany the inmate and be retained as part of the inmate's records.³⁹ Lack of authority (or evidence of authority) to hold the inmate is grounds for *habeas corpus* relief.

Next, certain minimum information must be obtained by the jailer during the booking process. Some of this information is required by law and some is merely precautionary to protect the county, the jailer, and the sheriff from liability.

It is important for the jailer to identify physical impairments of arrestees, i.e., blindness, hearing impaired, etc. Be aware of trending litigation involving the hearing impaired and the provision of sign language interpretation. Only the use of written communication has been legally

³⁷Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§ 1.04, 1.05

³⁸Ibid, Chapter 21

³⁹O.C.G.A. § 42-4-7.

challenged with the argument that written English is a second language for the hearing impaired who use sign language as their primary language. The jail should have procedures for providing TTY telephones for communication with family or friends and sign language interpretation, either in person or by video conferencing, including during the booking, orientation, and classification processes.⁴⁰

The sheriff is required to keep the official records on file in his or her office in a manner allowed by statute.⁴¹ These records must be freely accessible to the public, and anyone wishing to examine it must be allowed to do so. The records must include the following:

- names of persons confined, as well as their age, sex, and race;
- the process under which the individual was committed;
- the court that issued the process;
- the crime charged;
- date of commitment to jail;
- date of discharge;
- order under which individual was discharged; and
- the court that issued the discharge.⁴²

It is advisable that the records also include, whenever possible, the following information:

- any of the inmate's known aliases;
- addresses, physical description, previous occupations;
- any known criminal record;
- names and addresses of relatives or friends to be contacted in case of an emergency;
- name of the inmate's attorney if one has been retained or appointed;
- the inmate's social security number, although an inmate cannot be compelled to provide their SSN; and
- if the inmate will be confined for longer than overnight, the names and addresses of relatives the inmate may wish to have as visitors during the incarceration period.⁴³

⁴⁰Woody v. Bryson, 2017 U.S. Dist. LEXIS 7407.

⁴¹O.C.G.A. §§ 42-4-7, 15-16-10.

⁴²O.C.G.A. § 42-4-7.

⁴³Model Jail Operations Policy and Procedure Manual, 2019 Edition, Georgia Sheriffs' Association.

5 - 5(b) Search

Upon arrival at the jail facility, each detainee (not just potential inmates) must be searched for contraband and weapons. This is a “frisk” type search, not a “strip” search. All detainees who shall be placed in a cell with others who have already been strip-searched, or in a cell routinely used by others who have been strip-searched, can be strip-searched without probable cause.⁴⁴

Preventing the introduction of weapons, drugs and other contraband into the jail is a court-recognized concern. The U.S. Supreme Court has upheld the practice of performing strip searches of all persons booked into the jail to preserve the safety and security of the facility.⁴⁵ If admitted as an inmate, a strip search followed by a shower should be given by the jail officials, and the inmate's clothing and all personal possessions should be searched for contraband.⁴⁶

5 - 5(c) Clothing

Each inmate should be provided with distinctive jail clothing such as coveralls or blue jeans, chambray shirts, and shower slides. Personal possessions, including money, should be recorded and stored in a secure area.⁴⁷ The sheriff is responsible for the safe and secure storage of all personal property taken from an arrestee. A thorough description of all property taken from arrestees is necessary to determine an accurate replacement value of an arrestee's property that is lost or misplaced by jail staff. This is especially important regarding items like jewelry or sports type attire.

5 - 5(d) Medical Exam

A medical screening by a trained officer should be given at the time of incarceration. The officer should note any allergies, conditions, or problems which could require immediate or future treatment and should refer those for further examination and treatment.⁴⁸ Part of the screening process must include inquiries of female inmates as to whether they are pregnant or if they have delivered a child within the previous six weeks. If the female indicates she is pregnant or has given birth within the last six weeks, follow up questions should include an expected due date or date of child's birth. Pregnant or postpartum arrestees should be referred for immediate further evaluation by medical personnel. Verification of pregnancy or postpartum status is necessary for jail staff to comply with statutory limitations on the use of

⁴⁴Florence v. Bd. of Chosen Freeholders, 566 U.S. 318 (2012).

⁴⁵Florence v. Board of Chosen Freeholders of the County of Burlington, 566 U.S. 318, 132 S. Ct. 1510 (2012).

⁴⁶Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§10.08 – 10.12.

⁴⁷Model Jail Operations Policy and Procedure Manual, 2019 Edition, Georgia Sheriffs' Association

⁴⁸Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, § 14.13

restraints.⁴⁹ The officer in charge or his designated representative shall assure that each inmate is observed daily, and a physician shall be immediately called if there are indications of serious injury, wound, illness, or other health conditions requiring appropriate health evaluation or monitoring. The instructions of the physician shall be strictly carried out.⁵⁰

5 - 5(e) Identification

The identity of each inmate should be established. Two full sets of fingerprints and two photographs of the inmate's head, a front view and profile, should be obtained during the admissions process. The use of live scan finger printing and digital camera is required.⁵¹

5 - 5(f) Orientation

Upon completion of the booking procedure, inmates should be assigned to suitable quarters *according to classification* and given clean bedding, towels, and other necessary items.⁵²

The distribution of a printed, multi-lingual inmate handbook is advised to inform the inmate of issues such as disciplinary procedures, mail, visitation, etc.⁵³

5 - 5(f.1) Classification

New inmates should be carefully classified, with adequate separation and treatment given as needed.⁵⁴

5 - 5(g) Records

Information obtained upon admission should be kept in an active file during the period of incarceration and placed in an inactive file upon release. The inactive file should be maintained permanently for future reference. Medical files should be kept on each inmate independent of the confinement file. In addition to information obtained during the admission procedures, the record should show:

⁴⁹O.C.G.A. § 42-1-11.3.

⁵⁰O.C.G.A. § 42-4-32(d).

⁵¹O.C.G.A. § 35-3-36.

⁵²Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§ 11.01; 11.02; 15.08; 15.11; 15.13; 15.16

⁵³Model Jail Operations and Procedure Policy Manual, 2019 Edition, § 1.13

⁵⁴O.C.G.A. § 42-4-32(c).

- dates of all changes in status (e.g., from pretrial to sentence);
- date and type of discharge;
- any medical condition developed or any treatment administered during confinement (medical file); and
- disciplinary or other problems encountered during incarceration.

The files should also include copies of medical reports, recorded disciplinary actions, special accommodations afforded the inmate, pertinent official correspondence, and receipts signed by the inmate for personal property returned upon release. If released into the custody of other court or law enforcement officials, the receipt signed by the receiving authority should also be included in the file.⁵⁵

5 - 5(h) Keys

The jailer must maintain a key control system. It should include an accurate listing of all keys and a receipt system for all keys taken out. This system should be checked periodically to ensure the accuracy of the listing. Emergency keys should be distinctly marked for quick identification.⁵⁶

There shall be at least two separate keys for all locks at a detention facility, with one set in use and all duplicate keys safely stored under the control of a jailer or other administrative employee for emergency use. All security personnel must be familiar with the locking system of the detention facility and must be able to immediately release inmates in the event of a fire or other emergency. Regular locking and unlocking of door and fire escape locks shall be made to determine if they are in good working order. Any damaged or nonfunctioning security equipment shall be promptly repaired.⁵⁷

Inmates should never be placed in authority over other inmates, and they should never have access to keys or other security controls, including control rooms.⁵⁸

5 - 5(i) Tools

All tools and other potentially dangerous articles should be kept in a secure place out of access of the inmates. Tools should be used by the inmates only under direct supervision. Sharp objects and potentially dangerous tools should be stored or displayed in such a manner as to

⁵⁵Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§ 6.10 – 6.12.

⁵⁶Ibid, §23.14.

⁵⁷O.C.G.A. § 42-4-31(d).

⁵⁸Georgia Standards for Adult Pre-Trial Detention facilities, 2020 Edition, § 23.19.

make unauthorized removal immediately discernible. A dispersal-receipt inventory system should be established for the issuance and return of tools and knives.⁵⁹

5 - 5(j) Inmate Counts

Regular inmate counts must be conducted. Formal counts should be completed with an official entry made in the daily log after each mass movement and at each shift change.⁶⁰

5 - 5(k) Inspections

Frequent inspections of both the physical facility and the inmates should be conducted at irregular intervals to detect contraband and to discourage escape. Inspection of security devices is essential to detect tampering and to provide proper administration of any secure detention facility.⁶¹

The officer in charge of a detention facility shall have the facility inspected semiannually by an officer from the state fire marshal's office or an officer selected by the Safety Fire Commissioner. Each detention facility shall be required to comply with this article with regard to fire safety and the applicable rules and regulations promulgated by the Safety Fire Commissioner. The inspecting officer shall fill out a form provided by the officer in charge and the form shall be posted in a conspicuous place by the officer in charge, thereby evidencing inspection of the facility.⁶²

Plans must be established to deal with emergencies such as fires, escapes, and inmate disorders. All jail personnel should be thoroughly acquainted with the proper emergency procedures and equipment, and copies of these emergency evacuation routes should be placed in a conspicuous location for the benefit of both inmates and staff. All inmates should be informed of emergency exit procedures.⁶³

Sanitation inspections of both facilities and inmates shall be made as frequently as is necessary to ensure against the presence of unsanitary conditions. An official from the Department of Public Health or an officer designated by the commissioner of public health shall inspect the kitchen facilities at least once every three months.⁶⁴

⁵⁹Ibid, §§ 23.01; 23.12.

⁶⁰Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, § 23.21.

⁶¹Ibid, §§ 23.07, 23.14, 23.24.

⁶²O.C.G.A. § 42-4-31(c).

⁶³Georgia Standards for Adult Pre-Trial Detention Facilities 2020 Edition, §§ 24.01 – 24.17.

⁶⁴O.C.G.A. § 42-4-32(c).

5 - 5(l) Food Service

Food plays an important part in the physical and mental health of inmates. Proper feeding procedures and adequate meals are essential to maintain proper morale and discipline, and statutory law requires that at least two substantial and wholesome meals served per day; to reduce the possibility of inmate agitation caused by hunger and boredom, there should be no more than 14 hours between meals.⁶⁵ Arrangements should be made for medically required special diets.⁶⁶ To that end, a county jail should have a kitchen adequate to serve its maximum population. All aspects of food preparation and food service shall conform to the applicable standards of the Department of Public Health.⁶⁷ Sufficient food storage space should also be provided to permit economical bulk purchases of supplies. Meals should be planned by a professional dietician and prepared by an experienced cook wherever practical. Of course, some counties will find it more economical to contract for meal service to the jail facility. Food should be served as promptly as possible after preparation.⁶⁸

5 - 5(m) Contraband Control

It is unlawful for an inmate of a jail to possess any controlled substance, dangerous drug, gun, pistol, or other dangerous weapon, marijuana or alcoholic beverage. In this regard it is unlawful for any person to come inside the guard lines established at any jail with, or to give or have delivered to an inmate of a jail, any controlled substance, dangerous drug, marijuana, alcoholic beverage or any gun, pistol, or other dangerous weapon without the knowledge and consent of the jailer or a law enforcement officer.⁶⁹ Moreover, it is unlawful for any person to obtain, to procure for, or to give to an inmate, or to bring within the guard lines, any other article or item without the knowledge and consent of the jailer or a law enforcement officer.⁷⁰

Procedures should be established to supervise visits and to screen the mail. For visitation purposes, separate facilities should be provided, and wherever possible, the inmate and his or her guest should be physically separated. Visits should be supervised personally by a member of the jail staff. A visitors' register should be maintained containing each visitor's name, the date and time of the visit, the relationship (if any) of the visitor to the inmate, and the name of the inmate to be visited. A log for visits by attorneys should also be maintained.

⁶⁵O.C.G.A. § 42-4-32(b); Georgia Standards for Adult Pretrial Detention Facilities, 2020 Edition, §§ 18.01-18.13; and USDA Dietary Guidelines.

⁶⁶O.C.G.A. § 42-4-32(d).

⁶⁷O.C.G.A. § 42-4-32(a).

⁶⁸Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§ 18.01 – 18.13.

⁶⁹O.C.G.A. § 42-4-13.

⁷⁰O.C.G.A. § 42-4-13(e).

Non-privileged mail, both incoming and outgoing, may be inspected for contraband and reviewed to determine if the safety and security of the inmate or the facility is threatened. Privileged incoming mail may be opened and inspected for contraband only in the presence of the inmate to whom the mail is addressed. Outgoing privileged mail shall be free from inspection or review, be processed expeditiously, and not be delayed.⁷¹

5 - 5(n) Inmate Accounts

Inmates should not be permitted to have cash or other valuables in their possession except under strict control. Allowing inmates to maintain items of value in their personal possession is an open invitation for trouble from other inmates. The facility should establish a system for accounting for the funds received and expended by each inmate while in custody.⁷²

The officer in charge may establish by rules or regulations criteria for a reasonable deduction from money credited to the account of an inmate to repay the costs of: (1) public property willfully damaged or destroyed by the inmate during his incarceration; (2) medical treatment for injuries inflicted by the inmate upon himself or others; (3) extraordinary costs incurred in searching for and apprehending an inmate when he escapes or attempts to escape; and (4) quelling any riot or other disturbance in which the inmate is involved.⁷³

Deductions may also be made to defray the costs paid by a municipality or county for medical treatment for an inmate which medical treatment has been requested by the inmate. However, the deduction shall not exceed \$5.00 for each occurrence. Further, if the cost of medical treatment of an inmate has been collected from the inmate's health insurer or if the balance in an inmate's account is \$10.00 or less, such fee shall not be charged.⁷⁴ All sums collected for medical treatment of an inmate shall be reimbursed to the inmate if acquitted or otherwise exonerated of all charges for which the inmate was being held.⁷⁵

5 - 6 Inmate Detention Standards and Inmate Rights

Although the U.S. Supreme Court has acknowledged that inmates are entitled to protection of their constitutional rights, the Court has held that when a prison regulation impinges on an inmate's constitutional rights, the regulation is valid only if it is reasonably related to legitimate

⁷¹Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§ 16.01 – 16.18.

⁷²Ibid, §§ 2.03 – 2.05.

⁷³O.C.G.A. § 42-4-71(a)(1).

⁷⁴O.C.G.A. § 42-4-71(a)(2).

⁷⁵O.C.G.A. § 42-4-71(c)

penal interests.⁷⁶ The Court has explained that in protecting an inmate's rights, the absence of ready alternatives is evidence of the reasonableness of the prison regulation, and the existence of easy alternatives may be evidence that the regulation is not reasonable. Therefore, the presence or absence of alternative methods for accommodating an inmate's rights is a proper factor in a decision of the reasonableness of the regulation.⁷⁷

The following is a compilation of the minimum rights, standards, and freedoms which Georgia law says must be recognized and preserved in the jails of this state.⁷⁸

5 - 6(a) Right of General Safety and Well-Being

The right of general safety and well-being includes the inmate's right to protection, security, and general good health. As indicated previously, the sheriff and his staff are responsible for these rights, and the sheriff may be held liable for either intentionally or negligently failing to fulfill these duties to an inmate.⁷⁹

5 - 6(b) Searches

Searches of inmates and their cells may be conducted pursuant to an established policy, upon a reasonable suspicion, or wholly at random as an essential part of maintaining the effective security of a jail or prison in order to control the possession of weapons, drugs, and other contraband. However, all searches must be based on some penological interest such as safety, security, or order, and a search may never be used to harass an inmate.⁸⁰ Furthermore, jail officers should never conduct searches for police officers or someone outside the jail unless directed by a warrant.

In Georgia, there is a guarantee that "no person shall be abused during arrest, while under arrest, or in prison."⁸¹ These provisions are in addition to constitutional provisions against cruel

⁷⁶Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987); Lawson v. Singletary, 85 F.3d 502 (11th Cir. 1996); Lane v. Griffin, 834 F.2d 403 (4th Cir. 1987).

⁷⁷O'Lone v. Estate of Shabazz, 482 U.S. 342, 107 S. Ct. 2400, 96 L. Ed. 2d 282 (1987); Lane v. Griffin, 834 F.2d 403 (4th Cir. 1987).

⁷⁸For a detailed discussion of the rights of inmates and pretrial detainees as well as the minimum requirements of jails, prisons, and their staffs, see Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987) and Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979), on reh'g, 636 F.2d 1364 (5th Cir. 1981).

⁷⁹O.C.G.A. § 42-4-4; Kendrick v. Adamson, 51 Ga. App. 402, 180 S.E. 647 (1935); Duffey v. Bryant, 950 F. Supp. 1168 (M.D. Ga. 1997).

⁸⁰Hudson v. Palmer, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).

⁸¹Ga. Const. art. I, § 1, ¶ XVII. A decision by the Oregon Supreme Court points out that Georgia is one of only a handful of states that, like Oregon, have a specific constitutional guarantee in the state constitution that pertains to inmates. Sterling v. Cupp, 625 P.2d 123 (1981).

and unusual punishment. Several Georgia cases go on to say that jailers and other officers owe to inmates a duty to exercise ordinary diligence to treat them humanely and to refrain from oppressing them.⁸²

5 - 6(b.1) Strip Searches

Special care must be taken in the handling of personal searches. A strip search represents a serious intrusion upon personal rights.⁸³ The searches must be conducted in a reasonable manner balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates.⁸⁴ Correctional officers in a jail cannot properly conduct strip searches of incarcerated inmates in “an abusive fashion.”⁸⁵ It is permissible, however, to conduct full body visual strip searches on all jail detainees being booked without violating the inmates’ Fourth Amendment right to be free from unreasonable searches, regardless of whether there was any reasonable suspicion to believe that the inmates were concealing contraband, and regardless of whether inmates were arrested for minor offenses or misdemeanors.⁸⁶ Jails cannot require a woman in the second or third trimester of pregnancy to squat and cough during a strip search.⁸⁷

5 - 6(c) Protection and Security

The inmate must be protected from abuse by the sheriff’s staff and other inmates. The sheriff is responsible for the conduct of persons serving under him or her and must supervise their actions to ensure against cruelty⁸⁸ or physical abuse of the inmates.⁸⁹ Georgia law is very clear on the liability of the sheriff for misconduct of his or her staff.⁹⁰ Further, persons injured by a jailer have the same option in bringing an action on the jailer's bond that they have in bringing an action on the deputy's bond, provided that the sheriff shall not be liable for such misconduct and no claim or cause of action against the sheriff for such misconduct shall exist unless one of

⁸²Irwin v. Arrendale, 117 Ga. App. 1, 159 S.E.2d 719 (1967); Thomas v. Williams, 105 Ga. App. 321, 124 S.E.2d 409 (1962).

⁸³Justice v. City of Peachtree City, 961 F.2d 188, 192 (11th Cir. 1992).

⁸⁴Bell v. Wolfish, 441 U.S. 520, 560, 99 S. Ct. 1861, 1885, 60 L. Ed. 2d 447 (1979).

⁸⁵Evans v. Stephens, 407 F.3d 1272, 1281 (11th Cir. 2005), citing, Bell, *supra*.

⁸⁶Powell v. Barrett, 541 F.3d 1298 (11th Cir. 2008); Florence v. Board of Chosen Freeholders of the County of Burlington, 566 U.S. 318, 132 S. Ct. 1510 (2012).

⁸⁷O.C.G.A. § 42-1-11.3(b).

⁸⁸O.C.G.A. § 42-4-5(a).

⁸⁹Ga. Const. art. I, § 1, ¶ XVII.

⁹⁰Tate v. Nat'l Sur. Corp., 58 Ga. App. 874, 200 S.E. 314 (1938).

the following conditions exists: (1) The sheriff personally benefitted financially from the act complained of; (2) The sheriff was personally aware of and had actual knowledge of the act complained of and had actual knowledge that the act was illegal, was contrary to law, or was the breach of a duty imposed by law and either acted to cause or failed to prevent the act complained of; or (3) The sheriff failed to exercise ordinary care and diligence to prevent the condition or act which proximately caused the injury complained of.⁹¹

The Eighth Amendment of the United States Constitution protects the inmate from "cruel and unusual punishment." Furthermore, in the county jails, no inmate may be subjected to duress, willful inhumanity, oppression, or other cruel treatment.⁹² Use of physical force for punishment is prohibited. Whipping of inmates and all forms of corporal punishment shall be prohibited. All shackles, manacles, picks, leg irons, and chains shall be barred from use as punishment.⁹³ Georgia has prohibited the use of any type of mechanical restraint on a woman in the second or third trimester of pregnancy.⁹⁴ Punishment of inmates for infractions of correctional rules and regulations are restricted to isolation, restrictive diets, and other uniform standard humane punishment.⁹⁵

Therefore, the use of force against the inmate population should be highly restricted. Force may be used legitimately in self-defense, to protect another inmate, or to maintain order, and then only very carefully. It must never be used for the sake of punishment.⁹⁶ However, the use of deadly force may be acceptable to prevent escapes or apprehend escapees.⁹⁷ When force is used legitimately, only the least amount of force reasonably necessary to accomplish the objective is justified, and then only to accomplish one of the valid objectives.⁹⁸

Georgia has restricted the use of mechanical restraints on female inmates who are immediately postpartum. Only handcuffs can be used and must be applied with the female's hands in front of her body. Handcuffs are applied only for the reasons governing the use of force mentioned

⁹¹O.C.G.A. § 15-16-24.

⁹²O.C.G.A. §§ 42-4-5; 42-5-58.

⁹³O.C.G.A. § 42-5-58(a).

⁹⁴O.C.G.A. § 42-1-11.3.

⁹⁵O.C.G.A. § 42-5-58(b).

⁹⁶Westbrook v. State, 133 Ga. 578, 66 S.E. 788, 788 (1909); O.C.G.A. § 45-11-3.

⁹⁷O.C.G.A. § 17-4-20(c); See, Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985)(deadly force is only permissible "where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others"); Compare, Mullenix v. Luna, 136 S. Ct. 305, 309, 193 L. Ed. 2d 255 (2015).

⁹⁸Kingsley v. Hendrickson, 576 U.S. 389, 135 S. Ct. 2466 (2015).

above. The jail must prepare a written report detailing the need for handcuffing a female who is immediately postpartum each time such measure is taken.⁹⁹

5 - 6(d) Right of Silence

The right to remain silent is enjoyed by all citizens and is not automatically abrogated when a person is taken into custody.¹⁰⁰ Generally, the sheriff and his jailers have no more authority than arresting officers in the interrogation of inmates.

5 - 6(e) General Health of Inmates

Inmates have a right to expect a healthful environment.¹⁰¹ The minimum requirements necessary to ensure a healthful environment and adequate medical attention for inmate are found in the *Georgia Standards for Adult Pretrial Detention Facilities*. Many court suits result from a failure to maintain the required health and sanitation standards.

5 - 6(f) Medical Treatment

The National Sheriffs' Association recommends that all inmates be given a comprehensive physical examination upon admission to the detention facility. This exam should be repeated at regular intervals for the general good health and well-being of the incarcerated population. If at all possible, the sheriff's staff should be trained in first aid.¹⁰²

As indicated, the sheriff must furnish the inmates with prompt and efficient medical care and treatment.¹⁰³ The sheriff should either arrange for a physician to be immediately available or on call at all times or make arrangements with a local hospital for the emergency care of inmates.

Any inmate suspected of having an active communicable disease should be segregated immediately from the other inmates. If the illness is serious enough to warrant hospitalization, this step should be taken. The time spent in the hospital should be credited toward satisfaction of the inmate's sentence.¹⁰⁴

⁹⁹O.C.G.A. § 42-1-11.3.

¹⁰⁰U.S. Const. amend. V; Ga. Const. art. I, § 1, ¶ XVI.

¹⁰¹See, previous sections 5 - 5(k) *Inspections and 5 - 5(l) Food Service*.

¹⁰²Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§ 14.01 – 14.34.

¹⁰³O.C.G.A. § 42-4-4.

¹⁰⁴O.C.G.A. §§ 42-4-6; 42-5-52.

The governing authority having physical custody of an inmate is responsible for paying any medical and hospital care rendered to an inmate.¹⁰⁵ The county must pay for any medical treatment for a suspect or inmate in the custody of the county.¹⁰⁶ The city must pay for medical treatment for suspects or inmates in the custody of the city.¹⁰⁷

Officers are urged to “arrange for the inmate's health insurance carrier to pay the health care provider for the services or care rendered.”¹⁰⁸ However, most inmates released are uninsured or otherwise lack the financial resources to pay for medical care. Where an inmate is not eligible for health insurance benefits, the inmate “shall be liable for the costs of such medical care provided to the inmate and the assets and property of such inmate may be subject to levy and execution under court order to satisfy such costs.”¹⁰⁹ Essentially, this code provision creates a right of recovery on the part of the governmental unit with custody of the inmate against the inmate for medical services paid for by the government. However, these Code sections do not relieve the county governing authority having the physical custody of an inmate from its responsibility to pay for any medical and hospital care rendered to such inmate regardless of whether such individual has been convicted of a crime.¹¹⁰

5 - 6(g) Diet

Nutritious and well-balanced meals are essential to the creation of a healthful environment. By law, the sheriff must serve the inmates at least two substantial and wholesome meals a day, preferably with no more than 14 hours between each hot meal.¹¹¹ To be "substantial and wholesome" the meals should contain the minimum dietary allowances as prescribed by the Food Nutrition Board of the National Research Council.

If food must be transported before it is served, for example to a work crew, it should be covered in dust proof, nonabsorbent containers. Furthermore, dietary adjustments ordered by a physician for ill or incapacitated inmates must be made.¹¹² Religious diets should be provided

¹⁰⁵O.C.G.A. §§ 42-4-51; 42-4-12; Ga. Op. Atty. Gen. No. U86-23 (It is the responsibility of the governmental unit, subdivision, or agency having the physical custody of an inmate to provide any needed medical and hospital attention).

¹⁰⁶Cherokee Cty. v. N. Cobb Surgical Associates, P.C., 221 Ga. App. 496, 471 S.E.2d 561 (1996).

¹⁰⁷Johnson v. Mayor & City Council of City of Carrollton, 249 Ga. 173, 176, 288 S.E.2d 565, 569 (1982); Ga. Op. Atty. Gen. No. U90-8.

¹⁰⁸O.C.G.A. § 42-4-4(a)(2).

¹⁰⁹O.C.G.A. § 42-4-51(d).

¹¹⁰O.C.G.A. § 42-4-51(j).

¹¹¹O.C.G.A. § 42-4-32(b); Georgia Standards for Adult Pretrial Detention Facilities, 2020 Edition, §§ 18.01-18.13.

¹¹²O.C.G.A. § 42-4-32(d).

when an inmate's religious beliefs require adherence to dietary laws. A jail should accommodate an inmate's religious dietary restrictions, subject to budgetary and logistical limitations, but only when the belief is “truly held.”¹¹³

5 - 6(h) Sanitation Standards

The Georgia Department of Public Health developed minimum sanitation standards applicable to all detention facilities. These standards touch upon a number of aspects associated with the inmate's well-being, including the source and purity of the water supply and solid waste disposal.¹¹⁴

Concerning water supply, these standards require that portable water containers with dust proof lids be provided at all work areas, for athletic participants, and for all inmates confined without access to normal water supplies. The containers must be constructed of nontoxic, easily cleaned material. All containers should be cleaned and sanitized before use. Single service (disposable) cups protected from contamination must be provided to inmates at all portable water containers.

Inmates shall be given the opportunity to maintain reasonable personal hygiene. If an inmate cannot afford soap, toothpaste, or a toothbrush, the jail should provide these items. All inmates should be required to shower at least twice a week and shall be allowed to shower daily if they desire. Laundry facilities and services should be provided for clothing, sheets, and towels. Blankets should be changed or cleaned on a regular schedule, and mattresses fumigated or periodically replaced.¹¹⁵

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5 - 6(i) Recreation

The National Sheriffs' Association recommends that a program of physical exercise and recreation be provided for all inmates. Case law has established that exercise outside the individual cell for the health and well-being of the inmates is required. Ideally, adequate facilities for both indoor and outdoor exercise should be provided, since this ensures the availability of exercise regardless of the weather; however, there is no constitutional right that

¹¹³Hathcock v. Cohen, 287 Fed. Appx. 793, 801 (11th Cir. 2008); See, Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C.A. § 2000cc-1

¹¹⁴Georgia Department of Public Health Rule 511-3-3; Georgia Department of Public Health Rule 511-3-4.

¹¹⁵Goldsby v. Carnes, 365 F. Supp. 5 (W.D. Mo. 1973); Jail v. Parham, 430 F. Supp. 304 (N.D. Ga. 1976); James v. Wallace, 406 F. Supp. 318 (M.D. Ala. 1976)~ aff'd in substance; Newman v. Alabama, 559 F. 2d 283 (5th Cir. 1977).

¹¹⁶Georgia Standards for Adult Pre-Trial Detention Facilities, 2020 Edition, §§ 15.01 – 15.19.

inmates be outdoors or within special facilities such as a gymnasium.¹¹⁷

5 - 7 Use of Inmates for Profit or Private Gain

Requiring pre-trial detainees to perform work is strictly prohibited by the Thirteenth Amendment of the United States Constitution.¹¹⁸ A sheriff arguably is permitted to allow pre-trial detainees to voluntarily perform services at the correctional facility and for the benefit of the correctional facility.¹¹⁹ The safest course, however, is for a sheriff not to direct pre-trial detainees to perform work. Additionally, neither sheriffs nor jailers may use inmates to perform personal work for them. The law is clear that those having charge over inmates may not profit from their work. Thus, sheriffs and jailers shall not hire out inmates for personal gain.¹²⁰

It is unlawful for any sheriff or deputy sheriff to use any inmate of a jail or to allow such inmate to be used for any purpose that results in a private gain to any individual. Any person who violates this law shall be guilty of a misdemeanor. This prohibition does not apply to:

- Work by inmates on private property because of natural disasters;
- Work on private property as a form of victim compensation;
- Work or other programs or releases which have the prior approval of the board of commissioner of corrections;
- Community service work programs;
- Work release programs; or,
- Voluntary inmate labor programs.¹²¹

No sheriff, deputy, or any other officer who is in charge of or has control of inmates shall be interested in any manner in the work or profit of the labor of any inmate. In addition, no sheriff, deputy sheriff, or other officer in control of inmates shall receive any pay, gift, gratuity, or favor from any person interested, either directly or indirectly, in the labor of an inmate. Any

¹¹⁷Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979), on reh'g, 636 F.2d 1364 (5th Cir. 1981).

¹¹⁸U.S. Const. amend. XIII, § 1 (prohibits involuntary servitude for persons not convicted).

¹¹⁹See, Villarreal v. Woodham, 113 F.3d 202 (11th Cir. 1997), in which the Court of Appeal held that it was not a violation of the Fair Labor Standards Act for a Florida sheriff to direct a pretrial detainee to perform language translation services since the detainee was not an FLSA "employee", the detainee's standard of living was protected, and the services performed by the detainee were for the benefit of the correctional facility.

¹²⁰O.C.G.A. § 42-1-5.

¹²¹O.C.G.A. § 42-1-5.

person who violates this law shall be guilty of a felony, punishable by imprisonment for a period of not less than two nor more than five years, but the offense may be reduced to a misdemeanor upon the recommendation of the trial jury. Whether punished as a felony or as a misdemeanor, the person violating this law shall be summarily discharged from service.¹²²

5 - 8 Commissary and Inmate Telephone Funds

A sheriff may not use county property, facilities, or other resources to earn revenue independent from the county budgeting process and keep that revenue for use of the sheriff's department.¹²³

5 - 9 Property Bonds

The sheriff may not prohibit the posting of property bonds. However, additional requirements for the use of real property may be determined at the discretion of the sheriff. The sheriff shall not prohibit a nonresident of the county from posting a real property bond if such real property is located in the county in which it is offered as bond and if such property has sufficient unencumbered equity to satisfy the sheriff's posted rules and regulations as to acceptable sureties.¹²⁴

5 - 10 Cash Bonds

Unless transferred to the appropriate clerk of court, the sheriff shall deposit cash bonds held by the sheriff in one or more interest bearing accounts.¹²⁵

The financial institution in which the funds are deposited shall remit, after service charges or fees are deducted, the interest generated by such funds directly to the Georgia Superior Court Clerks' Cooperative Authority for distribution to the Georgia Public Defender Council.¹²⁶

In counties where the service charges or fees of the bank would exceed the interest received, the sheriff shall be exempt from this requirement. In such counties, the sheriff shall send a

¹²²O.C.G.A. § 42-5-37.

¹²³Lawson v. Lincoln Cty., 292 Ga. App. 527, 531, 664 S.E.2d 900, 903 (2008) (This case involved revenue derived from contracts with third party regarding telephone service at county jail and sale of pre-paid phone cards to inmates. Revenues from the jail commissary were not at issue in the case. The county and the sheriff had agreed to handle the jail commissary funds under the terms of a local policy.)

¹²⁴O.C.G.A. § 17-6-15(b)(3).

¹²⁵O.C.G.A. § 15-16-27(a).

¹²⁶O.C.G.A. § 15-16-27(b).

written notice to the Georgia Superior Court Clerks' Cooperative Authority.¹²⁷

5 - 11 Bond Fees

The sheriff shall charge a fee of \$20.00 for taking bonds in criminal cases.¹²⁸

Additionally, the Peace Officer, Prosecutor, and Indigent Defense Funding Act authorizes additional penalty assessments in criminal and traffic cases and provides that the proceeds derived therefrom may be used for the purpose of providing training to law enforcement officers and prosecuting officials.¹²⁹ At the time of posting bail or bond involving violation of any criminal or traffic law, an additional sum equal to the lesser of \$100.00 or 10% of the original amount of bail or bond, plus the lesser of an additional \$100.00 or 10% of the original amount of bail or bond shall be posted.¹³⁰

Also, the Jail Staffing and Construction Act authorizes additional penalty assessments in criminal and traffic cases and cases involving violations of ordinances of political subdivisions and provides that the proceeds derived therefrom may be used for constructing, operating, and staffing of jails, correctional institutions, and detention facilities by counties.¹³¹ At the time of posting bail or bond involving violation of any criminal or traffic law, an additional sum equal to 10% of the original amount of bail or bond shall also be posted.¹³²

As an example, if an individual has bail set at \$1,000.00, the bond amount posted will be \$1,300.00, with an additional \$20.00 paid to the sheriff:

	\$1,000.00 - original bond
+	\$100.00 - Peace Officer Fund [O.C.G.A. § 15-21-73(a)(2)(A), \$100.00 or 10% of the original amount of bail or bond].
+	\$100.00 - Indigent Defense Fund [O.C.G.A. § 15-21-73(a)(2)(B), \$100.00 or 10% of the original amount of bail or bond].
+	\$100.00 - Jail Construction and Staffing Fund [O.C.G.A. § 15-21-93, 10% of original bond of \$1,000.00].
=	\$1,300.00 + \$20.00 Sheriff's fee [O.C.G.A. § 15-16-21(c)(8)] for a total of \$1,320.00]

¹²⁷O.C.G.A. § 15-16-27(c).

¹²⁸O.C.G.A. § 15-16-21(c)(8).

¹²⁹O.C.G.A. § 15-21-71.

¹³⁰O.C.G.A. § 15-21-73.

¹³¹O.C.G.A. § 15-21-91.

¹³²O.C.G.A. § 15-21-93.

5 - 12 Bail Bonding Companies

It is unlawful for the sheriff, any elected official, officer of the court, other law enforcement officer, or attorney to engage either directly or indirectly in the bail bond business.¹³³

Bondsmen or persons who hold themselves out as signers or sureties of bonds for compensation are declared to be professional bondsmen.¹³⁴ A professional bondsperson is one who holds himself or herself out as a signer or surety of bonds for compensation who must meet the following qualifications: (1) Is 18 years of age or over; (2) Is a resident of the State of Georgia for at least one year before making application to write bonds; (3) Is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude; and (4) Is approved by the sheriff and remains in good standing with respect to all applicable federal, state, and local laws and all rules and regulations established by the sheriff in the county where the bonding business is conducted.¹³⁵

The sheriff of the county in which the bonding business is conducting business or is seeking approval to conduct business shall initiate a criminal background investigation to ensure that a professional bondsman has not been convicted of a felony or a crime involving moral turpitude in this state or any other jurisdiction. The sheriff shall require the professional bondsman to furnish two full sets of fingerprints which the sheriff shall submit to the Georgia Crime Information Center. The center shall submit a full set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.¹³⁶

The sheriff shall publish and make available written rules and regulations defining acceptable sureties and prescribing under what conditions sureties may be accepted.¹³⁷ Notwithstanding, a sheriff is not required to accept a professional bond company or bonds person as a surety.¹³⁸

If the sheriff determines that a professional bonding company is an acceptable surety, the rules and regulations shall require, but shall not be limited to:

- Complete documentation showing the composition of the company to be an individual, a trust, or a group of individuals;
- Complete documentation for all employees, agents, or individuals authorized to sign or

¹³³O.C.G.A. § 45-11-8.

¹³⁴O.C.G.A. § 17-6-50(a).

¹³⁵O.C.G.A. § 17-6-50(b).

¹³⁶O.C.G.A. § 17-6-50(c).

¹³⁷O.C.G.A. § 17-6-15(b).

¹³⁸O.C.G.A. § 17-6-15(b)(2).

- act on behalf of the bonding company;
- Complete documentation showing that the company holds a valid business license in the jurisdiction where bonds will be written;
 - Fingerprints and background checks of every individual who acts as a bondsman for the bonding company seeking approval;
 - Establishment of a cash escrow account or other form of collateral as follows:
 - (i) For any professional bonding company that is new to the county or that has operated continuously in the county for less than 18 months, in an amount and upon terms and conditions as determined and approved by the sheriff;
 - (ii) Once a professional bonding company has operated continuously for 18 months or longer in the county, then any such cash escrow account or other form of collateral shall not exceed 10 percent of the current outstanding bail bond liability of the professional bonding company; and
 - (iii) No professional bonding company shall purchase an insurance policy in lieu of establishing a cash escrow account or posting other collateral; provided, however, that any professional bonding company which was using an insurance policy as collateral as of December 31, 2013, may continue to do so at the discretion of the sheriff.
 - Establishment of application, approval, and reporting procedures for the professional bonding company deemed appropriate by the sheriff which satisfy all rules and regulations required by the state and the rules and regulations required by the sheriff;
 - Applicable fees to be paid by the applicant to cover the cost of copying the rules and regulations and processing and investigating all applications and all other costs relating thereto; and
 - Additional criteria and requirements for approving and regulating bonding companies to be determined at the discretion of the sheriff.¹³⁹

Sureties on criminal bonds in any court shall not charge or receive more than 15 percent of the face amount of the bond set, which amount includes the principal and all applicable surcharges, as compensation from defendants or from anyone acting for defendants; provided, however, that a surety may charge and receive a minimum of \$50.00 per bonded charge or offense as compensation, regardless of whether such compensation exceeds 15 percent of the face amount of any bond set.¹⁴⁰ No professional bondsman or his or her agents or employees who receive compensation for becoming the surety on a criminal bond shall thereafter receive any other sum in the case.¹⁴¹

¹³⁹O.C.G.A. § 17-6-15(b)(1).

¹⁴⁰O.C.G.A. § 17-6-30.

¹⁴¹O.C.G.A. § 17-6-54(a).

If the surety surrenders a defendant into the custody of the court, the sheriff, or other law enforcement officer before final disposition of the case, the surety is required to return to the principal the compensation received for signing the bond as surety if such surrender of the defendant is for reasons other than:

- The defendant's arrest for a crime other than a traffic violation or misdemeanor;
- The defendant's cosigner attests in writing the desire to be released from the bond;
- The defendant fails to provide to the court and the surety the defendant's change of address;
- The defendant fails to pay any fee due to the surety after being notified by certified mail that the same is past due;
- The defendant fails to notify the court and surety upon leaving the jurisdiction of the court; or
- The defendant provides false information to the surety.¹⁴²

In the event of a forfeiture on the bond by the defendant, the surety shall have the right to surrender into custody the defendant who is the principal on the bond without returning any compensation paid by the defendant for the signing of the bond.¹⁴³

5 - 13 Bail Recovery Agents

The term "bail recovery agent" means any person who performs services or takes action for the purpose of apprehending the principal on a bail bond granted in this state or capturing a fugitive who has escaped from bail in this state for gratuity, benefit, or compensation.¹⁴⁴

Any sheriff of a county shall require any professional bondsman who is a resident of or doing business in the sheriff's county to register his or her bail recovery agents in that county. The professional bondsman must submit to the sheriff, in a form and manner to be determined by the sheriff, a list of all bail recovery agents whose services may be used by such bondsman.¹⁴⁵

Each professional bondsman shall issue a uniform identification card to each bail recovery agent registered by the professional bondsman which identification card shall include the bail recovery agent's name, height, weight, address, photograph, and signature. The identification card shall also include the signature of the professional bondsman who has registered the bail

¹⁴²O.C.G.A. § 17-6-54(a).

¹⁴³O.C.G.A. § 17-6-54(b).

¹⁴⁴O.C.G.A. § 17-6-56(a).

¹⁴⁵O.C.G.A. § 17-6-56(c).

recovery agent. A bail recovery agent shall be required to carry such identification card while acting in the capacity as a bail recovery agent.¹⁴⁶

Any bail recovery agent who enters any local police jurisdiction in pursuit of and for the purpose of apprehending the principal on a bail bond or capturing a fugitive or engaging in surveillance of such principal or fugitive shall, prior to taking any action in his or her capacity as a bail recovery agent in that local police jurisdiction, notify by facsimile transmission or telephone the sheriff and police chief of the local police jurisdiction in which the surveillance, apprehension, or capture is to take place unless it is to take place in public.¹⁴⁷

An out-of-state bail recovery agent shall submit proof to the sheriff or police chief that he or she is qualified to be a bail recovery agent under the requirements of his or her home state. An out-of-state bail recovery agent shall deliver a certified copy of the bail bond or of the forfeiture or failure to appear to the sheriff or chief of police. Such out-of-state bail recovery agent, if not qualified in his or her home state or if his or her home state does not require bail recovery agents to be qualified, shall employ a Georgia bail recovery agent who is lawfully registered pursuant to this part.¹⁴⁸

5 - 14 Transportation of Mental Patients

Any peace officer, within 72 hours after receiving a physician's certificate, commonly known as a 1013 Form, stating that a person appears to be mentally ill and in need of involuntary treatment, must make a diligent effort to take the person, named in the certificate, into custody and deliver him or her to the nearest available emergency receiving facility serving the county for an examination.¹⁴⁹

A court (probate, or juvenile if person is under 17 years of age) may issue an order requiring any peace officer to take a person into custody and deliver that person for examination to the nearest available receiving facility or to a physician who has agreed to examine the individual for the purpose of deciding if he or she is mentally ill and in need of involuntary treatment. The court order must be based either on a timely physician's certificate or on the affidavits of two persons attesting that they have seen the person within the past 48 hours, and based on their observations, they have reason to believe that such person is mentally ill and in need of involuntary treatment.¹⁵⁰

¹⁴⁶O.C.G.A. § 17-6-57(c).

¹⁴⁷O.C.G.A. § 17-6-57(a).

¹⁴⁸O.C.G.A. § 17-6-57(b).

¹⁴⁹O.C.G.A. § 37-3-41(a).

¹⁵⁰O.C.G.A. § 37-3-41(b).

In addition, a peace officer may take any person to a physician or directly to an emergency receiving facility for an examination if the person is committing a penal offense and the officer has probable cause for believing that the person is mentally ill and in need of involuntary treatment. The officer need not formally tender charges against the individual prior to taking him or her in for an examination.¹⁵¹ Whenever a person is taken into custody for the purpose of transport to a physician or a medical facility for an examination, the officer must complete a written report detailing the circumstances under which such person was taken into custody.¹⁵²

Once an individual has been delivered to an emergency receiving and/or treating facility by the peace officer of the county where the patient was found, any subsequent transportation of the individual to another receiving and/or treating facility becomes the responsibility of the governing authority of the county of the patient's residence, which county becomes responsible for arranging all required transportation of the mental patients.¹⁵³

The sheriff of the county of the patient's residence has no mandatory statutory duty to transport the patient from one receiving and/or treating facility to another upon request of the facility, patient, or patient's family. However, upon the request of the county board of health, the court (probate court, or juvenile court if the individual is under 17 years of age)¹⁵⁴ shall order the sheriff to transport the mental patient to a state owned or operated facility in such manner as the patient's condition demands. At any time, the community mental health center is satisfied that the patient can be transported safely by family members or friends, such private transportation shall be encouraged and authorized.¹⁵⁵

The type vehicle used shall be in the discretion of the governing authority, but whenever possible, marked vehicles normally used to transport criminals or those accused of crimes should not be used for the transport of mental patients.¹⁵⁶ No female patient shall be transported at any time without another female in attendance who is not a patient, unless such female patient is accompanied by her husband, father, adult brother, or adult son.¹⁵⁷

Whenever a sheriff or deputy sheriff transports an adult involuntary patient to a mental health facility, the sheriff may request (in writing) that a notice of that patient's discharge from the facility be given to the sheriff, provided that the patient's guardian consents (in writing) to the

¹⁵¹O.C.G.A. § 37-3-42.

¹⁵²O.C.G.A. §§ 37-3-41(c), 37-3-42(a).

¹⁵³O.C.G.A. § 37-3-101.

¹⁵⁴O.C.G.A. § 37-3-1(4).

¹⁵⁵O.C.G.A. § 37-3-101.

¹⁵⁶O.C.G.A. § 37-3-101.

¹⁵⁷O.C.G.A. § 37-3-101.

disclosure or that the court which ordered the involuntary treatment provides for the notice in its order of commitment.¹⁵⁸

The lack of a sufficient number of beds in mental health facilities creates a hardship for sheriffs' offices that must transport a patient long distances. The Georgia Sheriffs' Association has asked the state legislature for relief on behalf of the sheriffs. GSA recognizes that statistical data can further this effort by demonstrating the large expenditure of work hours and other resources by sheriffs in fulfilling their statutory responsibilities regarding mental health transports. Without comprehensive data representing a statewide problem, legislators are less inclined to recognize the impact on the Office of Sheriff. The necessary data must be gathered and supplied to GSA by each of the 159 sheriffs' offices. GSA maintains a database that every sheriff's office should use to aid in this endeavor. GSA can assist with training the person you designate in the use of forms and data entry.

5 - 15 Interstate Inmate Transport - Reserved

5 - 16 Jail Staffing - Reserved

5 - 17 Jail Policy & Procedure - Reserved

¹⁵⁸O.C.G.A. § 37-3-166(d).

CHAPTER 6 – THE OFFICE OF SHERIFF AS AN OFFICER OF THE COURT

The Sheriff is responsible for basic activities of the court.

In addition to the service and execution of warrants, the sheriff is responsible for three other basic court activities: (1) bailiff duties, (2) the service of summonses and subpoenas, and (3) the service of other civil process papers.

6 - 1 Bailiffs' Duties

The sheriff must attend, either in person or by deputy, all sessions of the superior court and when required by the probate judge, sessions of the probate court as well. Unless authorized by the judge to leave, the sheriff or a deputy must be in attendance at all times while the court is in session.¹

With the approval of the superior court judge, the sheriff may select such bailiffs as are necessary to conduct the business of the court.² A judge who feels additional bailiffs are needed may appoint them as deemed necessary.³ A sheriff may personally serve as bailiff, may appoint one or more deputies to serve in that capacity, or may hire civilian employees to serve as bailiffs.⁴

Bailiffs must subscribe to the following oath:

"You shall take all juries committed to your charge to the jury room or some other private and convenient place designated by the court and you shall not allow the jurors to receive any books, papers, nourishment, or hydration other than water, or to use any electronic communication device except as directed and approved by the court. You shall make no communication with the jurors nor permit anyone to communicate with the jurors except as specifically authorized by the court. You shall discharge all other duties which may devolve upon you as bailiff to the best of your skill and power. So help you God."⁵

¹O.C.G.A. § 15-16-10(a)(2).

²O.C.G.A. § 15-6-35.

³*Id.*

⁴Ga. Op. Atty. Gen. No. U87-24 (Full time deputy sheriffs may serve as courtroom bailiffs).

⁵O.C.G.A. § 15-12-140.

The bailiff escorts the jury members to the jury room, to the courtroom, to meals, and, if requested, to their hotel rooms. He or she attends to the needs of the jury and guards the members to ensure they are not subjected to outside influences.⁶

Outside influences include the bailiff. Under no circumstances may a bailiff answer jury questions related to the jury's decision-making process based on the bailiff's perception of the question, the law, or the evidence.⁷ To avoid even the appearance of impropriety, the bailiff should adhere to the oath and avoid all communication with the jury, because the very nature of the bailiff's position serves to heighten the prejudicial potential a bailiff's communication may have on the jury.⁸

6 - 2 The Service of Summonses and Subpoenas

Another one of the major duties of the sheriff as an officer of the court is the service of summonses and subpoenas. A summons is a writ (court order) notifying a person that he or she must come to court on a given date. A subpoena is a type of summons.

Subpoenas are used either to obtain attendance of witnesses or to procure evidence for the court. A subpoena ad testificandum is a writ commanding a person to appear in court to testify as a witness. A subpoena duces tecum is a writ commanding a person to produce documents or other evidence in court.

6 - 2(a) Methods of Service

After a suit is initiated, the clerk of the court delivers the necessary summonses to the sheriff. The summonses may be served personally by the sheriff or by one of the sheriff's deputies.⁹ Personal service is the preferred method of notification (i.e., the sheriff or a deputy personally delivers the summons to the person summoned). Personal service is actual delivery of the process to whom it is directed.¹⁰

⁶Wellmaker v. State, 124 Ga. App. 37 (1971) (Failure of the bailiff to supervise the jury at all times is ground for reversal).

⁷Turpin v. Todd, 271 Ga. 386 (1999).

⁸Cooke v. State, 230 Ga. App. 326 (1998).

⁹O.C.G.A. § 9-11-4(c).

¹⁰O.C.G.A. § 9-11-4(e)(7).

However, alternate methods of service are sometimes permitted. The following alternate methods are listed in order of their preference:

- Service on another person. In some situations it is permissible to render service on a person of suitable age and mental ability residing at the same place as the person sought to be served.¹¹ An individual who is at least 15 years old is of “suitable age” to serve with process.¹² However, service on a person who does not reside on the premises is not proper. Courts have held that service upon a domestic day laborer (maid or baby-sitter) is not sufficient, since that person does not reside on the premises as required for this sort of service to be valid.¹³
- Tacking. If the principal sum involved in a suit is less than \$200, and if reasonable efforts have been made to obtain personal service, service may be made by tacking the summons and complaint in a conspicuously marked and waterproof packet to the upper part of the door to the person's most generally known place of abode and on the same day mailing by certified or registered mail an additional copy to the defendant's last known address.¹⁴
- Publication. When the person to be served has no known address, service may be made by publication.¹⁵ Service by publication is the least preferred method, since it is least likely to put a person on notice of the pending court action. Under this method of service, the summons must be published four times, at least seven days apart, in a newspaper in the county where the suit is filed.¹⁶ Service by publication can be made where the plaintiff does not know who is to be served. This is common in probating a will, which requires that all heirs be notified.

Failure of the Sheriff to carry out these duties of service can result in adverse consequences to the plaintiff. Failure to perfect service of process can give rise to a defense of insufficient service of process.¹⁷ Further, untimely service of process may result in dismissal of a complaint. When an action is filed within the applicable limitation period but is not served upon the defendant within five days of receipt of the summons and complaint by the person making

¹¹O.C.G.A. § 9-11-4(e)(7).

¹²Holmes & Company of Orlando v. Carlisle, 289 Ga. App. 619 (2008).

¹³Mahone v. Marshall Furniture Co., 142 Ga. App. 242(1977).

¹⁴O.C.G.A. § 9-11-4(e)(6).

¹⁵O.C.G.A. § 9-11-4(f)(1)(A).

¹⁶O.C.G.A. § 9-11-4(f)(1)(C).

¹⁷O.C.G.A. § 9-11-12(b)(5).

service thereafter or within the limitation period, the plaintiff must establish that he acted in a reasonable and diligent manner in attempting to insure that proper service was effected as quickly as possible.¹⁸

6 - 2(b) Major Types of Summonses

The service of summonses to witnesses is one of the sheriff's most important responsibilities.

- Witness summons. A subpoena to appear as a witness may be served by any sheriff, deputy, or person 18 years of age or older. Proof may be shown by return or certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail or statutory overnight delivery, and the return receipt shall constitute proof of service. Service upon a party may be made by serving his counsel of record.¹⁹ If the witness to be subpoenaed is confined in a penal institution under the control the Department of Corrections, the judge may issue an order to the Department of Corrections requiring delivery of the prisoner to the sheriff of the county where the prisoner is desired as a witness. The sheriff and deputies must take custody of the prisoner, guard him or her throughout the course of the proceeding and return him or her to the original place of detention after discharge by the trial judge. This provision for producing prisoners as witnesses does not extend to prisoners under the death sentence, but the requesting party may interview the proposed witness.²⁰
- Coroner's Inquest. Whenever a coroner receives notice of the death of any person within the limits of the county of which he is coroner, which death occurred under circumstances which make it his duty, under the law, to hold an inquest, he shall make out a precept directed to the sheriff or any constable of the county having jurisdiction requiring him to summon a jury of inquest selected from the grand jury or traverse jury lists of the last excused term of the superior court of such county to appear before the coroner at the time and place mentioned in the precept, which precept may be in the following form:

¹⁸Giles v. State Farm Mut. Ins. Co., 330 Ga. App. 314 (2014).

¹⁹O.C.G.A. § 24-13-24.

²⁰O.C.G.A. § 24-13-60.

STATE OF GEORGIA

_____ County

To the sheriff or any lawful constable of said county,

Greeting:

You are required immediately to summon six persons of said county, chosen from the lists of grand jurors and traverse jurors of the last excused term of the superior court of said county, to be and appear before me, the undersigned, coroner of the county aforesaid, at _____, in said county, on the _____ day of _____ at _____ : _____ . M. of that same day, then and there to inquire of, do, and execute all such things as in behalf of the state shall be given them in charge concerning the death of _____ (or a person unknown, as the case may be), and be you then and there with this precept to certify what you have done in the premises and further to do whatsoever else may in behalf of the state be enjoined upon you.

Given under my hand and seal, this the _____ day of _____, in the year of our Lord _____.

_____ Coroner (L.S.)

Such precept shall be immediately executed by the sheriff or constable in whose hands it may be placed; and, if the services of the sheriff or a constable cannot be conveniently obtained, the coroner may summon the jury himself.²¹

6 - 3 Service of Other Civil Process Papers

The sheriff's court-related duties and responsibilities also include the service of a wide variety of civil process papers. In general, civil process may be defined as the method by which civil (noncriminal) cases are initiated, carried out, and finalized.

Most civil proceedings pertain to disputes involving property ownership or the collection of debts. In addition to the service of summonses, subpoenas, and other papers, the sheriff exercises a number of broad responsibilities in such matters, including levying on (seizing) property.

²¹O.C.G.A. § 45-16-38.

6 - 3(a) Levy

Sheriffs and their deputies are required to levy on property to satisfy judgments of the courts. Such levies are conducted under a writ of execution. A writ of execution is a command issued to the sheriff authorizing and requiring him or her to execute (carry out) the command or decision of the court. The writ is directed to "all and singular the sheriffs of the state and their lawful deputies."²² Writs of execution may issue on all property, both real and personal, which is subject to levy and sale.²³

An officer making a levy under a writ of execution must enter the levy on the face of the writ and must plainly describe the property being levied upon, including the amount of the defendant's interest in such property.²⁴ The sheriff or other executing officer may make minor amendments to the writ (such as changing an incorrect date) to make it conform to the facts of the case at the time of the execution.²⁵ Note, however, that such amendments may only be made by the officer who is actually executing the writ. A writ executed by the sheriff, for example, is not amendable by a deputy, or vice versa.

The power to levy is held solely by an officer with the authority of the law in the jurisdiction in which the property is located. The sheriff may levy on land outside his or her jurisdiction only when the land outside the jurisdiction is attached to land inside the sheriff's county and the defendant is a resident of the sheriff's county.²⁶

When a levy is made upon land, the executing officer must leave written notice to that effect within five days of the levy by one of the following methods:

(a) In all cases of levying on land, written notice of the levy must be given personally or delivered by certified mail or statutory overnight delivery to the tenant in possession and to the defendant if not in possession.

(b) The officer levying on land under an execution, within five days thereafter, shall leave a written notice of the levy with the tenant in possession of the land, if any; and, if the defendant

²²O.C.G.A. § 9-13-10.

²³*Id.*

²⁴O.C.G.A. § 9-13-12.

²⁵O.C.G.A. § 9-13-5.

²⁶O.C.G.A. § 9-13-52; Fambrough v. Amis, 58 Ga. 519 (1877).

is not in possession, the officer shall also leave a written notice with the defendant if he is in the county or shall transmit the notice by mail to the defendant within the time aforesaid.²⁷

If the sheriff is a party to the dispute, the execution is directed to the county coroner, and to all sheriffs of the state other than the interested sheriff. The execution may be levied, served, and returned by the coroner or other sheriff at the option of the party seeking the remedy (usually the plaintiff).²⁸

A fieri facias (fi. fa.) is a writ of execution commanding the sheriff to levy on a debtor's goods in order to satisfy a money judgment. A defendant in a fi. fa. has the right to designate on which of his or her property the levy is to be executed.²⁹ If the defendant points out which of his or her property he or she wishes to be levied on first, the sheriff (or deputy) must do so if, in his or her judgment, the property is of sufficient value to cover the amount of the judgment and the cost of the levy. If such property is in the possession of a person not party to the judgment, the sheriff or deputy should not levy thereon, but should proceed to levy on such property as may be found in the hands and possession of the defendant.³⁰

If the property to be levied upon is in the form of a growing crop, the sheriff or deputy cannot levy upon it until the crop is mature and fit to be gathered. However, an officer may levy on growing crops in cases where the debtor absconds or attempts to remove himself from the county or state.³¹

A defendant is not required to designate which of his or her belongings or what portions of his or her land are to be levied upon, and if the defendant does not wish to make this choice, the levy upon property may be completed at the discretion of the officer. As a general rule, so long as the levying officer acts reasonably, such actions will be protected by law.

Sufficient labor to remove items and transportation of items subject to levy are the responsibility and at the expense of the plaintiff. The sheriff's role is that of peacekeeper and to ensure the levy is executed within the terms of the order. Safekeeping of the levied property is the responsibility and at the expense of the plaintiff within the county where the levy occurred, at allocation approved by the sheriff. Vehicles will be stored likewise at a wrecker lot approved

²⁷O.C.G.A. § 9-13-13.

²⁸O.C.G.A. § 9-13-11.

²⁹O.C.G.A. § 9-13-50.

³⁰*Id.*

³¹O.C.G.A. § 9-13-54.

by the sheriff. The plaintiff will most likely be held liable for any damage to or loss of levied property. The property must be available for inspection prior to the sheriff's sale.

6 - 3(b) Land Registration Disputes

The superior court exercises exclusive original jurisdiction in all petitions and proceedings concerning land in the county.³² When a petition for land registration is filed, for example, the clerk of the superior court issues process papers directing the sheriff to notify all defendants named in the petition and all other persons “whom it may concern.”³³ Such persons are thereby given the opportunity to show cause before the court why the petition should not be granted. If the petitioner or plaintiff is not a resident, he or she must appoint a resident agent or an attorney upon whom process papers and notices may be served.³⁴ During this period, the clerk also places notices of the proceeding in the newspaper to alert those persons named in the petition and any other persons who may have an interest in the dispute.

If service is required upon the state, it must be made upon the attorney general.³⁵ A city, town, or municipality is properly served by delivery of civil process to the mayor or to a majority of the members of the local council.³⁶ Service of process upon a county can be more complicated. As a rule, a county is served through the judge of the probate court.³⁷ Some county disputes, however, require service upon a majority of the board of county commissioners; in other disputes, service must be made upon the chairman of the board of commissioners. A sheriff would, therefore, be wise to consult with the county attorney in all matters concerning service of process upon a county.

Form of notice. The following form of notice is used in land registration cases:³⁸

³²O.C.G.A. § 44-2-60.

³³O.C.G.A. § 44-2-67.

³⁴O.C.G.A. § 44-2-68.

³⁵O.C.G.A. § 44-2-69.

³⁶*Id.*

³⁷*Id.*

³⁸O.C.G.A. § 44-2-67.

To (name of defendant):

Please take notice that (name of plaintiff) has filed in said court a petition seeking to register, under the provisions of the Land Registration Law, the following described lands (description of land). You are notified to show cause to the contrary, if any you have, before said court on or before the _____ day of _____, 20____.

Signature of Clerk

The sheriff must post notice of the proceeding in a conspicuous place on the property within 30 days from the date the petition is filed. If there is more than one tract of land, the sheriff must post the notice upon each tract included in the petition.³⁹

The sheriff is required to visit the land within 30 days of the petition and ascertain the names and mailing addresses of every person above the age of 14 years actually occupying the premises. He or she must then deliver this data to the court. Upon receipt of this information, the clerk must either notify all such persons of the proceeding by registered mail, or the clerk may require the sheriff to notify them personally.⁴⁰

6 - 3(c) Mortgage Foreclosures

In foreclosure cases, the plaintiff petitions the superior court in the county where the mortgaged property is located. If the court finds for the plaintiff, a rule is issued by the court directing that the principal (the amount owed), interest, and foreclosure costs be paid to the court on or before the first day of the next term of court. This ruling is either published twice a month for two months or is served on the mortgagor, his or her special agent, or his or her attorney at least 30 days prior to the date set by the court for the payment of the money.⁴¹

If the payment is not received, the clerk of the superior court issues a writ of execution commanding the sheriff to seize the mortgaged property. After foreclosing on the land, the sheriff must advertise its sale in one or more public newspapers weekly for four weeks prior to the date of sale.⁴² Following such publication, the sheriff or a deputy can sell the property in the manner prescribed for sheriff's sales.

³⁹O.C.G.A. § 44-2-72.

⁴⁰*Id.*

⁴¹O.C.G.A. § 44-14-180.

⁴²O.C.G.A. §§ 9-13-141, 15-16-10(a)(4).

Sales of property taken under execution shall be made by the sheriff or coroner only at the courthouse of the county where such levy was made, on the first Tuesday in each month between the hours of 10 a.m. and 4 p.m. and "at public outcry" before the courthouse door. All sales of property under execution within a county may be held at a place other than at the courthouse if, in the opinion of the presiding judge of the superior court, the holding of such sales before the courthouse door would create an undue traffic hazard or unnecessarily endanger the person or property of persons using the public streets. But such sale must be published in the official newspaper of the county and entered on the minutes of the court. No such property shall be sold at a place different from that shown in the advertisement of the sale.⁴³

6 - 3(d) Dispossession Proceedings

When a landlord demanding the possession of his or her premises files a proper affidavit, the judge of the superior court (or the magistrate) may issue a summons commanding the tenant to respond to the landlord's allegations, either orally or in writing, within seven days from the date of service.⁴⁴ A copy of the summons, together with the affidavit, should be served personally upon the defendant.⁴⁵

If the sheriff is unable to notify the defendant, then notice may be given by delivering the summons to any person sui juris (one who has full social and civil rights, is not under the power or guardianship of another, and has the capacity to manage his or her own affairs) residing on the premises. If no such person is found, service may be performed by tacking a copy of the summons and affidavit on the door of the premises and by mailing to the defendant, at his or her last known address, by first class mail, a copy of the summons and affidavit.⁴⁶

If the defendant so desires, he or she may file an answer. This will stay the execution until the judicial determination becomes final.⁴⁷ If the right of possession cannot be determined within two weeks from the date of service of the original affidavit, the tenant must pay into the registry of the trial court all rent and utility payments which accrue during this period when such payments become due.⁴⁸ If the tenant fails to make the rental and utility payments, the

⁴³ O.C.G.A. § 9-13-161.

⁴⁴O.C.G.A. §§ 44-7-50, 44-7-51(b).

⁴⁵O.C.G.A. § 44-7-51(a).

⁴⁶*Id.*

⁴⁷O.C.G.A. § 44-7-53(b).

⁴⁸O.C.G.A. § 44-7-54.

court can issue a writ of possession, and the landlord can be placed in full possession of the premises by the sheriff or a deputy.⁴⁹

On the trial of the case, if judgment is against the tenant, the tenant will be directed to pay all rents due and any other claim related to the dispute. The court shall issue a writ of possession, both of execution for the judgment amount and a writ to be effective at the expiration of seven days after the date such judgment was entered.⁵⁰ If judgment is for the tenant, he or she may remain on the premises, and the owner shall be liable for all foreseeable damages shown to have been caused by his or her wrongful conduct. Any rent monies remaining in the registry of the court shall be distributed to the parties in accordance with the judgment of the Court.⁵¹

Any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord's property or on other property as may be designated by the landlord and as may be approved by the executing officer; provided, however, that the landlord shall not be a bailee of such personal property and shall owe no duty to the tenant regarding such personal property. After execution of the writ, such property shall be regarded as abandoned.⁵²

6 - 3(e) Proceeding Against an Intruder

A person with a good faith claim to the possession of certain real property may assert his or her claim by a written affidavit, stating that he or she has a right to the possession of the property and that the property is in the hands of someone who holds it without right, yet who refuses to abandon it.⁵³ This affidavit is placed in the hands of the sheriff of the county where the land or building is situated. It is then the sheriff's duty to present the document at the earliest convenience to the person in possession of the land or building and to evict that person unless he or she tenders to the sheriff a counter-affidavit stating that he or she does have a good faith claim to legal possession of the property.⁵⁴ If a person wishes to tender a counter-affidavit, the sheriff may personally administer the oath and take the affidavit.⁵⁵

⁴⁹O.C.G.A. § 44-7-54(b).

⁵⁰O.C.G.A. § 44-7-55(a).

⁵¹O.C.G.A. § 44-7-55(b).

⁵²O.C.G.A. § 44-7-55(c).

⁵³O.C.G.A. § 44-11-30.

⁵⁴*Id.*

⁵⁵O.C.G.A. § 44-11-31.

If a counter-affidavit is tendered, the sheriff should not turn the party out of possession but should return both affidavits to the clerk of the superior court.⁵⁶ Unless a settlement is reached, the dispute must ultimately be decided by a jury trial.⁵⁷ Counter-affidavits do not apply in cases where the court has issued a writ of possession pursuant to a hearing that orders the sheriff to assist the property owner with regaining possession of property; they apply only in cases where the sheriff has received an affidavit of possession from the plaintiff.

6 - 3(f) Ejectment

Ejectment is an action by a landowner to remove a trespasser in order that the landowner might recover possession of the property.⁵⁸ A petition in ejectment is brought before the superior court of the county in which the land is located. The summons is then served by the sheriff on the alleged trespasser.⁵⁹

If a verdict of ejectment is rendered in favor of the plaintiff, and a judgment entered thereon, the clerk of the superior court issues a writ of possession. The writ of possession commands the sheriff to enter the land and to give possession of the property to the person entitled to possession by judgment of the court. In addition, the writ shall incorporate a clause authorizing the sheriff to collect all money awarded the plaintiff even if such requires the sheriff to levy and sell property of the defendant.⁶⁰

6 - 3(g) Eminent Domain (Condemnation of Property)

The purpose of eminent domain is to claim private property for the public good.⁶¹ Before claiming or condemning such property, notice must be served by the sheriff of the county or a deputy upon every person holding a title to or a lesser interest in the property.⁶² If the owner, or any one of the owners, is a minor (or is under any other legal disability), the notice must be served upon that person's representative or guardian.⁶³ If there is no personal representative,

⁵⁶O.C.G.A. § 44-11-32.

⁵⁷*Id.*

⁵⁸O.C.G.A. § 44-11-2.

⁵⁹O.C.G.A. § 9-11-4(c).

⁶⁰O.C.G.A. § 44-11-14.

⁶¹O.C.G.A. § 22-1-2.

⁶²O.C.G.A. § 22-2-20.

⁶³O.C.G.A. § 22-2-21(a).

the notice must be served personally upon the minor. At the same time, notice must be served upon the judge of the probate court of the county where the property is located who then appoints a guardian ad litem (a guardian appointed by the court for a minor or an incompetent person) to represent the minor at trial.⁶⁴

If the owner or any person having an interest in the property resides out of state, notice shall be served upon the person in possession of the property; if the nonresident's address is known, an identical notice is mailed to them by certified mail with return receipt requested by the clerk of the superior court.⁶⁵ Where the address of the nonresident is unknown, the method of advertising the condemnation of the particular property shall be sufficient service upon such nonresident; provided, however, that it shall be the duty of the condemner to certify that the address of such person is unknown to them; provided, further, that it shall be the duty of the sheriff of the county wherein the condemnation is pending to inquire into the truth of such allegation and to enter a certificate upon the condemnation proceeding, within three days from the filing of the same, verifying the truth of the allegation.⁶⁶ If the owner of the property is unknown, or if there is a possibility of unascertained persons having an interest in the property, the notice must be served upon the person in actual possession of the property and upon the probate judge, who acts for the unknown owners or unascertained persons as provided for in the case of minors.⁶⁷

6 - 3(h) Quiet Title

A legal action to quiet title provides a method for deciding questions of land ownership.⁶⁸ This is an in rem proceeding, which means the decision is binding on all persons, even those who have no notice of the proceeding.⁶⁹

The following procedure is used in actions to quiet title:

- A petition is filed in the superior court of the county where the land is located.⁷⁰
- A special master (any attorney who is authorized to practice law in Georgia and who

⁶⁴O.C.G.A. § 22-2-21(b).

⁶⁵O.C.G.A. § 22-2-23, 32-3-9

⁶⁶O.C.G.A. § 32-3-9(b).

⁶⁷O.C.G.A. § 22-2-24.

⁶⁸O.C.G.A. § 23-3-40.

⁶⁹O.C.G.A. § 23-3-61.

⁷⁰O.C.G.A. § 23-3-62(a).

resides in the judicial circuit where the action is brought) is then appointed by the court.⁷¹ The special master determines which persons are entitled to notice and arranges for the issue of process papers.⁷² The process papers are directed to all persons who are entitled to notice and to all other persons whom it may concern.⁷³

- The process papers are then served by the sheriff or a deputy to all such persons whose residences can be ascertained. Service by publication is required for all out-of-state persons and those persons whose residence cannot be ascertained.⁷⁴ Publication must be made in the paper in which the sheriff's advertisements are printed, four times (weekly) within 30 days following the order of the court.⁷⁵

6 - 3(i) Attachment

Attachment is a judicial proceeding whereby property belonging to a debtor is seized and held pending a final judgment in a suit. The purpose of attachment is to seize property of the alleged debtor and to hold such property until the court can determine whether a debt is actually owed. By seizing property before the case is decided by the court, the creditor's interests are protected. If the property was not seized, the debtor could remove it from the court's jurisdiction or sell it to another party, or the debtor could flee the state to avoid having to pay his or her creditor.

Attachment is allowed only to enforce money demands.⁷⁶ In all money demands, the plaintiff has the right to obtain attachment in any of the following situations:⁷⁷

- When the debtor resides out of state;
- When the debtor is actually moving, or is about to move, beyond the limits of the county;
- When the debtor is causing his or her property to be removed beyond the limits of the state;
- When the debtor absconds (this means when the debtor, in a clandestine manner,

⁷¹O.C.G.A. § 23-3-63.

⁷²O.C.G.A. § 23-3-65.

⁷³*Id.*

⁷⁴*Id.*

⁷⁵*Id.*

⁷⁶O.C.G.A. § 18-3-2.

⁷⁷O.C.G.A. § 18-3-1.

leaves the jurisdiction of the courts in order to avoid service of process by the court);

- When the debtor conceals him or herself; or
- When the debtor resists legal arrest.

The process of attachment is issued in the following manner. The party seeking attachment enters an application before a judge of any court of record, other than the probate court, in the county of the residence of the defendant if known, and if not known, in the county wherein the property sought to be attached is located.⁷⁸ The application must (1) state the amount of the debt claimed to be due, (2) state the basis and nature of the claim, and (3) show that the debtor has placed himself in one or more of the situations listed above.⁷⁹

In order to ensure against frivolous attachments, parties seeking attachments must give bond with good security for an amount equal to at least twice that of the alleged debt.⁸⁰ The purpose of the bond is to compensate the defendant for all damages and costs that may be incurred in defending against the attachment in the event the plaintiff's claim is shown to be without merit.⁸¹

The defendant, his or her agent, or his or her attorney may file an affidavit stating that the bond given by the plaintiff is not a good bond, and setting forth the reason why the defendant feels it is insufficient.⁸² When such an allegation is made, the sheriff or his deputy shall return both the affidavit and the attachment to the judge of the issuing court.⁸³ After hearing testimony as to the sufficiency of the bond, the judge may require additional security or a new bond to be given within a prescribed time period. If there is a failure to obtain such additional security or new bond, the judge will dismiss the levy and cause the sheriff to return the property to the defendant.⁸⁴

Attachments returnable to the superior and county courts are directed to “the marshal of said court or his lawful deputies, all and singular the sheriffs or their lawful deputies, and to all

⁷⁸O.C.G.A. § 18-3-9.

⁷⁹*Id.*

⁸⁰O.C.G.A. § 18-3-10.

⁸¹*Id.*

⁸²O.C.G.A. § 18-3-13.

⁸³*Id.*

⁸⁴*Id.*

lawful constables of said state.”⁸⁵ A constable is an officer of a municipal corporation whose duties are similar to those of the sheriff though his powers are less and his jurisdiction smaller.

Attachments shall be returnable to the court of record wherein filed.⁸⁶ Attachments are governed by the same rules of procedure and practice governing all civil actions as provided by law,⁸⁷ and a plaintiff must file his or her declaration in attachment within 15 days after the levy of such attachment.⁸⁸

It is the duty of the sheriff to levy upon the defendant's property. If the defendant has removed property beyond the county line, the sheriff must pursue the property into any county of the state and bring it back into the county from which the attachment was issued.⁸⁹ It is clear that attachment follows any property into any county in the state of Georgia and that a sheriff can serve an attachment in any county in the state where the property is found.⁹⁰

The sheriff must levy attachments in the order in which they come into his hands.⁹¹ The year, month, day of the month, and hour of the day when they were levied must be entered upon the face of the attachment.⁹²

6 - 3(j) Garnishment

This judicial proceeding is a valuable tool for civil plaintiffs who are awarded money judgments against insolvent defendants. Garnishment allows a successful plaintiff to satisfy the judgment by asserting a direct claim to money or property owed to the defendant by some third party or by an employer. For example, assume the plaintiff, Mr. Green, has recovered a money judgment against the defendant, Mr. White, in the amount of \$10,000. Also assume that Mr. White is unable to pay that debt, but that Mr. Brown, an uninvolved third party, owes Mr. White \$10,000. In order to satisfy the money judgment in his favor, Mr. Green may initiate a garnishment proceeding which would require Mr. Brown, as garnishee, to pay Mr. Green the \$10,000 he owes Mr. White. Such a payment would satisfy the money judgment owed by Mr. White and it would extinguish the debt owed to Mr. White by Mr. Brown.

⁸⁵O.C.G.A. § 18-3-19.

⁸⁶O.C.G.A. § 18-3-17.

⁸⁷*Id.*

⁸⁸*Id.*

⁸⁹O.C.G.A. § 18-3-30.

⁹⁰*Id.*

⁹¹O.C.G.A. § 18-3-31.

⁹²*Id.*

Although garnishment and attachment are similar, there are several important substantive differences between the two civil proceedings:

- In attachment, the plaintiff sues the debtor. In garnishment, the plaintiff sues a third party who owes money or property to the debtor.
- Attachment requires a sheriff to seize property to satisfy a debt. Garnishment does not require a seizure of property.
- Attachment does not require a preliminary judgment on the merits of the plaintiff's case. All that is necessary is that the plaintiff file an affidavit contending that the defendant has placed himself in one of the positions under which attachment may issue. A garnishment, on the other hand, will be issued only after notice is given the defendant, and a hearing is conducted on the merits of the garnishment petition.

The summons of garnishment is directed to the garnishee, who is required to state whatever money or property in his or her possession is subject to garnishment (i.e., money or property owed to the defendant).⁹³ The answer must be filed by the garnishee not sooner than 30 days and not later than 45 days after the service of the summons.⁹⁴ The reason for the required 30-day delay is to ensure inclusion of any accounts payable to the garnishee that may increase the amount of the property subject to garnishment.

If the summons of garnishment is not answered within 45 days, a judgment by default may be entered against the garnishee for the amount claimed by the plaintiff against the defendant.⁹⁵ This, in effect, makes the garnishee liable for the full amount owed the plaintiff by the defendant.

It is the duty of the sheriff or the sheriff's deputy to serve a summons of garnishment on the garnishee, and to make an entry of service on the affidavit and return it to the court.⁹⁶ A summons of garnishment may have to be issued from time to time on the same affidavit until the judgment is paid or the garnishment proceeding is otherwise terminated by law.⁹⁷

⁹³O.C.G.A. § 18-4-10.

⁹⁴*Id.*

⁹⁵O.C.G.A. §§ 18-4-10, 18-4-21.

⁹⁶O.C.G.A. § 18-4-8.

⁹⁷O.C.G.A. § 18-4-9.

6 - 3(k) Petition for Probation of a Will

Notice of a petition for probation of a will in solemn form shall be by personal service if the party resides in the state and is known. It shall be served at least 10 days before the probate is to be made.⁹⁸

Personal service shall be made by delivery of a copy of the petition and citation by the sheriff or some other lawful officer at least ten days before the hearing except that, if waived in writing, the ten-day provision shall not apply. An entry of such service shall be made on the original and the copy for the party served.⁹⁹

When personal service is required by this Code section, unless otherwise directed by the probate court, service may be made by registered or certified mail or statutory overnight delivery if the petitioner so requests in the petition. The court shall cause a copy of the petition and the citation to be sent by registered or certified mail or statutory overnight delivery with return receipt requested and with delivery restricted to addressee only. If the return receipt is not signed by the addressee, dated at least ten days before the date specified in the citation, and received by the court before the date specified in the citation for the filing of objections, service shall be made as otherwise required by this Code section.¹⁰⁰

6 - 3(l) Ne Exeat

Ne exeat is a writ which forbids a person to leave the jurisdiction of the court.¹⁰¹ It is used to keep a defendant within the reach of the court's process where justice would be hindered if he or she should leave the jurisdiction.

Georgia allows a ne exeat writ to be issued:¹⁰²

- In favor of an obligor or promisor or partner, against his or her co-obligor or joint promisor or copartner equally or partly responsible for any duty to be performed;
- At the instance of any person interested therein, against persons illegally removing property of a decedent or of a minor;

⁹⁸O.C.G.A. § 53-5-22(a).

⁹⁹O.C.G.A. § 53-11-3.

¹⁰⁰*Id.*

¹⁰¹O.C.G.A. § 23-3-20.

¹⁰²*Id.*

- At the instance of a remainderman or reversioner, against anyone attempting to remove the property in which such remainder or reversion exists or may exist;
- At the instance of a mortgagee against the person holding the equity of redemption; or
- At the instance of any person interested legally or equitably in property about to be removed, where no adequate remedy is afforded at law.

The defendant may relieve him or herself from the restraint imposed by the writ by posting bond with good security for double the value of the plaintiffs claim.¹⁰³ The judge granting the writ may, in his or her discretion, require a larger bond.¹⁰⁴

6 - 4 Tax Commissioners as Ex Officio Sheriffs

Georgia law provides that the tax collector or commissioner shall issue executions for the nonpayment of taxes at any time after thirty (30) days have elapsed since the taxes have become due and the taxpayer has been notified in writing that the taxes have not been paid, and that the executions shall be directed to all sheriffs of the state.¹⁰⁵ Presently, sheriffs are not so involved in the collection of delinquent property taxes. Most sheriffs and tax collectors and commissioners have taken advantage of state law that authorizes tax collectors and commissioners, with the written consent of their sheriffs, to act as ex officio sheriffs. The role of ex officio sheriffs is to collect taxes due the state and county by levy and sale under a tax execution.¹⁰⁶

Each tax collector and commissioner, by virtue of the office and state law, has the full power and authority to levy all tax executions as effectively as if levied by the sheriff. Any tax collector or commissioner properly acting as an ex officio sheriff has the authority to appoint one or more deputies with all of the powers necessary to act as an ex officio sheriff.¹⁰⁷

Each tax collector or commissioner acting as an ex officio sheriff shall have all of the power of the sheriff necessary to bring property to sale for the purpose of collecting taxes due the state and county. Such sales should be advertised and conducted just as if done by the sheriff, and they shall have the same effect as would a sale by the sheriff.¹⁰⁸

¹⁰³O.C.G.A. § 23-3-23.

¹⁰⁴*Id.*

¹⁰⁵O.C.G.A. §§ 48-3-3, 48-5-512.

¹⁰⁶O.C.G.A. § 48-5-137.

¹⁰⁷*Id.*

¹⁰⁸*Id.*

In addition, it should be noted that with respect to a tax collector or commissioner acting as an ex officio sheriff, the requirement of written consent of the sheriff shall not apply to counties with population brackets of not less than 300,000.¹⁰⁹

6 - 5 Control of County Courthouse

The county governing authority (a board of commissioners or a single commissioner) has control of all property belonging to the county.¹¹⁰ Georgia law clearly places control of the county courthouse in the hands of the county governing authority, and court cases make it clear that control of the courthouse is the responsibility of the county governing authority. Specifically, the county governing authority is responsible for the construction and repair of its courthouse and for the allocation of space within the courthouse.¹¹¹

Georgia law requires the sheriff to develop and implement a comprehensive plan for the security of the courthouse and courthouse annex. Prior to the implementation of any security plan, the plan shall be submitted to the chief judge of the superior court of the circuit wherein the courthouse or courthouse annex is located for review. The chief judge shall have 30 days to review the original or any subsequent security plan. The chief judge may make modifications to the original or any subsequent security plan. The sheriff shall provide to the county governing authority the estimated cost of any security plan and a schedule for implementation 30 days prior to adoption of any security plan.¹¹²

The sheriff shall be the official custodian of the comprehensive courthouse security plan and shall determine who has access to such plan and any such access and review shall occur in the sheriff's office or at a closed meeting of the county governing authority; provided, however, that the sheriff shall make the original security plan available upon request for temporary, exclusive review by any judge whose courtroom or chambers is located within the courthouse or courthouse annex or by any commissioner of the county in which the courthouse or courthouse annex is located. The sheriff shall be responsible to conduct a formal review of the security plan not less than every four years.¹¹³

¹⁰⁹O.C.G.A. § 48-5-137(f).

¹¹⁰O.C.G.A. § 36-9-2.

¹¹¹O.C.G.A. §§ 36-9-5, 36-9-6.

¹¹²O.C.G.A. § 15-16-10(a)(10).

¹¹³*Id.*

State law does not prescribe any specific security measures sheriffs should implement to protect the courthouse or annex(es) within their county. The security measures to be implemented are at the discretion of the sheriff and the chief superior court judge for the county. The Council of Superior Court Judges in conjunction with the Georgia Sheriffs' Association developed a set of standards for sheriffs and judges to consider in the development of a comprehensive courthouse security plan. The level of security of a courthouse or annex increases with the number of standards satisfied by the specific plan. However, there is no statutory requirement to incorporate the standards into a specific plan.

The sheriff's responsibility for providing protection to the county courthouse, however, should not be construed to raise the sheriff's role to that of having control over the courthouse.¹¹⁴

6 - 6 Certified Process Servers

"Under O.C.G.A. § 9-11-4(c), process in a civil action must be served by either (1) the sheriff of the county where the action is brought or where the defendant is found, or by such sheriff's deputy; (2) the marshal or sheriff of the court or by such official's deputy; (3) any citizen of the United States specially appointed by the court for that purpose; (4) a person who is not a party, not younger than 18 years of age, and has been appointed by the court to serve process or as a permanent process server; or (5) a certified process server as provided in O.C.G.A. § 9-11-4.1."¹¹⁵

Sheriffs have the duty to process the applications for certification. "A sheriff of any county of this state shall review the application, test score, criminal record check, and such other information or documentation as required by that sheriff and determine whether the applicant shall be approved for certification and authorized to act as a process server in this state."¹¹⁶ However, a sheriff's duty to process applications for certification to serve process is a separate issue from the decision of whether to allow certified process servers to serve process in his or her county. "Such certified process server shall be entitled to serve in such capacity for any court of the state, anywhere within the state, provided that the sheriff of the county for which process is to be served allows such servers to serve process in such county."¹¹⁷ Each sheriff is

¹¹⁴Hill v. Clayton County Board of Commissioners, 283 Ga. App. 15 (2006)(Sheriff was required to obtain approval of county board of commissioners before sheriff could make material alterations to sheriff's suite of offices and jail facilities located within county's justice center; justice center was county property not assigned to sheriff's exclusive use.)

¹¹⁵Philip Weltner II, Georgia Process and Service with Forms (November 2019 Update) § 6:1. By whom made.

¹¹⁶OCGA § 9-11-4.1 (b)(2).

¹¹⁷OCGA § 9-11-4.1 (a) (Emphasis added).

authorized to decide, as a threshold matter, whether to allow “certified process servers to serve process in his or her county.”¹¹⁸ Thus, a sheriff may approve applicants for certification, yet deny certified process servers to serve process in his county.

¹¹⁸OCGA § 9–11–4.1 (h) (1); Georgia Ass'n of Prof'l Process Servers v. Jackson, 302 Ga. 309, 314, 806 S.E.2d 550, 555 (2017).

CHAPTER 7 – THE OFFICE OF SHERIFF AS A LAW ENFORCEMENT AGENCY

Even when a county police force is established, the power and authority of the Sheriff to enforce the law and preserve the peace is not legally diminished.

7 - 1 Local Law Enforcement Functions of the Office of Sheriff

The sheriff's office has evolved into an organization of wide responsibility. The duties of today's sheriff include, for example:

- The protection of life and property;
- The preservation of the public peace;
- The prevention, detection, and investigation of criminal activity;
- The apprehension and confinement of offenders and the recovery of property;
- The expeditious movement and control of vehicular traffic and the investigation of traffic accidents;
- The control of crowds at public events and the regulation of other noncriminal conduct;
- The rendering of services and the protection of property during civil emergencies or natural disasters; and
- The responsibility for providing numerous non-crime-related services to the community.

When combined, these functions provide the foundation for the overall mission of the modern sheriff's office. This is, namely, to maintain the peace, to protect life and property, and to provide service to the community.

7 - 2 The Office of Sheriff within the Municipality

It is the duty of the sheriff to exercise the same duties, powers, and arrest authority within the municipalities which the sheriff exercises in the unincorporated areas of counties. Historically, the sheriff and his deputies were responsible for all law enforcement activities within the county. However, as cities developed, the sheriff gradually relinquished to the municipal governments the responsibility for law enforcement activities within the corporate limits but retained primary responsibility for policing unincorporated areas of the county.

This is the situation in most Georgia counties today. The sheriff generally permits the municipal police to handle all law enforcement activities within the confines of the city but assists them upon request. The sheriff does retain the authority to intervene if necessary, however, in matters relating to law enforcement activities within the county even when such activities occur within the city limits.

Furthermore, the sheriffs of the counties of this state are authorized to contract with the governing body of any municipal corporation located within the respective counties, with the written consent of the county governing authority, for the purpose of providing law enforcement services to the municipal corporation. Upon execution of the contract and within any limitations contained in the contract, a sheriff and his deputies may exercise the same powers possessed by the contracting municipal corporation with respect to police services. Such contracts shall provide for the reimbursement to the county for the costs incurred by the sheriff in providing such law enforcement services. All payments by a municipal corporation under the terms of such a contract shall be made to the general fund of the county. This authorization shall not apply to any county that has a population of 900,000 or more.¹

The municipal courts generally have jurisdiction over all misdemeanor traffic cases originating within the corporate limits of the municipality.²

7 - 3 The Office of Sheriff and County Police

Each of the 159 counties in Georgia maintains a sheriff's office. In at least 12 of those counties there is also a county police department. To function effectively, the sheriff of any county with a separate county police department should understand the powers and responsibilities of the county police officer. The sheriff should recognize the areas in which the agencies share jurisdiction as well as those areas in which one agency or the other has exclusive operational authority.

7 - 3(a) Establishment of a County Police

Compared to the Office of Sheriff, the county police concept in Georgia is of relatively recent origin. The county governing body, in most cases the county commission, is authorized by the General Assembly to establish a county police force. Each county governing authority may authorize, through proper resolution or ordinance, the creation of a county police force. However, no resolution or ordinance shall become effective until the governing authority of the county has submitted to the qualified electors of the county the question of whether the resolution or ordinance shall be approved or rejected.³ If more than one-half of the votes cast

¹O.C.G.A. § 15-16-13.

²O.C.G.A. § 40-13-21.

³O.C.G.A. § 36-8-1(b)(1).

are in favor of the creation of a county police force, then the county governing authority shall be authorized to create a county police force. Otherwise, a county police force shall not be created. Furthermore, if the resolution or ordinance is rejected by the qualified voters, the question of the creation of a county police force may not again be submitted to the voters of the county within 48 months immediately following the month in which such election was held.⁴

If the county elects to establish a county police department, the commission must develop rules and regulations for the management of the force.⁵ It also is responsible for setting the term of office for county police officers.⁶

Any person elected or appointed to the county police must meet the qualifications prescribed in the Georgia Peace Officers Standards and Training Act.⁷ Those qualifications are set forth in this Handbook in Chapter 4-3.

The terms of county police officers are set by the county governing body. Such police may be removed from office at any time at the will of the county governing authority with or without cause. However, as a general rule, the officers serve under a civil service system and cannot be removed without cause.⁸ Removal for racial, sexual, or political reasons is strictly prohibited, however, since dismissal on such grounds would constitute an impermissible denial of the officer's constitutional rights.

Each member of the county police force must be bonded for the faithful performance of his or her duties in the amount of \$1,000.⁹ This is a minimum amount. Individual counties may require larger bonds. Persons injured by members of the county police force may bring suit on this bond. However, to recover on the bond, the injury must have occurred while the officer was acting by virtue of or "under color of" office.¹⁰ Thus, the bond does not cover the police officer for private acts that are clearly outside the pursuit of county business.

By statute, county police officers are granted virtually the same power as the sheriff to make arrests in the county of their election or appointment and to execute and return all criminal

⁴O.C.G.A. § 36-8-1(b)(2).

⁵O.C.G.A. § 36-8-7.

⁶O.C.G.A. § 36-8-2.

⁷O.C.G.A. §§ 36-8-1; 35-8-8.

⁸O.C.G.A. § 36-8-2.

⁹O.C.G.A. § 36-8-3.

¹⁰Hodge v. U.S. Fidelity and Guaranty Co., 42 Ga. App. 84 (1930).

warrants and processes.¹¹ However, there is conflict between the statutes¹² and the Georgia Constitution¹³ as to whether the powers of the county police extend into the municipality.

7 - 3(b) Relationship of the Sheriff and County Police

Ordinarily when a county police force is established, the sheriff retains the court and detention related functions but is forced to relinquish authority to the county police for the law enforcement activities within the county. In the past, it was believed that the county government had authority to force the sheriff into such an arrangement by denying the sheriff adequate funds to conduct law enforcement activities. In light of recent Georgia Supreme Court decisions, this assumption is no longer valid. The county government may only establish a county police force by referendum submitted to the qualified electors of the county.¹⁴ In establishing such a force, however, the governing body cannot remove any law enforcement power or duty from the sheriff, nor can it reduce the sheriff's budget so as to diminish his or her ability to function as a keeper of the peace in the county.¹⁵ The county government is also prohibited from preventing the county police department and the sheriff's office from cooperating with one another in maintaining the peace and enforcing the laws within the county.

Obviously, the public good is best served when maximum cooperation is maintained between law enforcement agencies. The sheriff's cooperation, however, cannot be forced by the county commission. His or her acceptance of a reduced law enforcement role must be voluntary. Regardless of the working relationship of the law enforcement agencies in a county, all law enforcement officers are required by law to act in certain specified ways in performing their duties.

7 - 4 Good Samaritan Rule

The sheriff or a deputy sheriff will not be held liable for any action or actions done while performing any duty at the scene of an emergency except for gross negligence, willful or wanton misconduct, or malfeasance. This rule, often referred to as the "Good Samaritan" rule, was created originally to protect physicians from liability for helping at the scene of an emergency.¹⁶

¹¹O.C.G.A. §§ 36-8-5, 15-16-10(a)(9).

¹²*Id.*

¹³Ga. Const. Art. 9, Sec. 2, Para. 3(b)(1).

¹⁴O.C.G.A. § 36-8-1.

¹⁵Wolfe v. Huff, 233 Ga. 162 (1974); Wolfe v. Huff, 232 Ga. 44 (1974); Board of Com'rs of Dougherty County v. Saba, 278 Ga. 176, 177 (2004).

¹⁶O.C.G.A. § 35-1-7.

7 - 5 Mutual Aid

In 1988, Georgia law was amended to authorize local public safety officers and employees, including sheriffs, to provide assistance to other local public safety agencies when requested during local emergencies and at other times. Under the Georgia Mutual Aid Act, sheriffs are authorized, totally at the discretion of the sheriff, to provide and seek aid from other local law enforcement bodies. Those providing such aid are treated as if acting in their own jurisdiction. In particular, all expenses incurred while providing such aid, whether based on personnel, equipment, or some other type of expenditure, shall be the responsibility of the agency providing the assistance.¹⁷

Neither the public safety agency requesting assistance nor the political subdivision in which it is located shall be liable for any acts or omissions of employees of a public safety agency providing extraterritorial assistance under the Georgia Mutual Aid Act. This law does not place a duty on any public safety agency to respond to a request for assistance, and the responding agency may depart the scene at any time at the discretion of the officer who is in command of the agency rendering assistance and who is at the scene of local emergency.¹⁸

¹⁷O.C.G.A. §§ 36-69-1 through 36-69-10.

¹⁸*Id.*

CHAPTER 8 – THE OFFICE OF SHERIFF AND THE LAWS OF CRIMINAL ARREST

A sheriff or lawful deputy is authorized to make an arrest anywhere in the state in the execution of an arrest warrant.

8 - 1 Classification of Crimes

All crimes may be classified as either felonies or misdemeanors. Felonies are those crimes punishable by death, by imprisonment for life, or by imprisonment for more than 12 months.¹ Misdemeanors are all lesser crimes.²

It is important that peace officers understand the distinction between felonies and misdemeanors since, in some situations, their authority to act may depend upon how the crime is categorized. For example, a Georgia sheriff may pursue a felony suspect across a state line and make a valid arrest in another state. Whether the same sheriff could pursue a misdemeanor suspect into another state's jurisdiction and make a lawful arrest, however, depends upon the laws of that particular state.

An officer's authority to search premises for fleeing suspects is also determined by the category of the alleged offense. This will be discussed in more detail in the section on "hot pursuit searches," later in this chapter.

8 - 2 Laws of Criminal Arrest

The law attempts to achieve a balance between the right of society as a whole to be protected against criminal acts and the right of the individual to be free from unlawful interference with his or her conduct. Unfortunately, these rights are not always compatible. For example, a sheriff may encounter situations in which the zealous enforcement of the criminal law would conflict with an individual's right to be free from unreasonable governmental intervention into his or her affairs. Under such circumstances, the sheriff must remember to obey the law as well as to enforce it. Since our system of justice favors the protection of individual rights, law enforcement officers must be aware of their responsibility to both society and the individual, and they must follow proper legal procedure in dealing with persons suspected of having committed crimes. This procedure is referred to as "due process". The steps to be followed by law enforcement officers are embodied in the laws of arrest and the laws of search and seizure.

¹O.C.G.A. § 16-1-3(5).

²O.C.G.A. § 16-1-3(9).

8 - 3 Definition of an Arrest

An arrest occurs when a person is lawfully taken, seized, or detained by any means which indicates the intention to take the suspect into custody and which subjects him or her to the control of the person making the arrest.³ An actual touching with the hand can constitute a valid arrest in Georgia, although touching is not required.⁴ No formal words of arrest need be spoken.⁵ An arrest is simply whenever the liberty of a person to come and go as he or she pleases is restrained, no matter how slightly.⁶ It is sufficient that the suspect understands that he or she is under the control of the person making the arrest and that the suspect submits to that control.⁷ Even if the person arrested is allowed considerable freedom of movement, the arrest is complete, providing his or her movement is at the discretion of the person making the arrest.⁸

However, not every stop made by a law enforcement officer constitutes an arrest. For example, a peace officer may ask a person his or her name and address and other questions about the person's behavior without an arrest occurring. Presumably, if an arrest is not made, the citizen is not required to answer the officer's questions and may leave at any time. If the person is not free to walk away, an "arrest" has probably been made.⁹ The courts will ordinarily find this to be the case regardless of the officer's intent to make a formal arrest.

The police power of the state allows officers to make routine traffic stops to check drivers' licenses or for safety checks.¹⁰ Such stops do not constitute arrests. However, an arrest is complete from the moment an officer approaches a vehicle and causes the defendant to exit the vehicle or subjects the defendant to a search, even if the officer testifies that the arrest was made after the search.¹¹ An arrest also takes place when the driver of a vehicle is stopped on a criminal charge not related to traffic enforcement. For an officer's protection, each person arrested should be advised that he or she is under arrest and the charges. The officer should also identify himself or herself if not in uniform at the time of the arrest.

³Conoly v. Imperial Tobacco Co., 63 Ga. App. 880 (1940).

⁴O.C.G.A. § 17-4-1; Hines v. Adams, 27 Ga. App. 157 (1921).

⁵U.S. v. Jones, 352 F.Supp. 369 (S.D.Ga. 1972).

⁶Collier v. State, 244 Ga. 553 (1979), *overruled on other grounds*, Thompson v. State, 263 Ga. 23 (1993).

⁷O.C.G.A. § 17-4-1.

⁸O.C.G.A. § 17-4-1; Courtoy v. Dozier, 20 Ga. 369 (1856).

⁹*Id.*

¹⁰O.C.G.A. § 40-8-200.

¹¹Clements v. State, 226 Ga. 66 (1970).

8 - 4 Procedure of Arrest

Before making an arrest, it is the duty of officers to identify themselves¹² and, if the arrest is made under warrant, to show the warrant.¹³ This is not always possible, and suspects cannot complain of nonproduction of a warrant where their own conduct, such as violent resistance to arrest, prevents it.¹⁴ If the person to be arrested demands to see evidence of the officer's authority, it is the duty of the officer to show it. If, however, the officer is known to the suspect as an officer, he or she is under no obligation to exhibit such authority until after the suspect has submitted to arrest.¹⁵

Notice of the official character of someone making an arrest may be either express or implied. Express or implied notice is assumed:¹⁶ (1) where the suspect actually knows the person making the arrest to be an officer; (2) if the officer is in uniform, or exhibits a badge; (3) if the person is apprehended while committing a crime or is pursued from the scene of a crime; or (4) if the person is told by the officer that he or she is making an arrest and why.

If a non-uniformed officer, who is not known to a suspect, fails to identify him or herself or to make his or her purposes known, the suspect may be justified in resisting what appears to him or her to be an unjustified assault.¹⁷

Every law enforcement officer making an arrest under a warrant shall exercise reasonable diligence in bringing the person arrested before a judicial officer authorized to examine, commit, or receive bail. In any event, the person arrested must be presented before a committing judicial officer within 72 hours after arrest. The arresting officer shall notify the accused as to when and where the commitment hearing will be held, and an arrested person not notified of this before the hearing shall be released.¹⁸

8 - 5 Use of Force

An officer has the right to use whatever force is reasonably necessary to accomplish an arrest, but no more. The degree of force which is reasonable depends upon the seriousness of the crime and the degree of resistance offered. For the apprehension of a suspected felon, Georgia

¹²See Morton v. State, 190 Ga. 792 (1940).

¹³Giddens v. State, 154 Ga. 54 (1922); Jones v. State, 114 Ga. 73 (1901).

¹⁴Robinson v. State, 93 Ga. 77 (1893).

¹⁵*Id.*

¹⁶Franklin v. Amerson, 118 Ga. 860 (1903).

¹⁷*Id.*

¹⁸O.C.G.A. § 17-4-26.

has enacted statutory law which prohibits any law enforcement agency, or any city or county, from passing any rule, regulation, or policy which would prohibit a peace officer from using that degree of force allowed by existing statutory and case law.¹⁹

8 - 5(a) Deadly Force

If the person to be arrested makes no effort to resist arrest, but only seeks to avoid arrest by flight, an officer generally may not seriously injure or kill the person simply to prevent his or her escape. The prohibition against killing the suspect applies whether the offense is a felony or a misdemeanor. However, when the offense is a forcible felony, greater force may be used to prevent an escape, even to the extent of slaying the offender. Forcible felonies are those felonies in which danger to human life is a central part such as armed robbery, murder, kidnaping, and rape. However, even in the case of a forcible felony, sufficient circumstances must be present before a law enforcement officer is permitted to use deadly force in making an arrest. What constitutes sufficient circumstances is not clear. Generally, officers may defend themselves with whatever force is necessary. Additionally, it is reasonable to assume that an officer may use deadly force when that officer is in fear for his or her own life, the life of another officer, or the life of a bystander. Yet, the officer may never use unnecessary violence disproportionate to the resistance offered. Generally, it is deemed manslaughter or murder to kill the accused, regardless of the nature of his or her offense, if the accused could otherwise have reasonably been taken.

8 - 5(b) Entering Private Premises

An officer's right to arrest for criminal offenses customarily includes the right to enter private premises to make arrests. He or she may enter such premises to arrest under a warrant, or to arrest without a warrant when an offense is committed in his or her presence.²⁰ The force used in such situations must be reasonable, based on the circumstances of the moment. As a general rule, however, the use of force - such as forcibly entering the premises - is more restricted in misdemeanor than in felony situations. Therefore, while the law grants the use of such force in performing legitimate arrests, extreme care should be used when the arrest is for a misdemeanor only. The reason is that organized society will suffer less by the temporary escape of such person (a misdemeanant) than it would if the officer should be permitted to take his or her life, or inflict great bodily harm, to prevent the escape.²¹

Generally, before entering a private dwelling, an officer must announce his or her purpose and demand entrance.²² One exception to this rule is the "no-knock" provision of the search

¹⁹O.C.G.A. § 17-4-20(d).

²⁰*Ramsey v. State*, 92 Ga. 53 (1893).

²¹*Palmer v. Hall*, 380 F.Supp. 120 (M.D.Ga. 1974), *overruled in part on other grounds*.

²²*Green v. State*, 159 Ga. App. 28 (1981); *Groves v. State*, 175 Ga. 37 (1932).

warrant. Only under extraordinary circumstances, or if he or she cannot otherwise gain admittance, is a law enforcement officer permitted to use force, such as breaking open a door, to enter a house where an offender is believed to be concealed.²³

8 - 6 Arrest with A Warrant

An arrest warrant is a judicial command to bring a person before the court to answer a criminal charge. The law would prefer that all arrests be made with a warrant since the warrant requirement interjects an impartial magistrate or other judicial officer between the arresting officer and the arrestee to determine whether sufficient evidence exists for an arrest to be made.

8 - 6(a) Warrant Content

Georgia courts will consider a warrant to be void and ineffective if it does not comply in all respects with the statutory requirements regarding warrant content.²⁴ Thus, an affidavit made or warrant issued for the arrest of a person who is accused of violating the penal laws of this state shall include, as nearly as practicable, the following facts:

- The offense, including the time, date, place of occurrence, against whom the offense was committed, and a statement describing the offense; and
- The county in which the offense was committed.²⁵

When the offense charged is theft, the affidavit made or warrant issued shall state, in addition to the requirements above, the following facts:

- Name of the property alleged to have been stolen, with a description thereof, including its value; and
- Name of the owner of the property and the person from whose possession such property was taken.²⁶

All crimes in Georgia are statutory offenses, so the elements of every crime for which a warrant may be issued can be found in the Georgia Code.

²³O.C.G.A. § 17-4-3.

²⁴*Lowe v. Turner*, 115 Ga. App. 503 (1967).

²⁵O.C.G.A. § 17-4-41(a).

²⁶O.C.G.A. § 17-4-41(b).

The Official Code of Georgia Annotated (O.C.G.A.) provides the following form for warrants:²⁷

Georgia, _____ County.

To any sheriff, deputy sheriff, coroner, constable, or marshal of said state--Greetings:
(Name of the affiant) makes oath before me that on the _____ day of _____, in the year _____, in the county aforesaid, (name of person against whom the warrant is sought) did commit the offense of (insert here all information describing offense as required by Code Section 17-4-41). You are therefore commanded to arrest (name of person against whom the warrant is sought) and bring him before me, or some other judicial officer of this state, to be dealt with as the law directs. You will also levy on a sufficiency of the property of (name of person against whom the warrant is sought) to pay the costs in the event of his final conviction. Herein fail not.

Judicial officer

8 - 6(b) Issuance of Arrest Warrants

Any judge of a superior, state, city, or magistrate court, or any municipal officer clothed by law with the powers of the magistrate, may issue a warrant for the arrest of any person accused of violating the penal laws of the state of Georgia. The warrant must be based either on the official's own knowledge or the firsthand information of others given under oath.²⁸

8 - 6(c) Probable Cause

A warrant is issued on probable cause. Probable cause has been identified as "a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the party is guilty of the offense with which he is charged."²⁹ Before a magistrate issues an arrest warrant, he or she must determine that this "reasonable ground of suspicion" is present. Probable cause may be based on evidence which would not justify condemnation or even be admissible in a criminal trial.³⁰ For example, hearsay evidence may provide probable cause and form the basis for an arrest warrant if substantial grounds exist for believing the hearsay.³¹

An arrest warrant may also be issued based on an affidavit given under oath. The requirements of the affidavit are the same as those of the arrest warrant described above, and the affidavit

²⁷O.C.G.A. § 17-4-46.

²⁸O.C.G.A. § 17-4-40.

²⁹*Stacey v. Emery*, 97 U.S. 642 (1878); *Brown v. State*, 151 Ga. App. 830 (1979).

³⁰*U.S. v. Ventresca*, 380 U.S. 102 (1965); *Johnson v. State*, 111 Ga. App. 298 (1965).

³¹*U.S. v. Ventresca*, 380 U.S. 102 (1965); *Draper v. U.S.*, 358 U.S. 307 (1959).

must always comply with those statutory standards to be valid.³² An arrest warrant based on a statutorily complete affidavit given under oath, described below, is deemed to have impliedly met the requirement of probable cause, and the arrest warrant is properly issued.³³ The following affidavit form is sufficient in all cases.³⁴

Georgia, _____ County.

Personally came (name of affiant), who on oath says that, to the best of his knowledge and belief, (name of person against whom the warrant is sought) did, on the _____ day of _____, _____, in the county aforesaid, commit the offense of (insert here all information describing offense as required by Code Section 17-4-41) and this affiant makes this affidavit that a warrant may issue for his arrest.

(Signature of the affiant)

Sworn to and subscribed before me, this _____ day of _____, _____.

Judicial officer

A warrant for arrest may be issued in any county, even though the crime was committed in another county. Once the warrant is issued, it may be executed in any county without being backed or endorsed by a judicial officer in the county where the warrant is executed.³⁵

8 - 6(d) Reliable Informant's Tips

An informant's tip is often used as the basis for an affidavit to issue a warrant. The officer must give reasons for the informant's reliability, which may include how long the officer or other officers have known the informant; how many times the informant has provided information; the number of times such information served as the basis of search warrants; the number of arrests or convictions obtained as a result of the informant's tips; the number of times the information resulted in recovery of stolen property, drugs, or contraband; and other related background materials. When an officer acts solely on the basis of an informant's information, the affidavit must contain sufficient facts to show:³⁶

³²Lowe v. Turner, 115 Ga. App. 503 (1967).

³³Davis v. State, 155 Ga. App. 511 (1980).

³⁴O.C.G.A. § 17-4-45.

³⁵O.C.G.A. § 17-4-44.

³⁶Dailey v. State, 136 Ga. App. 866 (1975).

- Reasons for the informant's reliability;
- That the affidavit either specifically states how the informant obtained his information or describes the alleged criminal act in such detail that the magistrate may know that it is more than casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation; and,
- That the information is not stale.

If an informant's tip does not satisfy all of the above requirements, it may nevertheless be considered by the magistrate so long as corroborative evidence is available. Naturally, any additional information from the officer's own independent investigation should be provided to corroborate or strengthen the informant's tips.

8 - 6(e) Oath

Arrest warrants are sworn to under oath. Georgia does not require any special words to make an oath valid. All that is required is that the affiant and the issuing officer both understand that whatever words are used are sufficient to constitute an oath.³⁷ However, before an alleged affidavit can become the basis of a legal proceeding, it must appear that the oath was actually administered to the affiant or that something was done by the affiant signifying that he or she "consciously took upon himself or herself the obligations of an oath."³⁸ The affiant need not swear that the facts contained in the affidavit are true, only that they are true according to the best of his or her belief and knowledge.³⁹ Any official authorized to issue warrants may accept affidavits and administer oaths.⁴⁰

8 - 6(f) Peace Officer's Duty to Execute an Arrest Warrant

When a valid warrant is placed in the hands of a peace officer for execution, he or she has no choice but to execute it. Refusal to execute a valid warrant constitutes an offense for which the officer may be indicted.⁴¹ A sheriff or lawful deputy is authorized to make an arrest anywhere in the state in the execution of an arrest warrant issued by a judicial officer, but the officer should have the warrant in his physical possession or so near that it can be exhibited on demand.⁴²

³⁷McCain v. Bonner, 122 Ga. 842 (1905).

³⁸Segars v. Cornwell, 128 Ga. App. 245 (1973).

³⁹O.C.G.A. § 17-4-45.

⁴⁰O.C.G.A. § 17-4-40.

⁴¹Ormond v. Ball, 120 Ga. 916 (1904).

⁴²Croker v. State, 114 Ga. App. 492 (1966).

When executing a warrant, the officer must be certain that the person arrested is the person described in the warrant.⁴³ If the person is identified by name, the arresting officer must make sure that the person arrested bears the name specified in the warrant. If there are two or more persons in the officer's jurisdiction with the same name, before making an arrest the officer must attempt to ascertain which of the persons is the one named in the warrant. If the officer decides this question in good faith, the arrest is lawful, even though he or she may make a mistake and arrest the wrong person.⁴⁴ If the person to be arrested is identified only by description, the officer must see that the person arrested fits the description in the warrant. Again, if the officer decides this question improperly but in good faith, the arrest is legal.

8 - 6(g) Sheriff's Territorial Authority

The common law rule is that an arrest warrant may not be served outside the jurisdiction in which it is issued or outside the territorial jurisdiction of the officer to whom the warrant is addressed. This rule, however, is nullified by statute in Georgia so that a sheriff or deputy may execute a warrant in any county in the state.⁴⁵

Georgia sheriffs enjoy statewide arrest powers when they are acting pursuant to valid arrest warrants. A sheriff's authority to arrest, however, can be no greater than the authority of the arrest warrant under which they operate. Since an arrest warrant has no validity beyond the boundaries of the state in which it is issued, sheriffs may not make an arrest under warrant beyond the confines of their own state.

8 - 6(h) Jurisdictional Limitation of County and Municipal Police on the Execution of Arrest Warrants

The sheriff's authority to cross county lines to execute warrants does not extend to city or county police officers. Their authority to arrest extends only as far as the municipal or county boundaries.⁴⁶ The only situation in which a city or county police officer may lawfully execute an arrest warrant beyond the geographical limits of his or her jurisdiction is when the officer is deputized to do so by a sheriff or other state officer.⁴⁷

⁴³Massey Stores Inc. v. Reeves, 111 Ga. App. 227 (1965).

⁴⁴Blocker v. Clark, 126 Ga. 484 (1906).

⁴⁵O.C.G.A. § 17-4-44.

⁴⁶O.C.G.A. § 40-13-30; City of Winterville v. Strickland, 127 Ga. App. 716 (1972); Watkins v. State, 207 Ga. App. 766 (1993), *overruled on other grounds*; see O.C.G.A. § 17-4-25.1.

⁴⁷Phillips v. State, 66 Ga. 755 (1881).

8 - 6(i) Return of Arrest Warrants

After the sheriff has served the warrant, or attempted to serve it, it must be returned so that the results of the attempt can be recorded. Only a superior court judge may require that warrants be returnable exclusively to his or her court.⁴⁸ Superior court judges may issue "special warrants" returnable only to the superior court, providing such warrants are issued in that court's judicial circuit. Warrants issued by any other judicial officer are general arrest warrants and are made returnable to the issuing judicial officer or to "any other judicial officer having jurisdiction."⁴⁹ If any superior court judge issues a special warrant outside his judicial circuit, the warrant shall be treated as a general arrest warrant.⁵⁰

8 - 7 Arrest Without a Warrant

In regard to a warrantless arrest, Georgia follows the general rule that law enforcement officers have no official arrest powers beyond the boundaries of their jurisdiction.⁵¹ Except in a "hot pursuit" situation, the arrest powers of officers acting without a warrant outside their jurisdictions are generally limited to those of private citizens. When chasing an offender, however, officers are permitted to continue and arrest a fugitive beyond the boundaries of their jurisdiction. This exception to the general rule is known as the doctrine of hot pursuit.⁵²

Indeed, under the common law an officer may pursue a felony suspect into another state and still retain full powers of arrest. In misdemeanor cases, however, peace officers' arrest powers outside their state are limited to those of private citizens. It follows, therefore, that the arrest powers of a peace officer who pursues a misdemeanor suspect into another state are limited to the arrest powers of a private citizen of that state.

Furthermore, under the Uniform Criminal Extradition Act, O.C.G.A. § 17-13-34, warrantless arrests of some persons are provided for if they are "charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year."⁵³

8 - 7(a) Sheriff's Territorial Authority

The issue is quite clear concerning the warrantless arrest powers of municipal and county

⁴⁸O.C.G.A. § 17-4-42.

⁴⁹Ormond v. Ball, 120 Ga. 916 (1904).

⁵⁰O.C.G.A. § 17-4-42.

⁵¹Coker v. State, 14 Ga. App. 606 (1914).

⁵²Margerum v. State, 260 Ga. App. 398 (2003).

⁵³Beck v. Ohio, 379 U.S. 89 (1964); Ledesma v. State, 251 Ga. 487 (1983), *cert. denied* 464 U.S. 1069 (1984).

police officers outside their jurisdiction. The issue is not clear, however, with regard to sheriffs. Historically, sheriffs have made warrantless arrests under the state constitution and by common law, but the issue remains unclear because no statutory law exists on the subject at the present time.

To clarify this issue, it must be said that while the Georgia Constitution and general law are silent with regards to the power of sheriffs to make warrantless arrests outside their jurisdictions, the common law practice has been that sheriffs have made such arrests as a matter of course in this state.⁵⁴ However, it must be borne in mind that the field of civil tort liability is becoming more and more active with regard to actions of public officials. All due care should be taken when exercising arrest powers, especially when doing so outside the jurisdiction without a warrant.

8 - 7(b) Situations Permitting Warrantless Arrest

Georgia law specifies the following situations in which an arrest may be made without a warrant:⁵⁵

- If the offense is committed in such officer's presence or within such officer's immediate knowledge;
- If the offender is endeavoring to escape;
- If the officer has probable cause to believe that an act of family violence, as defined in Code Section § 19-13-1, has been committed;
- If the officer has probable cause to believe that an offense involving physical abuse has been committed against a vulnerable adult, who shall be for the purposes of this subsection a person 18 years old or older who is unable to protect himself or herself from physical or mental abuse because of a physical or mental impairment; or,
- For other cause if there is likely to be failure of justice for want of a judicial officer to issue a warrant.

Additionally, the Uniform Criminal Extradition Act provides for the warrantless arrest of persons "charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year."⁵⁶

⁵⁴O.C.G.A. §§ 40-13-30, 17-4-44; City of Winterville v. Strickland, 127 Ga. App. 716 (1972); Watkins v. State, 207 Ga. App. 766 (1993), *overruled on other grounds*; Wells v. State, 206 Ga. App. 513 (1992).

⁵⁵ O.C.G.A. § 17-4-20.

⁵⁶O.C.G.A. §17-13-34.

8 - 7(c) Types of Arrest

- Offenses committed in officer's presence. An officer may arrest without a warrant for any offense committed within his or her presence or immediate knowledge.⁵⁷ A crime is committed in an officer's presence or immediate knowledge if, by seeing, hearing, or using any other senses, the officer has personal knowledge of its commission.⁵⁸ An offense is not considered to be committed within an officer's knowledge when it is reported to him or her by someone else. Thus, an officer has no authority to arrest without a warrant merely upon information that someone is carrying a concealed weapon.⁵⁹ However, additional evidence, such as seeing a bulge, would probably constitute reasonable grounds for an arrest. Likewise, a "stop and frisk" would probably also be justified under these circumstances.
- Arrest to prevent escape. An officer may arrest without a warrant when a suspect attempts to escape or flee from lawful custody.⁶⁰ Police are also justified in pursuing and arresting drivers of automobiles who refuse to stop when signaled to do so.⁶¹
- Arrest when an act of family violence is suspected by the officer. The law now permits the officer to make an arrest whenever he or she suspects, and has probable cause to believe, that an act of family violence has occurred.⁶² The officer need not actually see the act of violence but must form an opinion based upon other evidence such as a bruise or the utterings of other family members at the time of confrontation.
- Arrest to prevent a failure of justice. The expression "likely to be a failure of justice for want of an officer to issue a warrant" is somewhat a catchall. An officer must have probable cause for believing that there will be a failure of justice unless he or she proceeds to make the arrest without a warrant.⁶³ Generally, the burden is on the police officer to show that no judicial officer was available to issue a warrant.⁶⁴
- Arrest to prevent a felony. Although it is not listed among the statutory sections, a fifth situation exists in which an arrest may be permissible without a warrant: an officer is

⁵⁷Goodwin v. Allen, 89 Ga. App. 187 (1953).

⁵⁸Novak v. State, 130 Ga. App. 780 (1974); Piedmont Hotel Co. v. Henderson, 9 Ga. App. 672 (1911).

⁵⁹Pickett v. State, 99 Ga. 12 (1896).

⁶⁰Napper v. State, 200 Ga. 626 (1946).

⁶¹Shirley v. City of College Park, 102 Ga. App. 10 (1960).

⁶²O.C.G.A. § 19-13-1.

⁶³Giddens v. State, 152 Ga. 195 (1921); *see also* Mitchell v. State, 226 Ga. 450 (1970), *cert. denied*, 400 U.S. 1024 (1971).

⁶⁴Douglass v. State, 152 Ga. 379 (1921).

justified in making a warrantless arrest to prevent the commission of a felony.⁶⁵ A warrantless arrest to prevent a felony which has not yet been attempted, however, is probably justified only when the criminal act is "imminent."⁶⁶

8 - 7(d) Reliable Information about Outstanding Felony Warrant

An officer may act upon reliable information that there is an outstanding felony warrant against the accused. Thus, the officer may effect the arrest even if he does not have the warrant in hand. "Reliable information" includes that received from another officer or a radio bulletin. However, there must actually be a valid warrant in existence for an effective arrest. Regardless of the urgency of the circumstances, officers should follow their departmental procedures to ensure that the information is accurate before proceeding to arrest.

8 - 7(e) Necessity for Probable Cause

When an officer arrests without a warrant, neither good faith nor an unfounded suspicion that the person arrested may have committed the crime is enough to justify the arrest. The officer must have reasonable grounds to suspect that the person arrested has committed an offense.⁶⁷ The phrase "reasonable grounds to suspect" is the equivalent of the more common expression "probable cause." A good rule of thumb is that the grounds for suspicion should be at least the same as would be required to obtain an arrest warrant.⁶⁸

8 - 7(f) Promptness in Making a Warrantless Arrest

An officer's power to arrest without a warrant does not extend to offenses that are long past.⁶⁹ Therefore, if an officer does not act when he or she sees a crime committed, but instead delays and seeks to make a warrantless arrest after having had time and opportunity to obtain a warrant, the arrest may be illegal.⁷⁰ It is not only the officer's right but his or her duty to make such arrests promptly.⁷¹ Such an arrest is authorized only when an officer has no time to secure a warrant and sets out to make an arrest immediately upon seeing an offense.⁷²

⁶⁵Savannah News Press, Inc. v. Harley, 100 Ga. App. 387 (1959).

⁶⁶Cobb v. Bailey, 35 Ga. App. 302 (1926).

⁶⁷Pistor v. State, 219 Ga. 161 (1963), *cert. denied*, 375 U.S. 947 (1963); *see also* Creamer v. State, 150 Ga. App. 458 (1979).

⁶⁸Harris v. State, 128 Ga. App. 22 (1973).

⁶⁹Thomas v. State, 91 Ga. 204, 207 (1892).

⁷⁰Reed v. State, 195 Ga. 842 (1943).

⁷¹*Id.* At 849-850; *see also* Yancey v. Fidelity and Cas. Co., 96 Ga. App. 476 (1957).

⁷²Yates v. State, 127 Ga. 813 (1907).

8 - 7(g) Arrest of Fugitives

When a suspect who has been lawfully arrested escapes from an arresting officer, he or she may be re-arrested without a warrant. By escaping, the suspect becomes a fugitive from arrest, and any officer can arrest without a warrant an offender who “is endeavoring to escape.”⁷³ Since it is a crime to escape from lawful custody,⁷⁴ the officer who made the original arrest could of course re-arrest without a warrant for a crime committed in his or her presence.⁷⁵

The rules for warrantless arrests are not enforced with the same strictness in the case of escaped convicts since a convicted fugitive enjoys no presumption of innocence. Because a fugitive has no right to be at large, he or she cannot complain when recaptured without a warrant.

⁷³O.C.G.A. § 17-4-20.

⁷⁴O.C.G.A. § 16-10-52.

⁷⁵O.C.G.A. § 17-4-20.

CHAPTER 9 – THE OFFICE OF SHERIFF AND THE LAWS OF SEARCH AND SEIZURE

A Sheriff can conduct a lawful search with or without a search warrant, but the law prefers searches to be made under warrant.

The Fourth Amendment of the United States Constitution guarantees the right of the people to be secure against unreasonable searches and seizures, and sets the requirements for the issuance of search warrants. What constitutes reasonableness in searches changes over time, and the law enforcement officer must keep abreast of the latest court interpretations in this area.

Lawful searches can be conducted with or without a search warrant. Just as the law prefers arrests to be made under warrant, so it prefers searches to be performed under warrant as well, so that an impartial judicial officer can determine whether a search is justified. Most of the time it is more feasible to obtain a search warrant than it is to obtain an arrest warrant, unless the search is incident to a lawful arrest and an immediate search is necessary to prevent destruction or removal of evidence or to ensure the safety of the arresting officer. Evidence seized under an illegal search warrant or through an illegal search will be excluded at trial.

9 - 1 Searches with a Warrant

A search warrant is a judicial command to all peace officers of the state directing them to search a particular place or person and to seize particular instruments, articles, or things.¹ Both the United States and the Georgia Constitutions require that: (1) the warrant be applied for under oath; (2) the place to be searched be specified; and (3) the things to be seized be described in detail.² Georgia law further requires that the search warrant be written and issued in duplicate.³ The original will be retained in the court's records, and the copy will go to the person or premises searched. Therefore, a prudent officer will make another copy of the warrant and affidavit for his or her case file.

9 - 1(a) Issuing a Warrant

The Fourth Amendment of the United States Constitution requires that search warrants be

¹O.C.G.A. § 17-5-23.

²U.S. Const., amend. IV; Ga. Const. Art. 1, Sec. 1, Para. 13.

³O.C.G.A. § 17-5-24.

obtained from judicial officers.⁴ Judicial officers in Georgia include judges of superior courts, state courts, magistrate's courts, probate courts, and any officer of a municipality who has the criminal jurisdiction of a magistrate.⁵ A police officer who is a full or part-time judicial officer (such as a magistrate) cannot issue a search warrant for any law enforcement officer. The attorney general or a district attorney cannot issue a search warrant either.⁶

A superior court judge may issue a warrant in any county within his or her judicial circuit.⁷ All other judicial officers may issue search warrants only in the area or county of their jurisdiction.⁸ Since issuing a search warrant is considered a judicial act, this function may not be delegated to any non-judicial officer, such as a clerk of the court.⁹

A search warrant can be issued only in the county where the warrant will be executed. For judicial officers with less than whole-county jurisdiction, the search warrant can be issued only if it will be executed in an area under their jurisdiction. An exception is superior court judges, who can issue search warrants in any county within their judicial circuit, so long as they are present in a county within the circuit.¹⁰

9 - 1(b) Obtaining a Search Warrant

A search warrant may be issued only upon the application of an officer of this state, its political subdivisions charged with the duty of enforcing the criminal laws, or a certified peace officer who is charged with the enforcement of the criminal law. A certified peace officer may apply for a search warrant in a county or city outside their normal jurisdiction. A certified peace officer in the State of Georgia may not apply for a search warrant outside the State of Georgia. A search warrant may not be issued upon the application of a private citizen.¹¹

A law enforcement officer may obtain a search warrant by submitting a written complaint under oath (affidavit) to a judicial officer. The affidavit must show probable cause that a crime is being or has been committed. It must particularly describe the place or person to be

⁴Coolidge v. N.H., 403 U.S. 443 (1971).

⁵O.C.G.A. § 17-5-21.

⁶Hawkins v. State, 130 Ga. App. 426 (1973); Baggett v. State, 132 Ga. App. 266 (1974); Coolidge v. N.H., 403 U.S. 443 (1971).

⁷O.C.G.A. § 15-6-23.

⁸O.C.G.A. § 17-5-22.

⁹Cox v. Perkins, 151 Ga. 632 (1921).

¹⁰O.C.G.A. § 15-6-23.

¹¹O.C.G.A. § 17-5-20.

searched as well as what is to be seized.¹² The affidavit should be prepared on a separate paper and attached to the search warrant. The warrant must then make reference to the attached affidavit.

Before a warrant is issued, the judicial officer must make an independent determination that probable cause exists.¹³ This determination is to be made upon careful consideration of the facts alleged in the affidavit as well as any oral testimony of the peace officer.¹⁴ The peace officer should expect to be sworn in by the judicial officer, give sworn testimony on the affidavit's contents, and any other necessary sworn oral testimony.¹⁵ If the peace officer provides testimony that is not included in the affidavit, the peace officer should make note of testimony given in investigative reports. At the criminal trial, the search warrant will be attacked by a defense attorney. The defense attorney will inquire if oral testimony was given to the judge issuing the search warrant.

As in the case of the affidavit supporting an arrest warrant, the affidavit in support of a search warrant may be based upon hearsay information, including an informant's tip, so long as the officer gives reason for believing the informant.¹⁶ The general test to be applied to determine the sufficiency of the affidavit's facts and circumstances to show probable cause based on an informer's information are: (1) that the affidavit gives reasons for the informer's reliability; (2) that the affidavit either specifically states how the informer obtained the information or describes the criminal activity in such detail that the magistrate may know that it is more than a casual rumor circulating in the underworld or an accusation based merely on an individual's reputation; and (3) that a time period closely related to the commission of the offense must be affirmatively stated within the affidavit to show that the information contained therein is not stale.¹⁷ Best practice is to verify information given by an informant to substantiate the information independently. Law suits can arise from law enforcement actions in which bad information or wrong addresses were provided to the peace officer. Check and verify locations.

When the judicial officer is satisfied that sufficient probable cause exists, he or she will sign the affidavit along with the peace officer. The warrant will not be valid unless both sign the

¹²O.C.G.A. § 17-5-21(a).

¹³Patterson v. State, 126 Ga. App. 753 (1972).

¹⁴Campbell v. State, 226 Ga. 883 (1970), *cert. denied*, 401 U.S. 1002 (1971).

¹⁵O.C.G.A. §17-5-20, *see also* O.C.G.A. §17-5-21.1 regarding search application by video conference.

¹⁶Reece v. State, 152 Ga. App. 760 (1979). *See Illinois v. Gates*, 462 U.S. 213 (1983). The Supreme Court ruled that when dealing with tips by informants, it would consider the "totality of the circumstances" and not just some rigid test. The Court ruled that sufficient information must be given to the officer issuing the warrant that would allow him or her to determine whether or not there was probable cause without having to rely solely on the bare conclusions of others.

¹⁷State v. Watts, 154 Ga. App. 789 (1980).

affidavit. The judicial officer will also sign the warrant with the date and time of issuance. At that point, the officer has a completed search warrant and may proceed to execute it.¹⁸ The search warrant is only valid for 10 days.

9 - 1(c) Contents of Search Warrant

To be valid, a search warrant in Georgia must contain:

- The time and date of issuance;¹⁹
- The person who is to execute the warrant (generally, the warrant is directed to all peace officers in the state);²⁰
- A command to search the place or person particularly described in the warrant;²¹ and
- A command to seize the instruments, articles, or things particularly described in the warrant.²²

The warrant must describe the places or persons to be searched and the objects to be seized with sufficient particularity that a reasonable and prudent officer could identify them solely on the information contained in the warrant.²³

9 - 1(d) Material to be Seized

Georgia law sets forth five classifications of material which may be seized under a warrant:²⁴

- Any instruments, articles, or things, including the private papers of any person, which are designed, intended for use, or which have been used in the commission of the offense in connection with which the warrant is issued;
- Any person who has been kidnapped in violation of the laws of this state, who has been kidnapped in another jurisdiction and is now concealed within this state, or any human fetus or human corpse;

¹⁸State v. Barnett, 136 Ga. App. 122 (1975); Merritt v. State, 121 Ga. App. 832 (1970); O.C.G.A. §§ 17-5-22, 17-5-23, 17-5-25.

¹⁹O.C.G.A. § 17-5-22.

²⁰O.C.G.A. § 17-5-24.

²¹O.C.G.A. § 17-5-23.

²²*Id.*

²³Steele v. U.S., 267 U.S. 498 (1925); Buck v. State, 127 Ga. App. 72 (1972).

²⁴O.C.G.A. § 17-5-21(a).

- Stolen or embezzled property;
- Any item, substance, object, thing, or matter, the possession of which is unlawful; or
- Any instruments, articles or things, any information or data, and anything that is tangible or intangible, corporeal or incorporeal, visible or invisible evidence of the commission of the crime for which probable cause is shown, other than private papers of any person.

Nothing in the preceding sections should be construed as precluding the officer, while in the process of effecting a lawful search, from discovering or seizing any stolen or embezzled property, or any material the possession of which is unlawful.²⁵ Nor do these sections preclude the officer's seizing of any matter other than private papers that would be tangible evidence of the commission of a crime against the laws of the state of Georgia.²⁶

9 - 1(e) Execution of the Search Warrant

Before a peace officer executing a search warrant may enter the place to be searched, he or she must give notice of the authority and purpose for the entry to any persons on the premises.²⁷ After giving notice, or making a good faith attempt to give notice, the officer may use all necessary and reasonable force to gain entry if:

- He is refused admittance;
- The person or persons within the building or property or part thereof refuse to acknowledge and answer the verbal notice or the presence of the person or persons therein is unknown to the officer; or
- The building or property or part thereof is not then occupied by any person.²⁸

For a search warrant to authorize entry of a building or dwelling without prior notice, the warrant must contain a "no-knock" provision.²⁹ No-knock provisions are sometimes needed in certain cases, such as gambling or drug cases where evidence could be quickly destroyed, or in dangerous person cases where the suspect occupying the premises could reasonably be expected to attempt to injure the officer if notified of the officer's presence. Probable cause for the need for a "no knock" provision must be given to the judicial officer at the time the search is requested. The judicial officer must approve and initial the no knock provision.

²⁵O.C.G.A. § 17-5-21(b).

²⁶*Id.*

²⁷O.C.G.A. § 17-5-27.

²⁸*Id.*

²⁹Jones v. State, 127 Ga. App. 137 (1972).

Upon completing the search, the officer is required to leave a duplicate copy of the warrant at the searched premises. Furthermore, an inventory of items seized must also be left with the search warrant. As long as the inventory is left behind, the affidavit portion of the search warrant does not need to be left. If no one is present to receive it, the officer must leave a copy of the search warrant and inventory in a conspicuous place on the premises.³⁰ A return of the search warrant and an inventory of all articles seized must be made without unnecessary delay before the judicial officer named in the warrant, or before any court of competent jurisdiction.³¹ Of course, if the arrestee is later released without a charge, all articles seized (other than illegal contraband) must be returned.

If the search warrant is not executed within 10 days of its issuance, it becomes void and must be returned to the issuing officer as "not executed."³² The warrant may be executed at any reasonable time.³³ What is reasonable, of course, will depend upon the circumstances in each case. As a general rule, it is good policy to execute a warrant in the daytime, unless the subject is unavailable or there are other good reasons for doing otherwise. When executing a search warrant, law enforcement personnel do not have to wear uniforms. Due to recent crimes including police impersonation, it is best practice to have a uniform presence or marked patrol vehicles at the location to be searched. Furthermore, clothing or marking identifying individuals as law enforcement are recommended.

9 - 1(f) Scope of Search

An officer should carefully organize the search to ensure that all the areas within the described premises or property are covered, and an inventory control system should be established to process any evidence obtained. Whether conducting a search with or without a warrant, an officer must stay within the scope of the search, which varies according to the nature of the evidence sought. In searching for a 60" flat screen television, for example, the scope of the search would be limited to areas where a 60" flat screen television could be concealed. A narcotics search, on the other hand, would be much broader, since narcotics are more easily hidden. Thus, officers are limited to actions necessary to locate the items listed in the warrant, and once these items listed in the search warrant have been located, the search must be discontinued. While searching for such items, however, and while staying within the scope of the search, the officer may seize evidence of other crimes. If searching for the 60 inch TV and narcotics are seen in plain view, it is recommended to stop searching and get another search warrant for narcotics.

³⁰O.C.G.A. § 17-5-25.

³¹O.C.G.A. § 17-5-29.

³²O.C.G.A. § 17-5-25.

³³O.C.G.A. § 17-5-26.

9 - 2 Searches Without a Warrant

The law terms such searches as exceptions to the warrant requirement and identifies four major exceptions in which warrantless searches are justified:³⁴ (1) consent searches; (2) plain view searches; (3) searches under exigent (emergency) circumstances; and (4) searches incident to lawful arrests.

- Consent searches. As with other constitutional safeguards, one may knowingly and intentionally waive the personal right to be secure against unreasonable searches and seizures.³⁵ It follows that any search to which an individual voluntarily consents cannot be held unlawful based on violation of the Fourth Amendment rights of the person giving the consent. The consent may be either oral or written, and while it may be implied from the conduct of the defendant, it must be given voluntarily.³⁶ In order for the consent given by one other than the suspect (a third party) to be valid, the one giving the consent must have a possessory interest (i.e., be a lawful occupant or have a legal right to occupy the premises or vehicle) in the property to be searched.³⁷ This third person may give consent to search the common areas a residence, but not the private room of another person. If a person is in control of the property, such as a vehicle, gives consent, but the owner denies consent, the search cannot take place. When asking for consent from married individuals, if one party grants consent and the other party does not, the search cannot be conducted. It is important to remember that consent can be withdrawn. If consent is withdrawn, the search must stop. Furthermore, during a search under consent, the person giving consent must have a way or ability to inform officers to stop the search. During the consent search, the officer may only seize items that the officers knows to be stolen, embezzled property, contraband, and instruments or fruits of the crime.
- Plain view searches. Under the plain view doctrine, mere observation by a police officer of an object in plain view does not constitute a search; consequently, the principles of the law of search and seizure are not applicable, nor is a warrant required when the items in question are voluntarily exhibited to the police officer.³⁸ An officer is free to seize without a warrant what he or she sees in plain sight.³⁹

³⁴*Arrest/Search and Seizure in Georgia* (Athens, Ga.: Carl Vinson Institute of Government (1985), pp. 71-76.

³⁵*Davis v. U.S.*, 328 U.S. 582 (1946); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); see *Hall v. State*, 239 Ga. 832 (1977); *Hunter v. State*, 190 Ga. App. 52 (1989).

³⁶*Young v. State*, 113 Ga. App. 497 (1966); *U.S. v. Watson*, 423 U.S. 411 (1976).

³⁷*Atkins v. State*, 173 Ga. App. 9 (1984), *rev'd on other grounds*, 254 Ga. 641 (1985).

³⁸*Katz v. U.S.*, 389 U.S. 347 (1967).

³⁹*Brewer v. State*, 129 Ga. App. 118 (1973), *overruled on other grounds*.

Four major limitations restrict an officer in exercising a plain view search:

- The officer must have a right to be where he or she is when he or she observes the object.⁴⁰ If the officer is trespassing on the defendant's property, a plain view search is not valid.
- The officer must take no action to bring the object into view.⁴¹ Affirmative action by the officer would probably constitute a search for which a warrant would be required.
- The incriminating nature of the article must be apparent from its appearance.⁴² The officer cannot unwrap a package or make any preliminary exploration to determine whether an object is illegal.
- The discovery of the evidence must have been inadvertent or accidental. If the officer knows in advance that illegal objects will be found within plain view, a search warrant must be obtained.⁴³

These limitations are based on the Fourth Amendment of the Constitution which provides protection to the owner of every container that conceals its contents from plain view. However, the Supreme Court has held that this protection varies in different settings, and once a legitimate search is under way and its purpose and limits based on probable cause have been set, then distinction between closets, drawers, and containers in the case of a home, or between glove compartments, upholstered seats, tanks, and wrapped packages, in the case of a vehicle, give way to the interest of prompt and efficient completion of the task. Therefore, when an officer has probable cause to believe that contraband is concealed somewhere within a home or vehicle, he or she may conduct a search as thorough as a magistrate could authorize by warrant.⁴⁴

- Exigent circumstances. A warrantless search may be made when an officer has probable cause for making the search, and when exigent circumstances make it impractical to obtain a warrant.⁴⁵ Generally, exigent circumstances exist when a suspect is fleeing, or

⁴⁰*Id.*; see also Harris v. U.S., 390 U.S. 234 (1968); Kelley v. State, 146 Ga. App. 179 (1978).

⁴¹ Lentile v. State, 136 Ga. App. 611 (1975); Caito v. State, 130 Ga. App. 831 (1974); U.S. v. Lee, 274 U.S. 559 (1927).

⁴² May v. State, 181 Ga. App. 228 (1986).

⁴³ Coolidge v. N.H., 403 U.S. 443 (1971).

⁴⁴ U.S. v. Ross, 456 U.S. 798 (1982).

⁴⁵ Coolidge v. N.H., 403 U.S. 443 (1971); see Anderson v. Creighton, 483 U.S. 635 (1987); see Brewer v. State, 129 Ga. App. 118 (1973).

when the instrumentalities of a crime are in the process of being destroyed.⁴⁶ Mere inconvenience in obtaining a warrant, or a slight delay in the preparation of the papers and presentation of evidence to a judicial officer, will not support a warrantless search under this exception.⁴⁷ This is an emergency situation which cannot be created by law enforcement.

- Search incident to a lawful arrest. One of the most commonly used exceptions to the general requirement of search warrants is a search incident to a lawful arrest. Two justifications exist for warrantless searches under these circumstances: (1) without a search, the officer's safety might be endangered and the arrest frustrated, or (2) evidence in the possession of the arrested party could be concealed or destroyed.⁴⁸

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

- Protecting the officer from attack;
- Preventing the person from escaping;
- Discovering or seizing the fruits of the crime for which the person has been arrested; or
- Discovering or seizing any instruments, articles, or things which are being used or which may have been used in the commission of the crime for which the person has been arrested.⁴⁹

9 - 2(a) Stop and Frisk Searches

The stop and frisk exception to the warrant requirement is a procedure by which officers may make on-the-street stops, interrogations, and pat-downs for weapons. The sole justification for this warrantless intrusion on an individual's rights is the protection of the officer and others nearby. A frisk is less than a search, and a thorough search of a suspect is never justified by calling it a frisk.⁵⁰ A frisk is a pat down of the suspect's outer clothing.

A reasonable suspicion that the suspect is engaged in criminal conduct is necessary for both the stop and the frisk.⁵¹ The first step, the stop, occurs when an officer stops a suspect whom he or she has reasonable grounds to believe is engaged in criminal activity. Such a stop may be

⁴⁶McDonald v. U.S., 335 U.S. 451 (1948).

⁴⁷*Id.*

⁴⁸See Preston v. U.S., 376 U.S. 364, 367 (1964).

⁴⁹O.C.G.A. § 17-5-1(a).

⁵⁰Holtzendorf v. State, 125 Ga. App. 747 (1972).

⁵¹Jones v. State, 126 Ga. App. 841 (1972); *see also* Terry v. Ohio, 392 U.S. 1 (1968).

justified even when there is insufficient evidence to establish probable cause for either an arrest or a warrantless search.⁵² After proper self-identification, the officer may ask the suspect's name, address, the reason for his or her presence, and other related questions.

On the basis of a reasonable suspicion that the suspect is armed and dangerous, the officer may conduct the second step in the stop and frisk encounter - the frisk. The frisk is limited to a pat-down of the suspect's outer clothing for weapons. If during the frisk, the officer immediately identifies an item by feel as contraband or a weapon (Plain Feel Doctrine), the officer may seize the item as evidence. If contraband or a weapon is discovered during the protective search, the officer may seize it and arrest the suspect for carrying a weapon without a weapons carry license. Following the arrest, the officer may make a full search of the person incident to a lawful arrest.

9 - 2(b) Search of a Person Incident to a Lawful Arrest

The warrantless search of a person incident to a lawful arrest differs from a warrantless search of premises. Generally, a police officer is permitted to make a full search of a person under custodial arrest.⁵³ Obviously, the arrest must be lawful before the search can be lawful.⁵⁴ A search incident to an arrest is lawful only if:

- The arrest is lawful;⁵⁵
- The search takes place at approximately the same time as the arrest;⁵⁶
- The search does not extend beyond the immediate control of the suspect;⁵⁷ and
- The search is for the purpose of disarming the suspect, finding instruments of escape, or for the seizure of fruits or instrumentalities of the crime for which the suspect was arrested.⁵⁸

The search may not precede the arrest (unless it is a stop and frisk encounter), nor may it serve as a justification for the arrest itself.⁵⁹ Unlike a stop and frisk encounter, where the officer is limited to a pat-down, the officer may conduct a full search of the person who is under lawful

⁵²Brooks v. State, 129 Ga. App. 109 (1973).

⁵³U.S. v. Robinson, 414 U.S. 218 (1973).

⁵⁴Bethea v. State, 127 Ga. App. 97 (1972).

⁵⁵Kelly v. State, 129 Ga. App. 131 (1973).

⁵⁶Cupp v. Murphy, 412 U.S. 291 (1973).

⁵⁷O.C.G.A. § 17-5-1.

⁵⁸*Id.*

⁵⁹Kelly v. State, 129 Ga. App. 131 (1973).

arrest, regardless of whether the officer fears the person to be armed.⁶⁰

9 - 2(c) Strip Searches

It should be noted in reference to the "search of a person incident to a lawful arrest" and "search of the body" that the "search of a person incident to a lawful arrest" includes "strip searches" when such is done for the purposes and within boundaries set in O.C.G.A. § 17-5-1. However, once a person is under arrest, he becomes a pretrial detainee, not yet convicted of a crime and is being detained pending trial. Pretrial detainees do retain some Fourth Amendment protection and the test for constitutionality of a strip search is one of the reasonableness of the search in light of the need for the search under the present circumstances.⁶¹ There must be a weighing of the detainee's personal rights and the need to invade them. Because of this view, strip searches should be done cautiously and with extreme regard for statutory provisions.

Furthermore, once the close relationship of the initial arrest and searches associated with the arrest has passed into a routine holding of a pretrial detainee, O.C.G.A. § 17-5-1 no longer applies. Any searches, strip or otherwise, conducted as part of holding should be done only with regard to the Supreme Court permission stated above.

9 - 2(d) Search of the Body

The United States Supreme Court has ruled that the Fourth Amendment protects against unreasonable searches involving physical extraction of evidence from the body.⁶² What determines reasonableness depends on the merits of each case based on a totality of the circumstances.⁶³

A blood test to determine the alcohol content of the blood must be consented to by the arrestee. If consent is denied and the officer has probable cause for the search, the officer must seek a search warrant. This would also apply for someone refusing consent under the Georgia's implied consent statute, O.C.G.A. § 40-5-55.

The implied consent statute affords a suspect the opportunity to refuse to submit to a state-administered test of his blood, urine or other bodily substances.⁶⁴ The right of refusal is

⁶⁰ U.S. v. Robinson, 414 U.S. 218 (1973).

⁶¹ Bell v. Wolfish, 441 U.S. 520 (1979); *but see*, Powell v. Barrett, 541 F.3d 1298 (2008) (Practice of conducting full body visual strip searches on all jail detainees being booked into the general population for the first time did not violate the Fourth Amendment).

⁶² Schmerber v. California, 384 U.S. 757 (1966).

⁶³ State v. Bowman, 337 Ga. App. 313 (2016); *see also* Williams v. State, 296 Ga. 817 (2015).

⁶⁴ State v. Collier, 279 Ga. 316 (2005), *superseded by statute as laid out in* McAllister v. State, 325 Ga.

reinforced by the express language of O.C.G.A. § 40-5-67.1(d), which provides in relevant part that if a person under arrest or a person who was involved in any traffic accident resulting in serious injuries or fatalities refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (a) of this Code section, no test shall be given.⁶⁵ It should be noted that an officer must have reasonable suspicion that the person involved in any traffic accident resulting in serious injuries or fatalities is under the influence of alcohol or drugs. Just because a serious motor vehicle crash occurs, it is not automatic right to administer implied consent. An officer's failure to so advise a suspect renders the results of the test inadmissible in evidence.⁶⁶ However, such refusal shall not preclude the administration of a test if a valid search warrant is obtained.⁶⁷

9 - 2(e) Custodial Inventory Searches

A custodial inventory search refers to the taking of property from prisoners for safekeeping while they are incarcerated. Inventory searches can be justified as necessary to protect the owner's property and to safeguard law enforcement from false claims of theft or loss.⁶⁸ Most commonly, custodial Inventory Searches are conducted on vehicles. These searches are covered by the agencies policy. Evidence obtained as the result of a routine inventory search conducted to itemize the property of an arrested person is admissible in court.⁶⁹

9 - 2(f) Fingerprinting

Fingerprinting, like an inventory search of a person following an arrest, is generally considered to be a valid part of the "booking" process and has been generally upheld as reasonable.⁷⁰ Fingerprints may be taken without a warrant after a valid arrest, or during the investigatory process if sufficient probable cause exists to believe the suspect has committed a crime.⁷¹

9 - 2(g) Warrantless Searches of Premises

A warrantless search of a person's home incident to arrest generally can be made only if the

App. 583 (2014).

⁶⁵O.C.G.A. § 40-5-67.1(d).

⁶⁶State v. Causey, 215 Ga. App. 85 (1994).

⁶⁷ O.C.G.A. § 40-5-67.1(d.1).

⁶⁸U.S. v. Gravitt, 484 F.2d 375 (5th Cir. 1973), cert. denied, 414 U.S. 1135 (1974).

⁶⁹Id.

⁷⁰U.S. v. Jackson, 451 F.2d 259 (5th Cir. 1971).

⁷¹Cupp v. Murphy, 412 U.S. 291, 294 (1973).

arrest took place in the home.⁷² If the arrest is made away from the suspect's home, a warrantless search of the home will probably not be justified.

A warrantless search of a person's home is authorized for the following purposes only:⁷³ (1) to protect the officer from attack; (2) to prevent the person's escape; (3) to discover or seize fruits of the crime for which the person has been arrested; or (4) to discover or seize any instrumentalities used in the commission of the crime for which a person has been arrested.

Even when the arrest takes place on the premises, the arresting officer is not authorized to make an unlimited search of them. Georgia law strictly limits the scope of search without a warrant to the area within the arrested person's immediate presence or control.⁷⁴ Any reasonable distance in which the suspect may have concealed a weapon, or fruits and instrumentalities of a crime, is considered to be within his or her presence or control. An arm's-length span in and around the suspect is a good rule of thumb for determining the space within the suspect's immediate control.⁷⁵

Maryland v Buie (1990) Further held that: incident to arrest, officers could, as a precautionary matter and without probable cause or articulable reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be launched. The sweep lasts no longer than necessary to dispel the suspicion of danger and no longer than it takes to complete the arrest and leave the premise. It is not a full search and may only be cursory inspection of those spaces where a person may be found.

9 - 2(h) Hot Pursuit Searches

As previously discussed, while in hot pursuit of a fleeing felon, the pursuing officer may enter a house in which he or she has probable cause to believe the suspect is hiding. This must be an ongoing and active pursuit. The officer may search for the felon and for any weapons the felon might use.⁷⁶ The scope of the search may be as broad as is reasonably necessary to prevent the suspect from escaping or injuring the officer.

The justification for the warrantless searches of premises while in hot pursuit of fleeing felons combines both the exigent circumstances exception and the plain view doctrine elaborated earlier. The exigency of the hot pursuit situation gives the officer the right to be in the house and to search the suspect.

⁷²Shibley v. California, 395 U.S. 818 (1969).

⁷³O.C.G.A. § 17-5-1.

⁷⁴*Id.*

⁷⁵Chimel v. California, 395 U.S. 752 (1969).

⁷⁶Warden v. Hayden, 387 U.S. 294 (1967); see Hall v. State, 135 Ga. App. 690 (1975).

While lawfully in the house, the officer may seize anything that comes into his or her plain view while conducting the search. Misdemeanor traffic offences do not rise to the level of an emergency under hot pursuit. Hence, entry to a residence, including a garage, should not be under hot pursuit for misdemeanor crimes.

9 - 2(i) Vehicular Searches

The term vehicle usually brings to mind the automobile. It should be remembered, however, that the term also applies to ships, motorboats, airplanes, trains, and other methods of conveyance. The exceptions for vehicular searches apply to these modes of travel as well.

While vehicles and other means of transportation are protected by the Fourth Amendment prohibition of unreasonable searches and seizures, their mobility has led to the establishment of several exceptions to the search warrant requirement. The exception which allows the warrantless search of movable vehicles is commonly known as the "Carroll Rule".⁷⁷

Under the Carroll Rule, the vehicle's mobility alone is not enough to allow a warrantless search. The officer must have probable cause to believe that contraband or other seizeable materials are within the vehicle.⁷⁸ There must also be some risk that the vehicle might be removed from the locality while a search warrant is sought.⁷⁹

The warrantless search of the vehicle must also be reasonable in regard to time, place, and manner of search.⁸⁰ It is not always necessary to search a vehicle immediately upon stopping it. The search may be postponed if it is either impractical to search the vehicle at the time it is stopped, or if a search at that time would endanger the officer.⁸¹ If the vehicle is impounded, doors sealed with evidence tape, and taken to a secured facility to be searched, best practice is to obtain a search warrant based on probable cause before the search takes place.

9 - 3 Items Subject to Forfeiture

All motor vehicles, tools, and weapons which are used or intended for use in any manner in the commission of or to facilitate the commission of a burglary or armed robbery are subject to forfeiture.⁸²

⁷⁷Carroll v. U.S., 267 U.S. 132 (1925).

⁷⁸Almeida-Sanchez v. U.S., 413 U.S. 266 (1973).

⁷⁹Carroll v. U.S., 267 U.S. 132 (1925).

⁸⁰Chambers v. Maroney, 399 U.S. 42 (1970).

⁸¹*Id.*; *but see* Coolidge v. N.H., 403 U.S. 443 (1971) (in which search eleven months after seizure of the vehicle was held too remote in time to fall within the Carroll Rule).

⁸²O.C.G.A. § 16-16-2.

When property is seized, the state attorney may: (1) place the property under constructive seizure by giving notice of pending forfeiture to its owners and filing notice of seizure in public record; (2) remove the property to a place designated by the judge of the superior court having jurisdiction over the forfeiture; (3) provide for another governmental agency, receiver, or owner to take custody of the property and remove it to an appropriate location within the county where it was seized; or (4) require the sheriff or police chief to take custody of the property and remove it to an appropriate location for disposition in accordance with law.⁸³

When property is seized, the sheriff or law enforcement officer seizing the same shall report the fact of seizure, within 30 days thereof, to the district attorney of the judicial circuit having jurisdiction in the county where the seizure was made.⁸⁴

9 - 4 Disposition of Weapons Used in Commission of a Crime

When a final judgment is entered finding a defendant guilty of the commission or attempted commission of a crime against any person or guilty of the commission of a crime or delinquent act involving the illegal possession or carrying of a weapon, any device which was used as a weapon in the commission of the crime or delinquent act shall be turned over by the person having custody of the device to the sheriff of the county wherein the device was confiscated when the device is no longer needed for evidentiary purposes.⁸⁵

Within one year after receiving the device, the sheriff shall retain the device for use in law enforcement, destroy the same, or advertise it for sale in such manner as other sheriff's sales are advertised and shall sell the device to the highest bidder at the next sheriff's sale conducted after the completion of the advertisements. However, if the device used as a weapon in the crime is not the property of the defendant, there shall be no forfeiture of such weapon.⁸⁶

The proceeds derived from all sales of such devices, after deducting the costs of the advertising and the sale, shall be turned in to the treasury of the county wherein the sale is made. However, if the device was used in the commission of a crime within a municipal corporation, the proceeds derived from the sale of the device, after deducting the costs of the advertising and the sale, shall be turned in to the treasury of the municipality wherein the crime was committed.⁸⁷

⁸³O.C.G.A. § 9-16-10.

⁸⁴O.C.G.A. § 9-16-7(a).

⁸⁵O.C.G.A. § 17-5-52.

⁸⁶Id, O.C.G.A. §17-5-54.

⁸⁷O.C.G.A. § 17-5-54(i).

9 - 5 Use of State Asset Forfeiture Proceeds

Currency distributed to a local government shall be passed through to the local law enforcement agency until the sum equals 33 1/3 percent of the amount of local funds appropriated or otherwise made available to such agency for the fiscal year in which such funds are distributed.⁸⁸

Such currency may be used for any official law enforcement purpose except for the payment of salaries or rewards to law enforcement personnel, at the discretion of the chief officer of the local law enforcement agency, or may be used to fund victim-witness assistance programs. Such property shall not be used to supplant any other local, state, or federal funds appropriated for staff or operations.⁸⁹

Any local law enforcement agency receiving property and proceeds under this subsection shall submit an annual report to the local governing authority by January 31 each year for the previous calendar. The report shall be submitted with the agency's budget request and shall itemize the property received during the fiscal year and the utilization made thereof.⁹⁰

9-6 Use of Federal Asset Forfeiture Proceeds

Money or property seized or forfeited pursuant to federal law, and such property or proceeds, authorized by that federal law to be transferred to a cooperating law enforcement agency of this state or any political subdivision thereof, shall be utilized by the law enforcement agency or political subdivision to which the property or proceeds are so transferred as provided by such federal law and regulations thereunder. Unless otherwise required by federal law or regulation, such funds shall be received and utilized as provided by Georgia law.⁹¹

⁸⁸O.C.G.A. § 9-16-19(f)(4)(A)(ii).

⁸⁹Id.

⁹⁰O.C.G.A. § 9-16-19(g)(2).

⁹¹O.C.G.A. § 9-16-21.

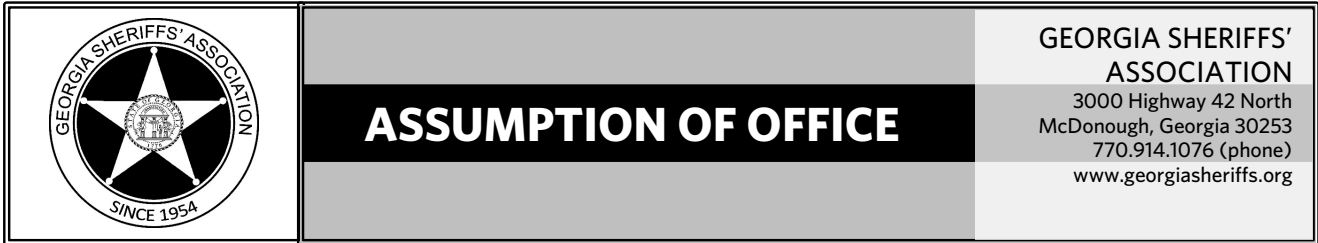
APPENDIX



ASSUMPTION OF OFFICE AND CHECKLIST

Revised 2020

This document serves as a guide for sheriffs-elects to ensure successful transition into the role of sheriff. Georgia Sheriffs' Association staff, along with many current and retired sheriffs, have contributed to this document based on experience and Georgia law. You should always seek legal advice on all matters related to the Office of Sheriff. Contact GSA staff with questions.



The Office of Sheriff is a unique constitutional office. Unlike other law enforcement agencies, the duties and responsibilities of the Office of Sheriff are established by common law, Georgia statutes, and the constitution. Upon assuming the duties as a newly elected Sheriff, the transition will be challenging. This guide, created by experienced sheriffs, command staff, and the GSA training staff, provides a pathway to transition successfully into the new role as Sheriff. Utilize the checklist at the end of this document as a management tool. And remember, there are experienced sheriffs and your Association staff willing to assist at all times.

I. General Information

1. Oaths of Office

Sheriffs, deputy sheriffs, and other sheriff's office personnel are required to take an Oath of Office

a. Sheriffs Oath of Office

Newly elected sheriffs must take two separate oaths before assuming Office. The first oath is required of all public officers of the state and is simply a pledge by the prospective sheriff that he or she is qualified to hold the office according to the constitution and laws of Georgia. The second oath is required by general statute and specifically applies to the Office of Sheriff.

O.C.G.A. § 45-3-1 mandates persons who are elected or appointed to an office to take the following oath.

"I, _____, a citizen of the United States of America and an employee of the _____ County Sheriff's Office do swear that I am not the holder of any unaccounted public money due this state and that I am not the holder of any office of trust under the government of the United States, or any foreign state which by the laws of Georgia I am prohibited from holding. I swear that I am otherwise qualified to hold said office according to the Constitution and laws of the State of Georgia. I also swear that I will support the Constitution of the United States and of this state."

This oath must be taken and signed before the judge of probate court. The oath shall be filed in the office of the judge of probate court and shall be entered in the minutes of the superior court. The oath may be administered at any time prior to taking office however; it is not effective until the designated date of assuming office.

O.C.G.A. § 15-16-4 requires the following oath for every person elected or appointed sheriff in Georgia.

“I do swear that I will faithfully execute all writs, warrants, precepts, and processes directed to me as sheriff of this county, or which are directed to all sheriffs of this state, or to any other sheriff specially, which I can lawfully execute, and true returns make, and in all things well and truly, without malice or partiality, perform the duties of the Office of Sheriff of _____ County, during my continuance therein, and take only my lawful fee. So help me God.”

These oaths must be taken and signed before the judge of superior court or the judge of probate court. The oaths shall be filed in the office of the judge of probate court and shall be entered on the minutes of the superior court. The oath may be administered at any time prior to taking office; however, it is not effective until the designated date of assuming office.

b. Oath for Deputy Sheriffs

O.C.G.A. § 45-3-7 mandates that deputy sheriffs must take the same oath as the sheriff.

“I do swear that I will faithfully execute all writs, warrants, precepts, and processes directed to me as deputy sheriff of this county, or which are directed to all sheriffs of this state, or to any other sheriff specially, which I can lawfully execute, and true returns make, and in all things well and truly, without malice or partiality, perform the duties of the Office of Sheriff of _____ County, during my continuance therein, and take only my lawful fees. So help me God.”

The sheriff administers this oath to their deputies. The oath is then filed and entered in the records of the sheriff’s office.

c. Oath for Jailers

O.C.G.A. § 42-4-2 mandates jail officers must take the following oath before performing any duties of their office.

“I do swear that I will well and truly do and perform, all and singular, the duties of jailer for the county of _____, and that I will humanely treat prisoners who may be brought to the jail of which I am keeper, and not suffer them to escape by any negligence or inattention of mine. So help me God.”

The sheriff administers the oath to their jailers. The oath is then filed and entered into the records of the sheriff’s office.

d. Oath for Bailiffs

O.C.G.A. § 15-12-140 mandates bailiffs must take the following oath before performing any duties as bailiff of a court.

“You shall take all juries committed to your charge to the jury room or some other private and convenient place designated by the court and you shall not allow the jurors to receive any books, papers, nourishment, or hydration other than water, or to use any electronic communication device except as directed and approved by the court. You shall make no communication with the

jurors nor permit anyone to communicate with the jurors except as specifically authorized by the court. You shall discharge all other duties that may devolve upon you as bailiff to the best of your skill and power. So help you God."

It is desirable to have the presiding judge administer the oath before each term of court. However, the judge of probate court may also administer said oath. Sheriffs should ensure oaths are administered at the beginning of each term of court.

e. Office for Other Sheriffs' Office Personnel

An oath of office is not mandated for the remaining sheriff's office personnel. However, many sheriffs create and administer an oath to all sheriff's office employees encouraging their loyalty and support of the sheriff's office.

2. Tax Commissioners as Ex-Officio Sheriff

O.C.G.A. § 48-5-137 may allow for tax collectors and tax commissioners, upon the written consent of the sheriff of the county involved in populations less than 300,000, to serve as an ex-officio sheriff insofar as to enable them to collect taxes due the state and county by levy and sale under tax execution. The judge of probate court administers the sheriffs' oath to the tax commissioner.

3. Sheriffs' Bond

O.C.G.A. § 15-16-5 requires the sheriff to give a bond in the sum of \$25,000, payable to the county. The amount may increase in any county by local Act.

O.C.G.A. § 45-4-5 requires at least two sureties on the bond, one of which must be a corporate surety (that is a bond signed by some surety or guarantee company authorized to do business in this state) liable for the full amount of the statutory bond penalty. This should be done immediately upon taking office.

The probate judge (with one exception, noted later) must approve the sheriffs bond. Once approved, deposit the document in the office of the clerk of the superior court for examination by the presiding superior court judge. If it meets the requirements of the law and if the sureties are sufficient, the superior court judge will declare the bond proper and enter the bond and sureties in the minutes of the court. Once approved, return the bond to the office of the probate judge where it is recorded and filed. Bonds may be obtained by sheriffs from various sources. Initially, a newly elected sheriff may wish to consult with the out-going sheriff or with the county manager to find out where the bond was obtained for the previous sheriff. Frequently, bonds are obtained from insurance companies or from the Risk Management Pool of the Association County Commissioners of Georgia (ACCG).

4. Deputies' Bond

O.C.G.A. § 16-16-23; 45-4-2 requires the deputy to post bond in the amount of \$5,000.00 payable to the sheriff and conditioned upon the faithful accounting for all public and other funds or property coming into the deputy's custody, control, care, or possession.

[1] It is a misdemeanor for the deputy to take any official action before the bond is filed.

[2] Although the deputy's bond must be taken and recorded in the same manner as the sheriff's bond, unlike the sheriff's bond it need not be approved by the probate judge.

[3] The deputy's bond is made payable to the sheriff since it is the sheriff who is ultimately liable for the deputy's actions.

[5] For their own protection, therefore, sheriffs should take it upon themselves to investigate the sureties on a deputy's bond to ensure the bond's sufficiency.

5. Jailers' Bond

Per O.C.G.A. § 42-4-2, before commencing to carry out the duties of their office, jailers must give to the sheriff a bond and surety for the sum of \$1,000.00, conditioned for the faithful performance of their duties as jailers, and shall take and subscribe before the sheriff of their respective counties, to be filed in and entered into the records of the sheriff's office

6. Advice and Assistance

There are many resources available to the new sheriff to prepare for and during the first years of Office. Experienced sheriffs are the greatest resource. Every sheriff has asked for and received help from other sheriffs who have been in the very same situation. You will have an opportunity to meet experienced sheriffs from your region during Sheriffs-Elect training. During this training, new sheriffs will also meet persons from a variety of state and federal agencies that will also answer specific questions.

Many new sheriffs appoint a transition team of experienced professionals knowledgeable in the Office of Sheriff to assist in this process. This team can help the new sheriff assess the present organization and assist in the transition of property and records. It is also advisable for the outgoing sheriff to assign a staff person to the transition process.

7. Transition of Property and Records

Receipts for the transition of property and records should be prepared within the first few days of the new term of office. Representatives from the transition team and the outgoing sheriff's staff (or the sheriffs themselves) should be present to acknowledge receipt.

II. Fiscal Concerns

O.C.G.A. § 36-81-3 states the governing authority of each county is required to establish by ordinance, local law, or appropriate resolution a fiscal year for the operations of the local government, which includes the operations of the sheriff's office. The sheriff may receive funds from different sources. The disbursement of these funds may be dictated by the source, and state and federal law. As an example, federal forfeiture funds must be used for law enforcement purposes. The sheriff may not have the authority to sign all contractual agreements. There are a wide range of opinions on petty cash funds. Needless to say, if a petty cash fund is used, there must be strict accountability compliant with county policy. It is important for the new sheriff to learn in training and on the job which funds can be used to improve the operations of the sheriff's office and the detention facility. The sheriff and his designee need thorough knowledge of the financial process. Initially, the new sheriff should:

a. List of Accounts

Compile a list of all accounts and their purpose. Below is a list of accounts the sheriff's office *may* possess. Information in the parenthesis () indicates who is responsible for maintaining the funds.

1. Cash bond (Sheriff and/or Clerk of Court may accept but is turned over to the Clerk)
2. Commissary funds (Recommend agreement with county commission for sheriff to maintain this fund for inmate benefit. The agreement makes payments for ancillary inmate management costs easier to manage.)
3. Crime Prevention (Line item in budget; funds are maintained in county general fund.)
4. Drug Education Fund (Supports drug education programs such as CHAMPS & DARE, as well as drug courts, etc. Funds are maintained in county general fund.)
5. Federal Forfeitures (Federal monies are to be kept in an account maintained by the county, with the sheriff maintaining exclusive and autonomous control over how and when the federal funds are spent.)
6. Fifas, Auctions, etc. (Monies should be paid to the Clerk of the Court.)
7. Fingerprinting funds (Monies collected for fingerprinting citizens for employment purposes. Funds are maintained in county general fund.)
8. Informant/drug funds (Line item in budget. Funds are maintained in county general fund.)
9. Inmate accounts (Personal money of the inmate to be used for the inmate's personal use such as medical fee, commissary, etc. Funds are maintained by the Sheriff.)
10. Inmate telephone funds (Per case law, profits from telephone usage belongs in the county general fund. If the county commission agrees, the sheriff may maintain these funds for jail/inmates purposes only.)
11. Jail Staffing and Construction (Monies collected through fine process; the county commission maintains this account.)
12. Judgments (Monies from judgements are paid to the Clerk of Court.)
13. Medical fees (Medical fees paid by the inmate or reimbursement for medical services for inmates housed from other counties; funds are maintained in the county general fund.)
14. Miscellaneous (donations, benevolent, or discretionary funds. NO tax revenue should ever be utilized for donations.)
15. Payments for GA Department of Corrections sentenced inmates (Monies are paid to the county and maintained in the county general fund for county use.)
16. Payments for housing federal inmates (Monies are paid to the county and maintained in the county general fund for county use.)
17. Payments for housing inmates from other counties (Monies are paid to the county and maintained in the county general fund for county use.)
18. Payment for reporting incarcerated individuals who draw social security benefits (Monies are paid to the county and maintained in the county general fund for county use unless county agrees for sheriff to utilize.)
19. State Forfeitures (State forfeited funds should be maintained in a separate checking account. State law is worded such that state forfeited funds can be maintained by the sheriff. The sheriff is required to submit an annual report to the governing authority detailing forfeited amounts and expenditures each year. These accounts can be interest-bearing accounts. OCGA § 9-16-19.)
20. Vending machines (most likely, county petty cash)

Limit the number of checking accounts that you have. Best practice are four accounts: (1) operating account (2) state forfeitures (3) federal forfeitures (4) interest bearing accounts. Remember, the sheriff does NOT have a checkbook for monies in the county general fund—he has autonomy in spending the money in his budget, but the county writes the check.

b. Authority to Sign Documents

Determine which staff members will be authorized to sign documents such as purchase orders, travel vouchers, etc. Submit new signature cards or forms to the banking institution for those staff members who are authorized to sign these documents.

c. Debit/Credit Cards

Determine if designated employees should have debit/credit cards. Must have signed user agreements from each designated employee and use policy on file with governing authority per O.C.G.A. § 36-80-24.

d. Cash and Checks

Identify all cash and outstanding checks on hand. Either sheriffs or their designees should sign all cash count sheets, including all revenues and collections on hand.

e. Inventory of Financial Documents

Prepare a physical inventory of all financial documents including all unused, pre-numbered documents. These include checks and pre-numbered receipt books.

f. List of Present Contracts

Obtain a list of all present contracts including 'out clauses' and expiration dates. Major contracts may include:

1. Building maintenance fees
2. Business machines (copiers, computers, etc.)
3. Construction and repair
4. Credit/debit cards
5. Employee drug screening
6. Employee medical screening
7. Fleet maintenance
8. Housing federal inmates
9. Housing inmates for other counties
10. Housing inmates for municipalities
11. Inmate commissary
12. Inmate food services
13. Inmate medical services
14. Inmate telephone service
15. Jail laundry
16. Janitorial services
17. Lease/purchases of vehicles and equipment
18. Leases of property
19. Pagers/cell telephones
20. Provision of law enforcement services for a governmental entity, i.e. a local town
21. Telephone services
22. Towing
23. Translators
24. Vending machines

g. Contracts for Signature Change

Elected officials are not bound by contracts signed by their predecessors. O.C.G.A. § 36-30-3 addresses the issue of contracts and how long they can be in effect for cities. In the case *Madden v. Bellew* 260 Ga. 530, the Georgia Supreme Court ruled the statute also applies to counties. Subsequent cases relying on *Madden*, ruled that the statute applies except for the exceptions

addressed in the statute, and instances where specific legislation (local or statewide) allows for lengthier contracts. Determine if any contracts need a signature change, i.e. housing inmates. Verify contract expiration dates. Determine requirements for terminating any contracts you do not wish to continue

h. Unsigned Contracts and Bid Proposals

Obtain a list of all unsigned contracts/and or bid proposals.

i. Current Budget

Obtain a copy of the current budget and expenditures under which the sheriff's office is operating.

j. Open Requisitions and Purchase Orders

Compile a list of all open requisitions and purchase orders.

k. Financial Audit

In writing, ask for a financial audit.

l. County Budget and Developmental Plans

Obtain a copy of all county budget and developmental plans that include the sheriff's office.

III. Property and Assets

The inventory of property and assets is a protection and benefit for both the outgoing and the new sheriff. This inventory should begin on the first day of Office. Read the county policy to determine the dollar amount for property to be considered a fixed asset. This inventory of property should occur in the presence of others; you are encouraged to video record said inventory. Obtain an inventory of all property from the outgoing sheriff. This inventory should include a description and the location of the property. The new and outgoing sheriffs should then sign, verifying delivery, receipt and review of the lists.

a. Fixed Assets

Inventory all fixed assets.

b. Evidence

Inventory all evidence. Cross reference with case file # to account for evidence. Determine which items can be returned, destroyed, or maintained. Work with DA.

c. Seized Property

Inventory all seized property and cash. Verify that all property that should have been disposed is in fact disposed.

d. Firearms and other Weapons

Inventory all firearms and other weapons in the possession of the agency. Designate duty weapons, weapons on loan from the federal government, domestic violence seizures, and weapons held for other agencies.

e. Purchases through Grants

Designate all inventory purchased through grant funds.

f. Vehicles

Inventory all vehicles including patrol and undercover.

g. Property Received through Other Agencies

Designate all property received through other state and federal agencies such as GEMHSA and FEMA.

h. Seized and Impounded Vehicles

Inventory all seized and impounded vehicles on-site and off-site.

- i. **Drug Collection Boxes**
Inventory drug collection boxes.
- j. **Equipment**
Inventory all equipment to include, but not limited to:
 - i. computers – in-car, laptops, office
 - ii. cameras – body, in-car, video, digitals
 - iii. radios – car, portables
 - iv. cell phones
 - v. badges
 - vi. uniforms/patches
 - vii. items in patrol car such first aid kits, flares, cones

IV. Maintenance and Disposition of Records

An inventory of records should be obtained from the outgoing sheriff. Visit Georgia Archives to review Local Government Record Retention Schedules. Review the most recent updated 2018 schedule for public safety at https://www.georgiaarchives.org/records/local_government/schedules/44. You should designate a person within your organization to become thoroughly familiar with this document. NOTE: Records cannot be destroyed except as provided by the Record Retention Schedule.

In addition:

- a. Obtain a list and spot check the records for the **Sex Offender Registry**.
- b. Obtain a list and spot check the records for **Domestic Violence Protective Orders**.
- c. Obtain a list and spot check the records for **Victim Notification** in regards to the Crime Victim’s Bill of Rights.
- d. Obtain a list and spot check the registration records of **Dealers of Precious Metals and Gems**.
- e. Obtain a list and spot check the records of the **Secondary Metals Recycler Registry**. Designate an employee to populate the state mandated registry.
- f. Obtain a list of **Involuntary Mental Health Transport Database** stats from the GSA portal, and designate personnel to populate data.
- g. Obtain a list and spot check the records for **Certified Process Servers** allowed to serve in your county.
- h. Identify the location of **Juvenile Records**, which should be held separate, apart from adult records under lock, and key.
- i. Designate a **Records Retention and Disposition staff** person.
- j. Obtain a copy of the **resolution to adopt a retention schedule**.
- k. Designate an **Open Records** staff member responsible for responding to Open Records requests, and post on the sheriff’s office website.
- l. Determine if there is a **service agreement(s)** with any agency to provide GCIC CJIS network functions. (i.e. 911 center, police department, municipal courts, etc.)
- m. Obtain a copy of the last GCIC CJIS audit and review areas of non-compliance.

V. Personnel

The newly elected sheriff must thoroughly understand the organizational structure and personnel in the present agency. Key information is available through personnel records.

- a. Employees**
Obtain from the county a list of all current employees by division, including reserve and special deputies.
- b. Open Positions**
Obtain a list of all open positions, including the classification and pay status.
- c. Organizational Chart**
Obtain a current organizational chart.
- d. ID's for Employees**
Provide all employees and volunteers with a proper ID.
- e. County Pay Plan**
Review the county pay and classification plan and determine whether to adopt.
- f. Business Cards**
Decide the rank and position for employees to have business cards
- g. Current Salary Schedule**
Obtain current salary schedule.
- h. County and Agency Personnel Records**
Obtain and review both county and agency personnel records.
- i. Employee Medical Records**
Obtain separate employee medical records.
- j. Open Internal Investigations**
Obtain and review open internal investigation files.
- k. Disciplinary Files**
Obtain and review disciplinary files. Recommend a review of all files for the last five years.
- l. Light Duty and Disability Employee Status**
Review the status of all light duty and disability employees.
- m. Terminal Agency Coordinator (TAC) and GCIC CJIS Network Operators**
Appoint a TAC and request a list of certified CJIS Network operators.
- n. Training and Standards Officer**
Designate a key employee to manage the process and paperwork for certifying new employees through the Georgia Peace Officer Standards and Training Council (POST).
- o. Training Files**
Review training files and training requirements for local, state and other federal regulatory authorities (OSHA, etc.).
- p. Annual Training Hours**
Identify and train immediately all certified employees who have not met the POST in-service training requirements for the current year. These requirements must be met by December 31 of each year.
- q. Pending Administrative Cases**
Identify and review all cases pending in an Administrative Hearing.
- r. POST Status & History**
Check POST status and history of ALL personnel. Be apprised of ANY pending internal investigations, suspensions, etc.
- s. Bonding Documents for Employees**
Verify and obtain bonding documents for all deputies and jailers.

VI. Policies and Procedures

Policies, procedures, and written directives should be reviewed continually while in Office. High liability policies including use of force and motor vehicle pursuits are a priority. Policy and procedure manuals from other agencies can be helpful when reviewing and revising policies and procedures. Sheriffs may choose to adopt county policies. The Office of Sheriff has special authority unlike any other area of county government. Apply caution in adopting county policies.

a. Review/Revise Policies

Establish a team to review and revise policies and procedures as necessary.

b. Written Directives and Memos

Review current written directives and memos.

c. Policy Signature

Sign all policies after review and revision.

d. Memo on Current Policies

While policies, directives, and memos are under review, prepare a blanket memo stating, "All current policies and procedures will remain in force until further review."

VII. Warrants and Process

O.C.G.A. § 15-16-10(a)(7) states the newly elected sheriff must receive from the preceding sheriff all unexecuted writs and processes and proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his or her predecessor's sales, when not done by his or her predecessor. This includes:

1. Certiorari Petition and Writs
2. Child Support
3. Complaints
4. Coroner's Inquest
5. Dispossessory
6. Divorce
7. Fieri Facias (FiFa)
8. Foreclosure
9. Garnishment
10. Grand Juror Summons
11. Jury Summons
12. Juvenile Summons
13. Miscellaneous Notices/Orders/Motions
14. Protective Orders
15. Rule Nisi
16. Subpoena
17. Summons
18. Warrants
19. Witness summons
20. Writs

a. Warrants

Obtain a list of all warrants not served. If possible, ascertain why the warrants were not served such as individual moved, charges were dropped, arresting officer has left the agency and cannot be found, etc. Any warrants that no longer appear valid, discuss with the DA and judge. The DA/judge can dismiss the warrant.

b. Process

Obtain a list of all civil process not yet served and ascertain why they have not been served. Many civil papers do not have an expiration; however, researching the origin might reveal that the original complaint has been satisfied already.

VIII. Investigations

Make it a priority to meet with the investigative staff and obtain a working knowledge of how the unit is organized. Have a solid operational knowledge of the unit will help you understand why the individuals within the unit will be mobile at unusual times.

a. Briefing on Significant Investigations

Obtain a briefing on all significant investigations to include civil, criminal, and administrative investigations.

b. Open criminal Investigations

Review all open criminal investigations. Utilizing the Uniform Crime Report is a suggested place to start.

c. Undercover / Informant Files

Review all undercover cases and informant files.

d. Task Force Involvement

Determine the Office's involvement in task forces, i.e. drug, violent crime, traffic enforcement, ICE, etc.

e. Unsolved / High Profile Cases

Review all unsolved or high profile cases.

f. Pending Court Cases

Review such cases pending in the courts.

g. Discuss cases with DA / Solicitor

Meet with the District Attorney and Solicitor to discuss these cases

IX. Jail

O.C.G.A. § 42-4-4 (a) states it shall be the duty of the sheriff: (1) To take from the outgoing sheriff custody of the jail and the bodies of such persons as are confined therein, along with the warrant or cause of commitment; (2) To furnish persons confined in the jail with medical aid, heat, and blankets, to be reimbursed if necessary from the county treasury, for neglect of which he shall be liable to suffer the penalty prescribed in this Code section; provided, however, that, with respect to an inmate covered under Article 3 of this chapter, the officer in charge will provide such person access to medical aid and may arrange for the person's health insurance carrier to pay the health care provider for the aid rendered; and (3) To take all persons arrested or in execution under any criminal or civil process to the

jail of an adjoining county, or to the jail of some other county if the latter is more accessible, if the jail of his county is in an unsafe condition, under such rules as are prescribed in this chapter.

Understanding the operations of your detention facility is extremely important. It will be helpful to select a team to assist the new sheriff in reviewing the operations of the detention facility.

a. Inmate Handbook

Obtain, review and update the Inmate Handbook; create a handbook if one does not exist.

b. Post Orders

Review all post orders.

c. Certification of Jail Officers

Verify all jailers are certified. Law mandates jailers to be POST certified within six months of employment.

d. Inmates in Sheriff's Custody

Obtain a list of inmates in the jail facility or otherwise in the custody of the Sheriff, including those on ankle monitors and those housed in other facilities

e. Inmate Count

Verify the inmate count—identify inmates that should have already been released from custody (time-served, charges/holds dropped, etc.); identify any unaccounted for inmates.

f. Security Inspection

Conduct a security inspection of the facility.

g. Medical Plan / Contract

Review the medical plan and medical contract for the detention facility.

h. Fire / Emergency Plan

Review the fire and emergency plans for the detention facility.

i. Standard Operating Procedures

Review and revise Standard Operating Procedures for the facility.

j. Security Levels

Identify all security levels in the jail.

k. Keys / Access Codes

Inventory all keys, proximity cards (key cards), and access codes; change access codes and deactivate missing proximity cards; certain offices might need to be rekeyed.

l. Jail Audit

Obtain and review the last audit of the jail.

m. Inmate Property

Inventory all inmate property.

n. Phone Systems & Accounts

Review inmate telephone systems and accounts.

o. Inmate Funds

Inventory accounts containing inmate funds.

p. Property in the Jail

Inventory all other property in the jail.

q. Jail Staffing Plan

Review the jail-staffing plan.

r. Bonding Procedures & Statutes

Review bonding procedures. In order to protect the integrity of the bonding process, the GSA urges sheriffs to develop and utilize written policy in order to achieve full and complete compliance of O.C.G.A. § 17-6-15.

X. Courthouse Security and Transportation

O.C.G.A. § 15-16-10 mandates the sheriff, or his deputy, to attend all sessions of the superior court of the county and sessions of the probate court whenever required by the judge thereof and, while the courts are in session, never to leave same without the presence of himself or his deputy, or both. Sheriffs are also required to develop and implement a comprehensive plan for the security of the courthouse and courthouse annex. The sheriff must provide court security services. In order to fulfill this general statute, the sheriff must obtain funds from the county to operate his or her office. The sheriff has the discretion to manage the office consistently with the responsibilities assigned to it.

a. Assigned Personnel

Identify both sworn and non-sworn personnel assigned to the court.

b. Courthouse Security Assessment

Obtain and review a courthouse security assessment.

c. Pattern / Practice of Transportation

Determine the pattern and practice regarding the transportation of convicted inmates to and from detention and juvenile facilities, and review the transportation practices for all prisoners, pre-trial and convicted.

d. Review Court Security Staffing Plan

Review and update security staffing plan for the courthouse.

XI. Miscellaneous

a. Involuntary Mental Health Commitments

Determine the pattern and practice regarding the transportation of involuntary commitment individuals (1013, 1014, 2013). Often these individuals are not inmates.

b. Outstanding Legal Actions & Pending Law Suits

Obtain and review a list of all outstanding legal actions and pending lawsuits, including worker compensation and EEOC.

c. Name and Address of all Sheriff's Facilities

Obtain the name, address, and telephone of all Sheriff's facilities, owned or rented.

d. Membership of Boards and Commission

Obtain a list of all Boards and Commissions where the Sheriff, his/her designee, or other Sheriff's Office employees are members.

e. County Ordinances

Obtain a current copy of all County Ordinances from the County Clerk.

f. Local Legislative Acts

Obtain from the County Attorney, all local acts of the General Assembly that apply to your county.

g. Grants

Obtain a list of all grants that are active within the agency and all grants in the application process. Identify the project director who is responsible for achieving goals and submitting all reports.

h. Mutual Aid Agreements

Obtain a list of all Mutual Aid Agreements. All agreements must be signed by the Sheriff and submitted to the Board of County Commissioners for a resolution.

i. Make the following administrative changes:

1. Design and order business cards.
2. Design and order stationery and envelopes.
3. Change Sheriff's name on Post Office Box, grants, and with vendors.
4. Change building signs.
5. Change internal and external telephone directories, telephone message systems, website, social media platforms.
6. Change photographs where applicable.

j. Organizational Chart

Update organizational chart.

k. Signature Stamp

Decide whether to use a signature stamp and order if applicable.

l. Security Access Codes

Change security access codes for telephone and computer systems.

m. Off-Duty Employment

Obtain a list of all off-duty employment. Review policy and modify if necessary.

n. Recall Roster

Create a recall roster containing emergency contact information and telephone numbers.

o. Ancillary Services

Identify ancillary services under the authority of the Sheriff, i.e. animal control, litter control, etc.

ASSUMPTION OF OFFICE CHECKLIST

ITEM	ASSIGNED TO	DATE ASSIGNED	DATE DUE	COMPLETED
I. GENERAL				
a. Oaths of Office				
b. Tax Commissioner as Ex-officio				
c. Sheriffs' Bond				
d. Deputies' Bond				
e. Jailers' Bond				
f. Advice and Assistance				
g. Transition of Property Records				
II. FISCAL CONCERNS				
a. List of Accounts				
b. Authority to Sign				
c. Debit/Credit Cards				
d. Cash and Checks				
e. Inventory of Financial Documents				
f. List of Present Contracts				
g. Contracts for Signature Change				
h. Unsigned Contracts and Bid Proposals				
i. Current Budget				
j. Open Requisitions and Purchase Orders				
k. Financial Audit				
l. Copy of County Budget and Developmental Plans				
III. PROPERTY & ASSETS				
a. Fixed Assets Inventory				
b. Evidence Inventory				
c. Seized Property Inventory				
d. Firearms and Other Weapons				
e. Purchased Through Grants				
f. Vehicles				
g. Property Received Through Other Agencies				
h. Seized and Impounded Vehicles				

ASSUMPTION OF OFFICE CHECKLIST

ITEM	ASSIGNED TO	DATE ASSIGNED	DATE DUE	COMPLETED
i. Drug Collection Boxes				
j. Equipment				
i. Computers – in-car, laptops, and office				
ii. Cameras – in-car, body, digitals				
iii. Radios – car, portable				
iv. Cell phones				
v. Badges				
vi. Uniforms & Patches				
vii. Items such as first aid kits, cones, barricade tape, etc.				
IV. MAINTENANCE & DISPOSITION OF RECORDS				
a. List/Check Sex Offender Registry				
b. List/Check Domestic Violence Protective Orders				
c. List/Check Victim Notification Records				
d. List/Check Dealers of Precious Metals and Gems Registration				
e. List/Check Secondary Metals Recycler Registry				
f. List/Check Involuntary <u>Mental Health</u> Transport Database in GSA Portal				
g. List/Check Certified Process Servers Authorization				
h. Locate Juvenile Records				
i. Designate Records Retention & Disposition Staff Person				
j. Check Resolution to Adopt Retention Schedule				
k. Designate Open Records Staff Person				
l. Copy of GCIC CJIS Network Service Agreements				
m. Copy of last GCIC CJIS Network Audit				
V. PERSONNEL				
a. List of Employees				
b. List of Open Positions				
c. Organizational Chart				

ASSUMPTION OF OFFICE CHECKLIST

ITEM	ASSIGNED TO	DATE ASSIGNED	DATE DUE	COMPLETED
d. ID's for Employees				
e. County Pay Plan				
f. Business Cards				
g. Current Salary Schedule				
h. County & Agency Personnel Records				
i. Employee Medical Records				
j. Open Internal Investigations				
k. Disciplinary Files				
l. Light Duty and Disability Employee Status				
m. List of TAC and GCIC CJIS Network Operators				
n. Designate Training and Standards Officer				
o. Review Training Files				
p. Review Compliance with Annual Training Hours				
q. Pending Administrative Cases				
r. POST Status & History				
s. Verify and Obtain Bonding Documents for Employees				
VI. POLICIES & PROCEDURES				
a. Review/Revise Policies Team				
b. Written Directives and Memos				
c. Policy Signature				
d. Memo on Current Policies				
VII. WARRANTS & PROCESS				
a. Warrants				
b. Process				
VIII. INVESTIGATIONS				
a. Briefing on Significant Investigation				
b. Review Open Criminal Investigations				
c. Review Undercover/Informant Files				
d. Determine Task Forces Involvement				

ASSUMPTION OF OFFICE CHECKLIST

ITEM	ASSIGNED TO	DATE ASSIGNED	DATE DUE	COMPLETED
e. Review Unsolved/High Profile Cases				
f. Review Pending Court Cases				
g. Discuss Cases with DA/Solicitor				
IX. JAIL				
a. Review Inmate Handbook				
b. Review all Post Orders				
c. Verify Certification of all Jailers				
d. List of Inmates in Sheriff's Custody				
e. Verify Inmate Count				
f. Security Inspection				
g. Medical Plan/ Contract				
h. Fire/Emergency Plan				
i. Standard Operating Procedures				
j. List of Security Levels				
k. Inventory Keys/Access Codes				
l. Jail Audit				
m. Inventory Inmate Property				
n. Phone Systems and Accounts				
o. Inventory Inmate Funds				
p. Inventory Other Property in Jail				
q. Review the Jail's Staffing Plan				
r. Review Bonding Procedures and Statutes				
X. COURTROOM SECURITY & TRANSPORTATION				
a. Assigned Personnel				
b. Courthouse Security Assessment				
c. Pattern/Practice of Transportation				
d. Review Court Security Staffing Plan				
XI. MISCELLANEOUS				
a. Involuntary <u>Mental Health</u> Commitments				
b. List of Outstanding Legal Actions and Pending Law Suits				

ASSUMPTION OF OFFICE CHECKLIST

ITEM	ASSIGNED TO	DATE ASSIGNED	DATE DUE	COMPLETED
c. List Name and Address of all Sheriff's Facilities				
d. List for Membership in Boards and Commissions				
e. County Ordinances				
f. Local Legislative Acts				
g. List of Grants				
h. Mutual Aid Agreements				
i – 1. Order Business Cards				
i – 2. Order Stationery and Envelopes				
i – 3. Change name on PO Box, Grants, and Vendors				
i – 4. Change Building Signs				
i – 5. Change Phone Directories, Website, <u>Social Media Platforms</u>				
i – 6. Change Photographs				
j. Change Organizational Chart				
k. Signature Stamp				
l. Change Security Access Codes				
m. List of Off-Duty Employment				
n. Recall Roster				
o. Identify Ancillary Services				



GEORGIA SHERIFFS' ASSOCIATION
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