



HANDBOOK

Ohio County Commissioners

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209 East State Street • Columbus, Ohio 43215-4309

Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

CHAPTER 100

COUNTY SHERIFF

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100.01 INTRODUCTION

The county sheriff is elected quadrennially to a four year term commencing on the first Monday in January after election to office. The sheriff's responsibilities can be categorized into four main areas.

First, as the chief law enforcement officer of the county the sheriff is charged with "preserving the public peace" (ORC 311.07).

Second, as an executive officer of the courts the sheriff is responsible for enforcing court orders, delivering subpoenas, and attending sessions of the court of common pleas and court of appeals. Subject to the direction and control of the board of county commissioners the sheriff is also in charge of the court house.

Third, the sheriff is in charge of the county jail. The sheriff's duties are broadly defined and include responsibility for the safety of the inmates, maintenance of the jail facility, and operation of the jail according to the "Minimum Standards for Jails in Ohio" promulgated by the Department of Rehabilitation and Correction. Jails and the sheriff's responsibilities are governed by ORC Chapter 341. (For more information on the operation of county jails see Chapter 101 of the *Handbook*)

Finally, the General Assembly has directly imposed specific responsibilities on the sheriff in relation to the administration of state programs or has authorized programs that can be established by the board of county commissioners that are to be managed by the sheriff if established.

100.02 QUALIFICATIONS FOR OFFICE OF SHERIFF

ORC Section 311.01 delineates various qualifications a candidate for sheriff must meet. Among the more pertinent qualifications are the requirements that the candidate must hold a valid certificate of training as a law enforcement officer and must have at least five years of full-time law enforcement experience or at least two years of supervisory experience or its equivalent. Two years of study at a college or university may be substituted for the supervisory experience. (For a complete review of the qualifications for sheriff refer to CCAO County Advisory Bulletin 96-10 at the following link: <http://www.ccao.org/LinkClick.aspx?link=CAB+199610.pdf&tabid=356&mid=976&language=en-US>)

100.03 SHERIFF'S BOND

ORC Section 311.02 requires the sheriff to give a bond conditioned for the faithful performance of the duties of the office. All other elected county officers are also required to give a bond (See Chapter 7 of the *Handbook*).

The amount of the bond is set by the board of county commissioners and must be in an amount not less than \$5,000 or more than \$50,000. The board may require the sheriff, at any time during the term of office, to give additional sureties on the bond or give a new bond. The bond must be given within 10 days after the sheriff receives his commission after appointment or before the first Monday in January after election to office.

The bond may be obtained from a bonding or surety company authorized to do business in Ohio and the premium is to be paid by the board of commissioners from the county general fund. A bond also may be presented on the sheriff's behalf by at least two freeholders owning real estate that is double the value of the amount of the bond.

The bond, which is to be signed by the bonding/surety company or freeholders and indorsed with both the approval of the board of commissioners and the sheriff's oath of office, is to be filed with the county auditor.

100.04 REQUIRED TRAINING FOR SHERIFF

A sheriff must take a training course upon first assuming the office through either election or appointment. Each year the sheriff must complete continuing education hours and a firearms requalification program.

Sheriffs are required to attend a basic training course within six months after their initial election or appointment. The training consists of three weeks of instruction at the Ohio Peace Officers' Training Academy (OPOTA) (ORC 109.80). The cost of conducting the course, meals, lodging, and travel are paid from state funds appropriated to OPOTA (ORC 311.01(D)). For newly elected sheriffs two weeks of this training must be completed prior to the sheriff taking office in January. The board of county

commissioners may approve compensating the sheriff-elect for their time attending the training (ORC 311.01(D)).

Each year a sheriff must complete 16 hours of continuing education that has been approved by a committee of OPOTA (ORC 311.01(E)). Successful completion of an annual firearms requalification program is required for the sheriff to be authorized to carry a firearm in the course of the performance of official duties (ORC 109.801).

The board of county commissioners may, but are not required to, appropriate funds to pay the reasonable expenses of the sheriff or deputy sheriffs while going to, attending, and returning from and police training school, whether in or out of state (ORC 307.72).

100.05 SHERIFF'S SALARY & ALLOWANCES FOR EXPENSES

ORC Sections 325.06 and 325.18 establish the sheriff's salary (See Chapter 72 of the *Handbook*). In addition to a salary, a sheriff receives a monthly allowance from the county commissioners for two different purposes.

There is an allowance provided for keeping and feeding inmates in the jail. The amount is based upon the budget submitted for the next calendar year to the commissioners by the sheriff on or before June 21st of the preceding year. The sheriff has to submit an itemized account of the previous month's jail operating costs to the commissioners by the 5th of each month (ORC 311.20).

The second allowance is for the actual and necessary expenses incurred in the pursuit or transportation of persons accused or convicted of a crime; maintenance of transportation facilities; transportation and telephone expenses associated with court duties in civil and criminal cases; and transportation expenses associated with the proper administration of the duties of the office. The sheriff is to submit a monthly report reflecting these expenses and is reimbursed after approval of the expenses by the board of county commissioners. The board may authorize an advance to the sheriff from its appropriation for these purposes in anticipation of the sheriff incurring such expenses. The advance cannot exceed 50% of the sheriff's salary and upon the sheriff filing his monthly report the board is to restore the amount expended to the advance. Any unexpended balance remaining in the advance at the end of the year is returned to the county general fund (ORC 325.07).

The commissioners also annually appropriate an amount equal to 50% of the sheriff's annual salary to the Sheriff's Furtherance of Justice Fund (FOJ) to provide for expenses that the sheriff "incurs in the performance of the sheriff's official duties and in the furtherance of justice." (See Section 100.141 *below*)

100.06 ANNUAL REPORT OF THE SHERIFF

On the first Monday in September of each year, the sheriff is to make a certified statement to the board of county commissioners reporting all fines and cost in criminal

prosecutions collected by him, through payment by the defendant or upon execution against the defendant's assets, and paid over to the clerk of the common pleas court or to the county treasurer (ORC 311.16).

If the sheriff fails to make this report on time the board of county commissioners can file a civil action and recover not less than \$50 or more than \$100 directly from the sheriff.

100.07 ANNUAL INVENTORY REPORT

The sheriff, as all other county officers under ORC Section 305.18, is required to file an inventory with the board of commissioners on the second Monday in January of each year. The inventory is to list all the materials, machinery, tools, and other county supplies under the jurisdiction of the sheriff. The inventory is a public record and is to be filed with both the clerk of the board of county commissioners and the county auditor.

100.08 CONTRACTING AUTHORITY

The sheriff has limited ability to independently enter into contracts, leaving most contracts to the county commissioners. The sheriff must come to the commissioners as the contracting authority for all purchases of goods and services except as noted in Section 100.112 *below*. A sheriff is not, for example, permitted to contract with another county to house prisoners in the jail without the permission of the commissioners (OAG 37-523).

The sheriff may, however, charge the per diem fees calculated pursuant to ORC Section 311.20 for basic care and feeding for those inmates he receives from another county pursuant to ORC Section 341.12. This section authorizes a sheriff, without approval by the commissioners, to determine that the county jail does not have sufficient space or staff and then transfer inmates who have been convicted and sentenced to another county jail that the sheriff considers convenient and secure.

100.09 LOCATION OF THE SHERIFF'S OFFICE

The sheriff's office is to be maintained at "the county seat of justice" in rooms provided by the board of county commissioners. The commissioners must also furnish the office with furniture, blankbooks, stationary and blanks all at county expense. With the consent of the sheriff the board of commissioners may pass a resolution establishing the primary office of the sheriff at a location outside the county seat of justice (ORC 311.06).

100.10 PERSONNEL

The sheriff is bound by civil service laws under ORC Chapter 124, as are all other county officials and employees of the sheriff's office are members of the Ohio Public Employees Retirement System (OPERS).

100.101 UNCLASSIFIED EMPLOYEES

In keeping with the provisions of ORC Chapter 124, the law provides that a sheriff, as an elected county official, may appoint four clerical and administrative support employees as unclassified employees with respect to their civil service status (ORC 124.11(A)(8)). The sheriff also may appoint to an unclassified position a person who has a fiduciary and or administrative relationship to the sheriff whose fitness would be impracticable to determine by competitive examination (ORC 124.11(A)(9)). Within 90 days after appointing an employee to an unclassified position the sheriff must notify the Department of Administrative Services (DAS) of that appointment. In addition, on the date of appointment the sheriff is required to provide the employee with written information describing the nature of employment in the unclassified civil service and, within thirty days thereafter, provide the employee with written information describing the duties of that position (ORC 124.12).

100.102 CLASSIFIED EMPLOYEES

All other positions in a sheriff's office including all deputies appointed by the sheriff are considered classified positions and, as such, have the right to engage in collective bargaining with the sheriff's office under ORC Chapter 4117. Employees initially hired are provisional employees who must serve a probationary period during which time they may be dismissed without cause. The employee becomes a permanent employee upon successfully completing the probationary period (ORC 124.271). The sheriff may appoint a temporary employee for a period of not longer than 120 days (ORC 124.30). The sheriff has the sole responsibility to appoint deputies and the commissioners cannot be held personally liable for the conduct of a deputy while in the performance of duties (*Ridgeway v. Union County Commissioners*, 775 F Supp 1105)

For information on dismissal procedures for classified employees in the sheriff's or any other elected official's office, see Chapter 63 of the *Handbook*

100.103 APPOINTMENT/TERMINATION OF DEPUTY SHERIFFS

ORC Section 311.04 authorizes the sheriff to appoint, in writing, one or more deputies. A person who has previously been convicted of or has pleaded guilty to a felony cannot be appointed as a deputy sheriff. At the time of the appointment, the sheriff must file the appointment with the clerk of the common pleas court, and the clerk is to enter it upon the journal of the court.

A deputy sheriff's appointment must be terminated if the deputy pleads guilty to a felony or pleads guilty to a misdemeanor pursuant to a negotiated plea agreement as provided in ORC Section 2929.43(D) in which the deputy agrees to surrender peace officer certification (ORC 311.04(C)(1)).

The sheriff shall suspend a deputy sheriff who is convicted, after a trial, of a felony pending appeal. If the deputy loses the appeal or fails to timely file an appeal the

sheriff then must terminate the deputy's employment. If the deputy files an appeal that results in an acquittal of the felony conviction or dismissal of the felony charge the deputy is entitled to reinstatement. The deputy is only entitled to back pay during his suspension if his conviction is overturned due a finding on appeal that there was insufficient evidence to support a conviction (ORC 311.04(C)(2)).

A hearing to suspend or terminate the employment of a deputy sheriff shall be held in accordance with ORC Section 119.09 and is governed by ORC Section 124.34 which provides the process for suspension or removal of classified employees (OAG 86-068). No pre-disciplinary hearing is required in this instance since there has been an independent finding of criminal culpability (*Gilbert v. Homar*, 520 U.S. 924).

The sheriff is only responsible for the neglect of duty or misconduct of any deputy if the sheriff orders, has prior knowledge of, participate in, acts in reckless disregard of, or ratifies the neglect of duty or misconduct of the deputy (ORC 311.05).

100.104 TRAINING FOR DEPUTY SHERIFFS

Under ORC Section 109.803 each of the certified peace officers employed by the sheriff's office is required to complete up to 24 hours of continuing professional training each calendar year, as directed by Ohio Police Officer Training Commission. The Commission is to set the required minimum number of hours based upon available funding for reimbursement in the Law Enforcement Assistance Fund established under ORC Section 109.082. If no funding is available for reimbursement, then no continuing professional training is required.

Employees of the sheriff's office who are certified peace officers are also required to annually complete professional continuing education and firearms requalification in order to be authorized to carry a firearm in the course of the performance of official duties (ORC 109.801).

To help defray the cost of training deputies, sheriffs may assess up to \$100 for collection of transient vendor bonds (See Section 100.134 *below*) from transient vendors wishing to sell good in the county. Any fees collected must only be used to train deputies (ORC 311.37(B)).

Any other additional training may be arranged by the sheriff and the board of county commissioners may, but are not obligated to, appropriate funds to pay the reasonable expenses of the sheriff or deputy sheriffs while going to, attending, and returning from any police training school, whether in or out of state (ORC 307.72).

100.105 SPECIAL DEPUTIES

A "special deputy" sheriff is appointed under the authority of ORC Section 311.04 and is considered a deputy sheriff. The rights, powers and duties of a "special deputy" can be no greater than those of a regular deputy, but those rights, powers, and duties can

be reduced by the appointing sheriff (OAG 65-177). Consequently, the responsibilities and assigned duties of a special deputy can be limited by the commission granted to the special deputy by the appointing sheriff. If the special deputy is commissioned to duties that include preserving peace, protecting life and property, and enforcing laws they must be a certified police officer. For special deputies who are not commissioned to duties that include preserving peace, protecting life and property, and enforcing laws no specific training is required, however, they may receive training pursuant to ORC Section 109.78 designed to qualify persons for positions as special police, security guards, or persons otherwise privately employed in a police capacity (OAG 89-071). A special deputy can be compensated from the same fund a regular deputies and thus are included in the funding parameters of ORC Section 325.17.

Special deputies are often inappropriately referred to as “auxiliary deputies.”

100.106 SPECIAL DUTY ASSIGNMENT

A special duty assignment occurs when a certified police officer acts as an independent contractor to a private individual or business. A deputy sheriff may use county owned uniforms, equipment, and firearms while performing under his special duty contract provided the sheriff authorizes such use (OAG 91-063).

100.107 OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM MEMBERSHIP

Employees of the county sheriff’s office, as are all other county employees, are members of the Ohio Public Employees Retirement System (OPERS). However, within OPERS there has been a separate division created for employees who can be classified as law enforcement officers. Known as the OPERS Law Enforcement Division, the OPERS members who qualify for this division are entitled to retire at a younger age and receive a different retirement benefit than an employee member of the general division of OPERS and also have different contribution rates assessed for both the employer and employee. Under the statutory definitions applicable to OPERS and Revised Code Chapter 145, an OPERS law enforcement officer includes a sheriff and a deputy sheriff whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state (ORC 145.01(WW)). A deputy sheriff is required to hold peace officer training certification pursuant to ORC Section 109.77(ORC 145.01(AA)).

The current OPERS contribution rates in effect as of January 1, 2011 are:

Law enforcement officer members:
11.6% of salary – employee
18.1% of salary - county employer

County employee members:
10.0% of salary - employee
14.0% of salary - county employer

100.11 “PRESERVING THE PUBLIC PEACE”

ORC Section 311.07 designates the sheriff as the chief law enforcement officer of the

county charged with the responsibility of “preserving the public peace” within the county. This responsibility imposes upon the sheriff the duty not only of enforcing the laws, but also of preventing violence, such as riots, and providing protection to others where a threat of violence exists. For example, the sheriff must provide protection and assistance to the Director of Transportation when needed in gaining access to property. Further, the sheriff must provide protection during labor disputes to non-striking employees desiring to enter and leave the premises of the employer.

In cases of emergency, the sheriff has broad authority to request “mutual aid” from other county sheriffs, municipalities or townships under ORC Section 311.07(B) (See also ORC 311.04(B)(1)). The mutual aid provided can be for law enforcement or fire protection personnel, or both, together with appropriate equipment and apparatus, as may be necessary to preserve the public peace and protect persons and property in the requesting sheriff’s county. The political subdivision is to provide the sheriff requesting it, insofar as possible without withdrawing from the political subdivision furnishing the aid the minimum police and fire protection appearing necessary under the circumstances. Law enforcement officers engaged in providing mutual aid outside the territory of their regular employment have the same authority to enforce the law as when acting within the territory of their regular employment.

Law enforcement and fire protection personnel acting outside the territory of their regular employment shall be considered as performing services within the territory of their regular employment for the purposes of compensation, pension or indemnity fund rights, workers’ compensation, and other rights or benefits to which they may be entitled as incidents of their regular employment. The county receiving aid shall reimburse the political subdivision for the cost of furnishing such aid, including compensation of personnel, expenses incurred by reason of the injury or death of any such personnel while rendering such aid, expenses of furnishing equipment and apparatus, compensation for damage to or loss of equipment or apparatus while in service outside the territory of its regular use, and such other reasonable expenses as may be incurred by any such political subdivision in furnishing aid.

Reimbursement to the political subdivision furnishing the mutual aid may be paid from the sheriff’s furtherance of justice fund (See Section 100.141 *below*), the law enforcement trust fund (See Section 100.143 *below*), or the county general fund to the extent moneys have been included in the annual budget appropriations for such purpose unless the board of county commissioners adopts a resolution restricting or prohibiting the use of general fund moneys without the prior approval of the board of county commissioners.

In addition to cooperating with officials from other counties, each sheriff must work closely with members of other agencies within his own county. The sheriff’s office, with county-wide jurisdiction, has concurrent authority with municipal and township police within the boundaries of those political subdivisions. Limited resources and efficiency will often limit the active participation of the sheriff’s office in law enforcement within municipal boundaries even though such activity is authorized. Often, smaller

municipalities will enter into a contract for law enforcement protection with the sheriff rather than maintain a separate police department.

100.111 SHERIFF'S ROAD PATROL

The provision of road patrol has continually and consistently been held by the courts to not be considered an element of the sheriff's duty of "preserving the public peace" specified in ORC Section 307.11. Consequently, the provision of road patrol is discretionary and cannot be subject to a sheriff's demand for a specific level of funding.

The Ohio Supreme Court held in *In re Sulzmann, Sheriff*, 125 Ohio St. 594 (1932), that the mandate to "preserve the public peace" does not require that a sheriff patrol the county as a policeman or ferret out crime as a detective. In examining this question the Federal District Court for the Northern District of Ohio stated in *Jones v. Wittenberg* (N.D. Ohio 1973), 357 F.Supp. 696, that "the weight of what little authority there is indicates that the Sheriff is only required to respond to calls. He does not have to serve as a patrolman for the County." There have also been two Ohio court of appeals decisions that addressed this issue.

In the case of *Lorain County Deputies Assoc v. Vasi*, 1992 Ohio App. LEXIS 6392, 9th District Court of Appeals held:

"The legislative mandate to 'preserve the peace' only requires that a sheriff respond to calls and bring to justice those the Ohio Sheriff knows to have committed illegal acts. Any additional police protection the Sheriff provides ... is a discretionary matter for the Commissioners and the Sheriff"

The most recent case involving Geauga County was decided by the 11th District Court of Appeals in 2003. *Gauga Cty. Bd. of Commrs. v. Gauga Cty. Sheriff*, 2003-Ohio-7201, adopted the logic of *Vasi* concluding that:

"(A)lthough the general scope of law enforcement services has increased through the years, the Ohio General Assembly has not chosen to change the 'preserve the peace' language in the statute. As a result, the narrow interpretation of R.C. 311.07(A), as originally stated by the Supreme Court of Ohio in *In Re Sulzmann*, must be followed. That is, when read in the context of the entire statute, the phrase 'preserving the public peace' must be interpreted to apply only to those violations of the peace which the sheriff has knowledge or takes place in his presence."

Of greater interest may be the *Gauga* Court's comments noting that the statutes provide for the ability by which townships and municipalities can contract for law enforcement services (See Section 100.112 *below*). The *Gauga* Court indicated that those provisions suggest that the General Assembly did not obligate county government to provide law enforcement services that go beyond the scope of the narrow definition of

preserving the peace. Consequently, if the board of county commissioners makes an informed decision not to provide road patrol or crime prevention services to townships and municipalities, they have the discretion to do so.

100.112 CONTRACTS TO PERFORM POLICE FUNCTIONS

Generally, a sheriff may contract with the various political subdivisions and special districts listed in ORC Section 311.29(B). This includes the county commissioners of any contiguous county. In the instance where a county is to receive additional police protection services the contract must be approved by the board of county commissioners as the contracting authority for the county (ORC 307.15) and can be done only with the concurrence of that county's sheriff.

Any expenses incurred by the sheriff for providing additional deputies to perform the services to a subdivision including salaries, retirement and workers' compensation benefits, training, equipment, supplies and all other reasonable costs must be reimbursed to the county. Payments from the subdivision receiving the police protection must be credited to a special fund in the county treasurer called the "sheriff's policing revolving fund." Any money paid from this fund may only be used to provide services stipulated in the contracts. Any money remaining in the fund at the end of the contract period is credited to the county general fund (ORC 311.29(D)).

ORC Section 505.50 authorizes townships, township police districts, and joint police districts to contract for the provision of police protection services or additional police protection services either on a regular basis or for additional protection in times of emergency with a multitude of police agencies including the county sheriff. The contract may provide for a fixed annual charge to be paid at the time agreed upon in the contract. The cost of the contract if entered into by a township may be paid for from the township general funds or if entered into by a township or police districts may be paid from proceeds from a voted levy authorized by ORC Section 5705.19(J). Identical parallel contracting and funding powers are repeated for a board of township trustees in ORC Section 505.43.

100.113 ENFORCEMENT OF THE TRAFFIC LAWS

Each sheriff and his deputies have county-wide jurisdiction in the enforcement of the Ohio Traffic Code. As mentioned previously, this jurisdiction may be concurrent with that of other law enforcement agencies in certain areas of the county.

The sheriff and his deputies, along with members of the highway patrol, have exclusive power, except within municipal corporations to make arrests for violations on state highways of certain enumerated sections of the Ohio Traffic Code. Within municipal corporations that authority coincides with that of the municipal police department. Township constables or police officers do not have the power to arrest persons committing the enumerated violations on a state highway, even though such highway passes through the township.

100.114 OTHER SPECIFIC ENFORCEMENT AUTHORITY

In addition to general law enforcement and traffic enforcement, the sheriff has the duty and authority to enforce other specific laws. The sheriff has the duty to enforce the fish and game laws and orders of the Division of Wildlife for the taking, protection, preservation, and propagation of wild animals (ORC 153.16) and the horse racing laws (ORC 3769.12). The sheriff is also required to keep the peace on election day at the various precinct locations and may be directed by precinct election officials to arrest any person violating election laws (ORC 3501.33 and .44).

100.12 COURT RELATED FUNCTIONS

The sheriff as chief law enforcement officer of the county is also an executive officer of the courts of his county charged with attending session of the court, enforcing court orders and serving process, and transporting inmates in custody to and from court and to prison if sentenced for the commission of a felony. Any responsibility of the sheriff may be fulfilled by a deputy at the sheriff's designation (*State ex rel Wolf v. Shaffer*, 6 ONP, NS 219, 18 ODNP 303), since "whatever the sheriff may do in person he may do by deputy."

100.121 ATTENDANCE AT SESSION OF THE COURTS & COURT SECURITY

The sheriff is to attend upon the common pleas court and the court of appeals during their sessions and, when required by the court to perform every duty it may impose upon a court constable or bailiff. The common pleas court may appoint a criminal bailiff or court constable to attend upon the court. When it has not, however, the sheriff is still required to attend in both civil and criminal cases. Generally deputy sheriffs are assigned to a court detail for the purposes of providing security in the court rooms and the court house and maintaining custody of inmates who are appearing before a judge or on trial.

The Supreme Court of Ohio requires courts to develop a court security plan that provides for safe and secure court facilities for all who enter so that justice for all may be sought and not unjustly interrupted. Each court is to appoint a court security committee to meet on a periodic basis for the purpose of developing, reviewing and implementing a court security plan. The court security committee at a minimum should include representatives of first responders, emergency management agencies, the sheriff, and the commissioners.

For a greater discussion of court house security refer to Chapter 98 (Sections 98.11 and 98.12) of this *Handbook*.

100.122 COURT APPOINTED CRIMINAL BAILIFF

The common pleas court may appoint a criminal bailiff who serves at the court's pleasure and is to be a deputy sheriff (ORC 2301.12(C)). The criminal bailiff acts as the

agent of the sheriff in criminal cases and matters in the common pleas court and also the probate court. The bailiff is present in the courtroom during criminal trials and is in charge of bringing prisoners from the jail to the courtroom and back to jail.

In larger counties, common pleas judges may choose to appoint their own bailiffs to assist in the courtroom. However, they may still want to rely upon the sheriff to provide certain security services, such as having a deputy in the courtroom to maintain order, and transport prisoners to and from jail.

100.123 COURT CONSTABLES

Court constables may be appointed by a common pleas court, a court of appeals, or the probate court of a county which has more than 70,000 inhabitants as of the most recent federal census (ORC 2301.12(C)). Court constables perform some of the same functions as criminal bailiffs or deputies, such as maintaining order in the courtroom, but they also attend to the assignment of cases in counties having two or more regularly setting common pleas judges, and they may also call and impanel jurors in all but capital cases.

In a county common pleas court which has four or more judges, the court may, instead of appointing a criminal bailiff, appoint a chief court constable to supervise the drawing of jurors and additionally to perform such duties as a criminal bailiff performs. The chief court constable, like the criminal bailiff, must be a deputy sheriff.

100.124 SERVICE OF PROCESS

The sheriff is responsible for executing every summons, order, or other process directed to him by a proper and lawful authority of the state or any other state, make return thereof, and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law (ORC 311.08). "Process" can generally be described as the documentation of a court proceeding and includes such items as the initial summons and subpoenas. "Service of process" means that the court document has been actually delivered to the person it was addressed to and that the court has been informed of the successful delivery.

For the performance of most of the responsibilities associated with process and service of process, including millage, a fee has been established among the schedule of sheriff fees contained in ORC Section 311.17. These fees are taxed as costs of the case by the clerk of courts and when received paid to the clerk of courts and deposited into the county general fund. (See Section 100.151 *below*)

100.125 TRANSPORTATION OF PRISONERS

The sheriff must transport prisoners of the county common pleas court to and from the jails and to prison after sentencing.

Where a municipal court has county-wide jurisdiction, questions may arise as to which law enforcement agency has the responsibility for transporting a prisoner from a county or municipal jail to a county or municipal court. Generally, this question turns not on which agency made the arrest but on which court has jurisdiction over the prisoner. Thus, the sheriff, or the criminal bailiff (if one is appointed) under the sheriff's direction, is responsible for transporting prisoners charged with violations of state statutes to and from the county jail and common pleas court. Likewise, when a person originally under the jurisdiction of a municipal court is indicted or bound over on a felony charge to the common pleas court, his transportation becomes the responsibility of the sheriff or criminal bailiff.

Transportation of prisoners under the jurisdiction of a municipal court is generally the responsibility of the bailiffs of the municipal court. However, the responsibility for transfer to confinement of a person convicted of a misdemeanor lies with the sheriff or a constable of the sentencing court as the court directs (OAG 78-019).

100.13 STATUTORALLY CREATED DUTIES

The General Assembly has directly imposed specific responsibilities on the sheriff in relation to the administration of the state programs regarding sex-offender registration, licensing individuals to carry concealed handguns, and the registration of transient vendors. There are also three other programs regarding county-wide public safety communications systems, vehicle registration, and parking enforcement which may be implemented by the board of county commissioners that are to be managed by the sheriff if established.

100.131 SEX-OFFENDER REGISTRATION & NOTIFICATION

One of the greatest burdens and "unfunded mandate" placed upon sheriffs' offices is the sex-offender registration program. According to the Buckeye State Sheriffs' Association, on average, a sheriff's office must allocate 2 full-time equivalent deputy positions to perform the functions placed upon the office by ORC Chapter 2950.

A sex-offender, upon conviction, is required to register personally with the sheriff of the county in which the offender was convicted of or pleaded guilty to the sex offense. A sex-offender is also required to register within three days with the sheriff's office of the county in which the offender resides, attends a school or institution of higher education on a full-time basis, or works. If a sex-offender fails to verify a current residence, school, institution of higher education, or place of employment address, by the date required, the sheriff is obligated on the next day to send a written warning to the offender notifying the offender that the offender has seven days in come into the sheriff's office or they will be subject to arrest. If the offender fails to appear within that seven day period the sheriff must notify the Bureau of Criminal Identification and attempt to locate the offender. If the sheriff cannot locate the offender the sheriff must promptly seek a warrant for the offender's arrest. (ORC 2950.04, .041, and .06)

If a victim has made a request to be provided with the registration notices filed by the perpetrator of the crime against that victim the sheriff is obligated to provide each of the sex-offender's registrations to the victim not later than five days after a registration takes place (ORC 2950.10).

And, for each sex-offender who resides within the county the sheriff is required to provide "community notification" of the sex-offender's address to ten different categories of individuals located within a certain specified geographical notification area. The notice must be provided within five days to the neighbors and law enforcement personnel and within seven days to all other individuals entitled to notice under the statute (ORC 2950.10).

100.132 CONCEALED HANDGUN LICENSES

The sheriff's office is responsible for accepting applications for and issuing licenses to carry a concealed handgun. Upon receipt of an application for a license, renewal of a license or affidavit for a temporary emergency license to carry a concealed handgun under ORC Section 2923.125 the sheriff is required to conduct a criminal records check and an incompetency check of the applicant to determine whether the applicant fails to meet the licensing criteria (ORC 311.41).

If a criminal record check and an incompetency records check conducted do not indicate that the applicant fails to meet the criteria, the sheriff's office shall destroy all records other than the application within 20 days after conducting the criminal records check and issue the license to carry a concealed handgun.

At the time the application is given to the sheriff the applicant must pay a nonrefundable license fee of \$67 for new license and \$50 for a renewal (ORC 2923.125). The application fee is to be deposited into the "sheriff's concealed handgun license issuance expense fund" (See Section 100.145 *below*).

100.133 COUNTY-WIDE PUBLIC SAFETY COMMUNICATIONS SYSTEM

Under ORC Section 307.63 a board of county commissioners may establish a county-wide public safety communications system. A county-wide public safety communications system is defined as a system of communications facilities, equipment, and services that helps to provide immediate field exchange of police, fire, and emergency medical services information between the county and participating states, political subdivisions, and other public entities, without regard to which jurisdiction holds title to real or personal property used in the system or employs the persons responsible to dispatch emergency personnel using the system. These systems are designed to help the various emergency services personnel communicate on route to or at the scene of an emergency and usually are walkie-talkie or radio systems. The newer versions of these systems permit multiple user communications without the need to go through a central switching operator by creating "talk groups" and are most notably the 800 and 700 Megahertz radio systems.

In counties with a population of less than 750,000 the county sheriff has a statutory right to operate the system unless, before the system is established, the sheriff notifies the board of county commissioners that the sheriff chooses not to do so. In such case the board operates the system. In these counties, however, regardless of who operates the system the sheriff cannot be required to use the system to dispatch sheriff's office employees.

In any county if a board chooses to stop operating a system the county sheriff may operate the system. The authority granted to a sheriff to operate a system does not apply in any county where prior to March, 1993, the board was providing public safety communications needs of municipal corporations, townships, or other entities or officials with officials or with employees not under the direct supervision of the county sheriff. However the board and the sheriff may mutually agree that the sheriff operate a system.

Note that a county-wide public safety communications system does not encompass 9-1-1 services. 9-1-1 services involve the receipt of an emergency call prior to the dispatch to a public safety agency to appropriately respond to that emergency call. As noted above, a county-wide public safety communications system involves field communications between and among emergency responders on the scene or in route to the incident.

100.134 TRANSIENT VENDORS

The sheriff is required under ORC Section 311.37 to keep a record of all transient vendors who have obtained a transient vendor's license pursuant to ORC Section 5739.17 and are doing business in the county. Prior to doing business in a county the transient vendor is to file information with the sheriff's office which is to be kept for a period of two years that includes:

1. Proof of identity and proof that a transient vendor's license has been obtained from the state.
2. A statement describing the goods or services to be provided and an estimate of the amount of the goods or services that the vendor expects to sell in the county.
3. The vendor's permanent business address.
4. The times, days, and locations when and where the vendor plans to do business in the county.

The vendor is also required to provide a bond to the sheriff. The sheriff may charge a fee of up to \$100 at the time of receipt of the bond from the vendor. The bond must be in an amount equal to 50% of the wholesale value of the goods and services provided, but in no case more than \$10,000. The bond must be in a form approved by the Attorney General and the term of the bond needs to be in effect for two year after the transient vendor last does business in the county.

100.135 PARKING ENFORCEMENT UNIT

The board of county commissioners under ORC Section 311.30 may establish, by resolution, a parking enforcement unit within the sheriff's office to operate in the unincorporated areas of the county. Subject to any general rules prescribed by the board of county commissioners' resolution, the sheriff manages the unit and is responsible for the employment of parking enforcement officers. The sheriff prescribes rules for the organization, training, administration, control, and conduct of the parking enforcement unit. The authority of the parking enforcement officers is limited to the enforcement of ORC Section 4511.69 and any other parking laws specified in the resolution creating the parking enforcement unit. Parking enforcement officers have no other powers and are not deputy sheriffs.

100.136 MOTOR VEHICLE DECAL REGISTRATION PROGRAM

The board of county commissioners under ORC Section 311.31 may establish, by resolution, a voluntary motor vehicle decal registration program to be controlled and conducted by the sheriff within the unincorporated areas of the county. The board may establish a fee for participation in the program in an amount sufficient to cover the cost of administering the program and the cost of the decals. The board must be coordinated with any pre-existing program established by a township under ORC Section 505.67.

100.14 SPECIAL FUNDS

There are several funds within the sheriff's office which have been established by law to manage or provide funding which supports special activities the sheriff's office undertakes. Except for the FOJ fund (See Section 100.141 *below*), expenditure from these funds is by appropriation by the board of commissioners and is subject to competitive bidding requirements and limits. Any property, such as vehicles, is titled in the name of the board of county commissioners as is all other property of the county.

100.141 FURTHERANCE OF JUSTICE FUND

The Furtherance of Justice Fund or FOJ fund as it is more commonly known, is authorized under ORC Section 325.071 and is to provide for expenses that the sheriff "incurs in the performance of the sheriff's official duties and in the furtherance of justice." The FOJ is funded annually in an amount equal to 50% of the annual compensation provided under ORC Section 325.06(A) for the sheriff for that year. The additional annual compensation provided under ORC Section 325.06(B) is not included in calculating the amount allocated to the FOJ.

FOJ funds are derived from the county general fund and individual items are paid by the county treasurer. Before any FOJ funds can be drawn the sheriff must give bond to the state for an amount fixed by either the common pleas court or its probate division which may not be less than the sheriff's annual salary and must be deposited with the county

treasurer. The sheriff must prepare an order for the amount required and submit it to the county auditor. The auditor then draws a warrant for the amount payable to the sheriff or the sheriff's designee.

The sheriff annually, before the first Monday in January, must file an itemized statement, verified by the sheriff, with the county auditor indicating how the funds for the prior year were spent. If any amount of the fund remains unexpended and in the hands of the sheriff the sheriff must return that amount to the county general fund.

For a detailed explanation of the management of the FOJ fund refer to *Auditor of State Bulletin 97-014*, issued August 12, 1997.

100.142 DRUG LAW ENFORCEMENT FUND

Mandatory fines from drug offense cases are credited to the law enforcement agency directly responsible for arrest and prosecution of the offender. The fine money a sheriff may receive must be used to finance that office's law enforcement efforts relative to drug offenses (ORC 2925.03(F)). Further, a sheriff must establish written policies for the use of any drug fines including procedures for types of allowable expenditures, and amount of each expenditure. All financial records relative to the Drug Law Enforcement Fund are public records pursuant to ORC Section 149.43. Reports are filed with the Attorney General each year by March 1 to cover the previous calendar year.

Two Attorney General's Opinions relate to disbursement of mandatory drug fine monies (OAG 89-090) and interest earned on monies deposited in the Drug Law Enforcement Fund (OAG 92-030).

OAG 89-090 underscores provisions in ORC Section 2925.03(F) for the prosecutor to share in these mandatory drug fines and stipulates that the prosecutor and the sheriff are free to work out a compromise relative to sharing the funds. The State Auditor retains discretion to determine whether accounting methods for disbursing money are appropriate.

OAG 92-030 holds that sheriffs and prosecutors may deposit drug fine monies into interest-bearing accounts, and that all interest earned on these monies must be added to the principal sum. This opinion contains a finding that many may believe is contrary to other special accounts and/or earmarked funds for other entities. The finding is, however, buttressed by the fact that the Drug Law Enforcement Fund and the Law Enforcement Trust Fund (See Section 100.143 *below*) are administered independently of the county commissioners by the sheriff and prosecutor.

100.143 LAW ENFORCEMENT TRUST FUND

All proceeds from the sale of contraband and forfeited monies from the sale of possessions, etc., constitute a law Enforcement Trust Fund (ORC 2981.13(C)(1)). This fund is also subject to established internal policies and procedures relative to the use of

the monies only for specific purposes which include cost of investigations, technical training or expertise for deputies, matching funds for federal grants to aid law enforcement, DARE program support or similar programs to educate citizens about drugs and other law enforcement activities the sheriff deems appropriate.

At least 10% of the first \$100,000 and 20% of monies over \$100,000 must be spent on preventive education programs (ORC 2981.13(D)). The sheriff must file a report itemizing expenditures from this fund with the county auditor no later than January 31 every calendar year (ORC 2981.13(C)(3)). Financial records of this fund are public records. OAG 92-030 (See Section 100.142 *above*) also applies to the Law Enforcement Trust Fund.

If the sheriff receives money from the sale of forfeited property under federal law the sheriff is required to document the amount received and deposited, how the money was used, and report any interest earned on the money on deposit, in accordance with applicable federal law (ORC 2981.14).

100.144 CONCEALED HANDGUN LICENSE ISSUANCE EXPENSE FUND

Each county is required to establish in the county treasury a sheriff's concealed handgun license issuance expense fund. The sheriff must deposit into this fund all fees paid by applicants for the issuance or renewal of a license or duplicate license to carry a concealed handgun under ORC Section 2923.125. The county distributes the fees deposited into the fund in accordance with the specifications adopted by the Ohio Peace Officer Training Commission.

The sheriff, with the approval of the board of county commissioners, may spend any county portion of the fees deposited into the fund to cover costs incurred by the sheriff in connection with performing any functions related to the issuance of concealed handgun licenses.

100.145 TRANSIENT VENDOR BONDS

To help defray the cost of training deputies, sheriffs may assess up to \$100 for collection of transient vendor bonds from transient vendors wishing to sell goods in the county. Any fees collected must only be used to train deputies (ORC 311.37(B)). (See Section 100.134 *above*)

100.15 FEES

Generally any fees a sheriff collects in the performance of an official duty are paid to the county treasurer. Under ORC Section 311.11 the sheriff is required to keep a cashbook in which he records the date, amount, title of the cause of action, and the name and number of the writ or process on which the money was received and must issue a receipt to the party paying the money.

100.151 FEES ASSOCIATED WITH COURT CASES

ORC Section 311.17 establishes a long list of fees that the sheriff is to charge in association with his duties required as an executive officer of the court. These fees are actually taxed as costs to the particular case for which the sheriff provided the service by the clerk of courts and are included in the bill of costs against the convicted defendant, judgment debtor, or the party legally liable for them based upon the judgment entry in the case and, when collected by the clerk, are paid into the county general fund.

100.152 SEX-OFFENDER REGISTRATION & NOTIFICATION FEE

The sheriff may charge a fee for each registration, change of address, or verification of address filed by a sex-offender required to register with the sheriff if the county is their residence (ORC 311.171). The sheriff is required to determine whether the registrant is able to pay the fee. If the registrant's income is less than 125% of the federal poverty level, the fee must be waived (ORC 311.171(D)). As a result of this provision most registration fees are not collected.

The maximum amount of fees which may be paid each year is based upon the registrant's category of sex-offender and the registrant is required to keep their receipts to establish that the payment of any fee to any sheriff in any county will exceed the maximum annual amount allowed to be charged during the sex-offender's registration year. The fee cannot be charged to a minor who is subject to registration.

The fee paid to the sheriff is deposited into the county treasury to the credit of the county general fund and is to be allocated to the sheriff to be used to defray the cost of registering sex-offenders and child-victim offenders and providing community notification under ORC Chapter 2950.

The sheriff may not refuse to accept a person's registration if the person does not pay the fee, however, the sheriff is to report unpaid fees in the sheriff's annual report to the board of commissioners required by ORC Section 325.31(C). The county may then recover those fees in a civil action in the same manner as other money due the county.

100.16 CRIMINAL JUSTICE SERVICES LEVY

ORC Section 5709.19(LL) provides for a property tax levy for criminal justice services. ORC Section 307.45 which specifically authorizes how the money raised from this levy can be used provides that the funds can be used to support the county sheriff (ORC 307.45(A)(1)).

100.17 PERMISSIVE SALES AND USE TAX FOR ADMINISTRATIVE AND CRIMINAL JUSTICE SERVICES

Counties may enact the permissive sales and use tax under ORC Sections 5739.021

and 5741.021 for the county general fund and for criminal and administrative justice services. Under this section commissioners may enact the tax at the rates of $\frac{1}{4}\%$, $\frac{1}{2}\%$, $\frac{3}{4}\%$, or 1.0%. It can be levied for a specified number of years or for a continuing period of time. County commissioners also may reduce this tax to a lower authorized rate after its enactment and they may repeal the tax.

If the commissioners propose that the tax is to be used for criminal and administrative justice services special provisions apply. In this case, the commissioners must prepare a statement showing the amount that has been spent for criminal and administrative justice services from the general fund for the two previous years and an estimate of the amount that will be spent during the current year. In addition, the commissioners must also prepare a preliminary plan on how they anticipate money will be spent on these services during the next two years from both the general fund and the special fund that must be established if the tax is enacted for the purpose of criminal and administrative justice services.

Also, if the tax is to be used for both general fund and for criminal and administrative justice services, the resolution enacting the tax must state the rate or amount of the tax to be apportioned to each purpose. The rate or amount may be different for each year the tax is in effect, but the rates or amounts actually apportioned each year cannot deviate from that stated in the resolution enacting the tax.

Criminal and administrative justice services is defined in the law to include a variety of purposes including the “exercise by the county sheriff of all powers and duties vested in that office by law” along with many other criminal justice related services as defined in ORC Section 5739.021(I).

A more detailed discussion of these issues along with enactment and repeal methods and procedures, public hearing requirements, and other details contained in the law are discussed in Chapter 18 of the *Handbook*.