

House Bill No. 1799

An act relating to Flagler County; providing a career services act for Flagler County deputies; providing for applicability; providing for status of employees and administration; creating a Career Service Appeals Board; providing for membership and duties; providing procedures and forms for complaints; providing for promotional testing; providing for notice of opportunity; providing application for promotion; providing for a promotional oral review board; providing for selection; providing for final selection for promotion; providing for a promotional eligibility list; providing minimum requirements; providing that certain employees are permanent employees; providing that certain employees shall be deemed public employees; repealing Chapter 90-450, Laws of Florida; relating to a career services act for the Flagler County Sheriff's Office; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Employees of Flagler County Sheriff; applicability of act; permanent status of employees; administration.—

(1) APPLICABILITY.—The provisions of this act shall apply to all commissioned and noncommissioned persons in the employ of the Office of the Flagler County Sheriff, including deputy sheriffs. The provisions of this act shall not apply to the Sheriff or to special deputy sheriffs appointed pursuant to section 30.09(4), Florida Statutes, members of the Sheriff's Posse or Reserve Unit, and individuals appointed as part-time deputy sheriffs, as defined by the Criminal Justice Standards and Training Commission, unless any such person is also employed full time by the Office of the Sheriff. As used in this act, the terms "employee," "employ," and "employment" shall refer to all persons, whether employed or appointed, to whom the act applies. It is the express intent of this act to grant the right of public employee status to persons in the employ of the Office of the Flagler County Sheriff who do not otherwise have that right pursuant to law.

(2) PERMANENT STATUS; CAUSE FOR SUSPENSION OR DISMISSAL.—

(a) After an employee of the Sheriff to whom the provisions of this act apply has served in such employment for a period of one (1) calendar year, such employee shall have attained permanent status in the Office of the Sheriff; provided that, if an employee is terminated and rehired at a later date, said employee shall be required to complete 1 calendar year of service from the date of the action before being granted the right of appeal provided in Section 2. Any employee who is required to serve a probationary period attendant to a promotion shall retain permanent status in the Office of the Sheriff, but may be demoted to his prior rank during such probationary period without the right of appeal as provided in Section 2.

(b) Any employee who has achieved permanent status in the Office of the Sheriff may only be suspended or dismissed for just cause, provided that

prior to such action the employee must be furnished written notice of the proposed action and offered an opportunity to respond to the reasons for the suspension or dismissal. However, in extraordinary situations, such as when delay could result in damage or injury, an employee may be suspended or dismissed for cause immediately and provided notice thereof and reasons therefor within 24 hours afterwards. Cause for suspension or dismissal shall include, but not be limited to, negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or office rules, conduct unbecoming a public employee, misconduct, illegal drug use, or drug abuse. Cause for suspension or dismissal shall also include adjudication of guilt by a court of competent jurisdiction, a plea of guilty or of nolo contendere, or a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation, with respect to any felony, misdemeanor, or major traffic infraction. The filing of felony, misdemeanor, or major traffic infraction charges against an employee shall constitute cause for suspension.

(3) TRANSITION OF EMPLOYEES.—When a newly elected or appointed Sheriff assumes office, the new Sheriff shall continue the employment of all currently employed permanent personnel unless cause for dismissal, as provided herein, exists. However, the incoming Sheriff shall have the option of maintaining the current personnel assigned to the positions of Administrative Assistant, Chief Deputy, Legal Advisor, and Director. If the incoming Sheriff fills the above positions with new personnel, the current occupants of those positions, if certified law enforcement officers, shall be reduced to the rank of Captain, which rank shall be permanent unless later reduced by disciplinary demotion, and their salaries may be reduced accordingly. If the incoming Sheriff fills the Administrative Assistant position with a new employee, the current occupant of the position shall be transferred to another position for which the employee is qualified within the Office of the Sheriff. Actions taken pursuant to this subsection affecting the Chief Deputy, Legal Advisor, Director, and Administrative Assistant positions shall not be appealable under Section 2.

(4) ADMINISTRATION.—The Sheriff shall have the authority to adopt such rules and regulations as are necessary for the implementation and administration of this act; however, nothing in this act shall be construed as affecting the budget-making powers of the Board of County Commissioners of Flagler County.

Section 2. Career Service Appeals Boards; creation; membership; duties.—

(1) FUNCTION OF BOARDS.—Ad hoc Career Service Appeals Boards shall be appointed as provided herein for the purpose of hearing appeals of permanent employees arising from personnel actions brought under office rules or policies which result in dismissal, suspension, demotion, or reduction in pay; provided that reprimands, oral or written, and suspensions of two (2) working days or less shall not be appealable to a Board; provided, however, that no more than one such action of suspension may occur within 1 calendar year without the right to appeal. Any such Board may also provide assistance and advice to the Sheriff in matters concerning the disciplinary actions, and may take any other action authorized by the Sheriff.

(2) MEMBERSHIP OF BOARDS.—When needed upon the call of the Sheriff, or upon the filing of an appeal, an ad hoc Career Service Appeals Board shall be appointed. The membership of each such Board shall consist of five law enforcement officers who are assigned within Flagler County. Two members shall be selected by the Sheriff, two members shall be selected by the employee filing the appeal, and the fifth member, who shall serve as Chair of the Board, shall be selected by the four members, with the concurrence of the Sheriff and the employee requesting the hearing. The ranking officer in charge of personnel shall serve as an ex officio member of the Board, but shall have no vote. Any person shall have the right to decline to serve as a member of a Board, and persons selected to serve on a Board shall serve without additional compensation or overtime compensation with respect to such service; however, such service shall be considered to be a regular work day for those persons serving. Once selected to a Board, the members thereof shall serve until final action is taken by the Board with respect to the purpose for which the Board was selected, at which time the Board shall be dissolved.

(3) PROCEDURE WITH RESPECT TO APPEALS.—

(a) An appeal of an action specified in subsection (1) shall be made to the Sheriff in writing, and must be received by the Sheriff no later than 15 working days after the employee is notified of the action on which the appeal is based.

(b) A Career Service Appeals Board shall be selected and must meet for purposes of hearing the appeal no later than 30 working days after receipt of an appeal by the Sheriff.

(c) During any hearing, the employee filing the appeal shall have the right to be heard publicly, to be represented by a person of his or her choice, and to present any evidential facts in his or her behalf, and during such hearings the technical rules of evidence shall not apply. The Board shall, in the conduct of such hearings, have the power to administer oaths, issue subpoenas, compel the attendance of witnesses, and require the production of books, records, accounts, papers, documents, and testimony. In case of refusal of any person to comply with an order of the Board or a subpoena issued by the Board, or upon the refusal of a witness to testify on any matter regarding which that witness may be lawfully interrogated, a County Judge of the county in which the person refusing to comply or testify resides, upon the application of a member of the Board, shall compel obedience by proceeding as for contempt. Each witness who appears in obedience to a subpoena before the Board shall receive compensation for attendance fees and mileage as provided for witnesses in civil cases in the courts of this state. Such payment shall be made by the party calling the witness; except that, with respect to any witnesses called by the Board, payments shall be made by the Sheriff upon presentation of proper vouchers and approval by three members of the Board.

(d) A Board shall by majority vote dispose of the appeal for which it was appointed by making findings of fact and issuing a written decision. Such decision shall either sustain or not sustain the action being appealed. If an

action by the Sheriff is not sustained by a Board, the Board shall order such remedial action as is appropriate, which may include reinstatement with back pay, and may modify any personnel action which was the subject of the appeal. No Board shall have the authority to impose on any employee any penalty which is more severe than that which formed the basis of the appeal.

(e) The decision of the Board shall be final and binding on the employee and the Sheriff, however, this shall not limit or circumvent the right of the Sheriff or sheriff-appointee to further proceedings in a court of competent jurisdiction.

Section 3. Complaints.—

(1) PURPOSE.—To provide a systematic, objective, and impartial method of investigating complaints of alleged inappropriate behavior by any personnel of the Flagler County Sheriff's Office.

(2) POLICY.—The Flagler County Sheriff's Office will respond to all complaints concerning any employee's behavior and/or performance, and will conduct a thorough investigation of all allegations.

(3) DEFINITIONS.—For the purpose of this policy, "complaint" shall be defined as any expression of dissatisfaction or any allegation of conduct that is:

- (a) Unconstitutional;
- (b) Unlawful; or
- (c) A violation of policy/procedure.
- (4) PROCEDURE.—

Complaints

All complaints will be placed into one of three categories: administrative, criminal, or possible criminal.

Administrative complaints will follow the chain of command, when possible, starting with the immediate supervisor. At the discretion of the Sheriff, an internal investigation may be conducted.

Criminal complaints will be forwarded to the Division Commander immediately. The Chief Deputy and the Sheriff will be advised and an investigator will be assigned. This will be an internal investigation.

Possible criminal complaints will be forwarded to the Division Commander immediately. The Division Commander will determine if the complaint will be investigated as a administrative or criminal complaint.

Receiving Complaints

Supervisors receiving or otherwise having knowledge of a complaint will conduct the initial investigation, and will obtain and document all available

and related information about the allegations. He or she will notify the Division Commander immediately if such allegations amount to criminal conduct. The complaint form will be completed on all complaints.

Harassment of Complainants

No deputy or other employee will ignore, harass, verbally abuse, belittle, or threaten any citizen or employee who files a complaint against a deputy or employee of the Flagler County Sheriff's Office.

Duty Status of Deputy/Employee

At the discretion of the Sheriff, deputies or employees may be relieved of active duty status (with or without pay) pending the outcome of the investigation.

Duty to Reply/Cooperate

Deputies and employees of the Flagler County Sheriff's Office will answer fully all questions which a supervisor may ask regarding performance of official duties and will cooperate with any internal investigation. Before an interview with a deputy or employee is conducted, the "Garrity Rule" will be read to the deputy/employee. The deputy/employee will sign the sheet containing the "Garrity Rule" that was read.

GARRITY RULE

I wish to advise you that you are being questioned as part of an official investigation of the Sheriff's Office. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all rights and privileges guaranteed by the laws and Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to Sheriff's Office charges which could result in your dismissal from the Sheriff's Office. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent Sheriff's Office charges.

NOTE: No employee can be disciplined for refusal (on fifth amendment rules) to make a statement or prepare a report unless he or she has been given the Garrity Admonition. An employee can be disciplined for refusal (without Garrity) unless it was reasonable to believe the statement would implicate the employee in a violation of the law.

BASED ON GARRITY VS NEW JERSEY 1967 AND GARDNER VS BRODERICK 1968

Complaints of Criminal Activity

Complaints against deputies/employees of the Flagler County Sheriff's Office which involve facts to support criminal conduct will be grounds for criminal charges. This action will not serve to prevent the internal investigative process from dealing with the same matters.

Initial Complaint Non-Criminal

Upon learning or receiving a complaint of inappropriate behavior, the deputy or employee receiving such information shall immediately direct the complaints to the on-duty shift supervisor or the supervisor of the employee involved in the complaint. Supervisors receiving or otherwise having knowledge of a complaint will conduct the initial investigation, follow through as much as practical, and obtain and document all available and related information about the allegations. The supervisor should make every attempt to resolve the complaint if unable to do so, the chain of command will be followed. Any complaints received through communications or at the reception desk will be directed to the on-duty supervisor whenever possible. All complaints received will be forwarded to the Division Commander whether resolved or not. The complaint form will be completed on all complaints.

Confidentiality

Section 112.533(3), Florida Statutes, states that any person who is a participant in an internal investigation including the complainant, the subject of the investigation, the investigator conducting the investigation, and any witnesses in the investigation, who willfully discloses any information obtained pursuant to the agency's investigation, including, but not limited, to the identity of the employee under investigation, the nature of the questions asked, information revealed or documents furnished in connection with a confidential internal investigation of an agency, before such complaint, document, action, or proceeding becomes a public record, as provided in the section is guilty of a misdemeanor of the first degree, punishable as provided in section 775.082, Florida Statutes.

The investigator, which includes the person receiving the initial complaint, will ensure confidentiality of the investigation until the final disposition has been made.

1. Supervisors/Investigators will not leave reports, notes, or related documents where they would be accessible to unauthorized persons.
2. No portion of the internal investigation reports shall be copied or reproduced in any manner without authorization of the Sheriff.

Internal Investigations

When an internal investigation has been initiated, the employees under investigation shall be notified, in writing, of the allegations and the names of the complainants. This will be on the employee notification form, complaint received.

1. In cases where advance notice would jeopardize the investigation, said notification may be given just prior to the interview of the employees under investigation.

2. The subject employee may review the complaint and all written statements made by the complainant and witnesses prior to the beginning of the investigative interview.

At the time an internal investigation is initiated, a complainant notification form will be completed and given or mailed to the complainants.

The internal investigation checklist will be maintained, and appropriate entries made until the investigation is completed. The internal investigation shall be completed within 45 days, unless an extension is granted by the Sheriff because of extenuating circumstances. Upon completion of any internal investigation, a copy of the entire report shall be forwarded to the Sheriff for review, as listed below.

Final Disposition

The Chief Deputy shall submit to the Sheriff a written summary of the internal investigation and include one of the following recommendations:

1. SUSTAINED.—The investigation disclosed sufficient evidence to prove the allegations made in the complaint. The Chief Deputy's summary will reflect all violations of Sheriff's Office Policy and Procedures, as well as all violations of local, state, and federal laws.

2. NOT SUSTAINED.—The investigation did not disclose sufficient evidence to prove the allegations made in the complaint. If the case is not sustained, the Chief Deputy's summary will reflect one of the following:

a. NOT INVOLVED.—The investigation disclosed that the named employee was not involved.

b. EXONERATED.—That acts which provided the basis for the complaint or allegation occurred, however, investigation revealed they were justified, lawful, and within accepted policy and procedure.

c. FALSE.—The allegation is false; the alleged incident never took place.

d. MISCONDUCT NOT BASED ON ORIGINAL COMPLAINT, SUSTAINED.—New substantiated misconduct not mentioned in the initial allegation was disclosed by the investigation and is sustained.

Upon conclusion of the investigation and final disposition rendered, the affected employee will be given a memo informing him or her of the disposition of the case.

The complainants will receive a form letter advising of the final disposition of the case, in addition to a telephone notification, if appropriate.

CJSTC-78 FORM

Use the CJSTC-78 Form to report any sustained allegations of non-compliance with section 943.13(4) or (7), Florida Statutes, which does not result in the termination of the deputy. The form must be submitted within 45 days of the date the allegation has been sustained. Refer to the back side of the CJSTC-78 Form for additional information and instructions.

Section 4. Promotional testing.—Promotional eligibility tests will be held as needed.

(1) Notice of this test will be distributed throughout all divisions of the department by bulletin board a minimum of 30 days in advance of the date of the test.

(2) Each member/appointee wishing to take the test must apply to his or her division director through the chain of command and must have been with this agency in a full-time capacity for a minimum of 2 years.

(3) Each member/appointee who has applied to go before an oral review board will be required to have taken a written examination and met the minimum passing score of 75 percent to be eligible for an interview.

(4) Promotional examinations shall be given on an as needed basis and the passing of such examination shall be valid for a period of 2 years.

Section 5. Notice of opportunity.—Whenever an opportunity for promotion is available within the Sheriff's office, a notice to all members will be published by the Sheriff's office.

(1) This notice will be distributed throughout all divisions of the agency by bulletin board a minimum of 15 days in advance of the date of the oral review board.

(2) The responsibility of the publication and posting of said notice shall be initiated by the Sheriff to the director of the division in which the vacancy occurs.

Section 6. Applications for promotion.—Upon posting of a notice of opportunity, each member requesting consideration must apply by memorandum through the chain of command to the director of the division of which he or she is a member/appointee.

(1) The division director of the applicant will either approve or disapprove the application based on the member/appointee's eligibility as specified in this act.

(2) If the vacancy is in a division other than that of the applying member/appointee and the application is approved, the division director will submit the application to the director of the division in which the vacancy occurs.

Section 7. Promotional oral review board.—All eligible members/appointees applying for the position shall have the right to attend an oral review board on the date and at the time selected by the board.

(1) The oral review board shall have access to each applicant's personnel file.

(2) The oral review board shall make a written recommendation to the Sheriff of the top three applicants, chosen by majority vote of the board, within 3 calendar days after the interviews.

(3) The list will be in alphabetical order and signed by all five board members.

Section 8. Oral review board membership selection.—Each oral review board shall be comprised of five members as follows:

(1) SERGEANT'S PROMOTIONAL BOARD.—

(a) One Lieutenant selected by the Sheriff from the division in which the vacancy occurs.

(b) One Sergeant from any other division selected by the majority organization of agency members/appointees such as the Fraternal Order of Police or the Police Benevolent Association. It shall be the responsibility of the representative organization to provide the Sheriff with documentary proof of such majority.

(c) These two members will select a nonranking member/appointee from the division in which the vacancy occurs.

(d) These three members will select a member/appointee from any rank from any division.

(e) These four members will select an individual from a list of qualified persons furnished by the Sheriff.

(f) The board chair is to be elected by a majority vote of the board members. All board members will have equal vote in all actions of the board.

(2) LIEUTENANT'S PROMOTIONAL BOARD.—

(a) One Captain to be selected by the Sheriff.

(b) One Lieutenant to be selected from any other division by the majority organization of the department.

(c) These two members will select a Sergeant from the division in which the vacancy occurs.

(d) These three members will select a member/appointee from any rank from any division.

(e) These four members will select an individual from a list of qualified persons furnished by the Sheriff.

(3) All new ranks shall attend an oral review board as outlined in this act, with proper rank selections determined in the same manner as for Sergeant or Lieutenant.

Section 9. Final selection for promotion.—The final selection for the promotion will be made by the Sheriff from the top three applicants recommended by the oral review board.

Section 10. Promotional eligibility list.—

(1) Individuals who have passed the written portion of the examination will remain on the promotional eligibility list for a period of 2 years. During this time, they will not be required to pass another written examination.

(2) Individuals who have been placed on the “top three” list by an oral review board, but not selected for promotion, will remain eligible for similar promotion for a period of 3 months.

Section 11. Minimum requirements for promotion.—Minimum requirements for ranks currently established in accordance with the Career Service Act are as follows:

(1) To be eligible for promotion to the rank of Sergeant, an applicant:

(a) Shall be certified by minimum state law requirements, if applicable, in the field in which the vacancy occurs.

(b) Shall meet departmental guidelines for specialized functions.

(c) Shall have completed a minimum 3 years’ service with the Sheriff’s office prior to filing application for promotion.

(d) In the event there are less than three eligible persons for the rank of Sergeant, persons with 2 years’ service to the department may apply.

(e) If the position is certified, the applicant shall have met qualification standards on the firearms range within the previous 12 months.

(2) To be eligible for promotion to the rank of Lieutenant, an applicant:

(a) Shall have held the minimum rank of Sergeant for 12 months after probation.

(b) Shall be certified by minimum state law requirements, if applicable, in the field in which the vacancy occurs and shall meet agency guidelines for specialized functions.

(c) If the position is certified, the applicant must have met qualification standards on the firearms range within the previous 12 months.

(d) In the event an insufficient number of eligible persons meet the guidelines set forth in paragraphs (a)-(c), the applications may be opened up to next lower rank requirements.

Section 12. All commissioned and noncommissioned persons in the employ of the Office of the Sheriff of Flagler County on the effective date of this act who have served for a period of 1 calendar year or more as of such date shall be permanent employees subject to the provisions of this act. All other

employees shall become permanent employees subject to the provisions of this act upon reaching their 1-calendar-year service anniversary date.

Section 13. All full-time deputy sheriffs employed by Flagler County shall be deemed public employees and shall enjoy all rights granted public employees by law, including the protection granted public employees by law, including the protection afforded by part VII of chapter 112, Florida Statutes.

Section 14. Chapter 90-450, Laws of Florida, is repealed.

Section 15. This act shall take effect upon becoming a law.

Approved by the Governor June 7, 2000.

Filed in Office Secretary of State June 7, 2000.