

The Thin Silver Line Alliance

Presents

Florida Legal Precedents Defining Correctional Officers as Law Enforcement Officers

On June 1st 1982, Florida Attorney Jim Smith responded in Advisory Legal Opinion - AGO 82-40 to The Honorable Louie L. Wainwright Secretary of the Department of Corrections at the time with his opinion as to whether the exemption to the Public Records Law specified by s. 119.07(3)(k), F.S., for law enforcement officers applies to correctional officers? Smith goes on to state "the only question is whether correctional officers are included within the term "law enforcement personnel." Nowhere does Ch. 119 define this term for the purposes of the Public Records Law; therefore the meaning must be construed in light of its ordinary meaning and in view of statutory definitions of related terms contained in the Florida Statutes. [Attorney General Opinion 76-05](#) concluded that the supervision of prisoners and their activities during the terms of their confinement can be classified as a police function in that they keep the public peace, and also concluded that guards of the then Department of Offender Rehabilitation, designated law enforcement officers pursuant to s. [790.001\(8\)\(d\), F.S.](#), and actually serving as armed guards or custodial officers, are also law enforcement officers entitled to the benefits of [s. 90.141](#). [Attorney General Opinion 76-05](#) also noted that in other jurisdictions, prison guards and custodial officers or employees are considered law enforcement or peace officers. See also, [AGO 076-24](#), construing s. [112.19\(1\)\(c\)](#), and concluding that parole and probation officers are "law enforcement officers" for the purposes of that statute, since, among other reasons, they have limited powers of arrest pursuant to [s. 947.22\(2\)](#). Correctional officers also have the power to make arrests. See, [s. 843.04\(1\)](#) (which requires prison guards to arrest any escaped convict) and [s. 944.39](#) (which authorizes any "peace officer or any . . . guard of the department" to arrest

without warrant persons interfering with prisoner work or the discipline or good conduct of prisoners). It would appear that correctional officers, as defined in [s. 943.10\(2\)](#) and newly amended [s. 112.531\(2\)](#), are just as much "law enforcement officers" within the scope of their jurisdiction as are sheriffs and municipal police officers within their respective jurisdictions.

Additionally, Smith notes that [Part VI, Ch. 112](#), is but one of many statutes that treat or define "law enforcement officers" and "correctional officers" in a similar way.

Section [790.001\(8\)](#), in defining "law enforcement officers" includes both (a) employees of any state agency that have the authority to make arrests and (d) employees of the state prisons or correctional systems who have been designated as law enforcement officers by the Department of Corrections or by a superintendent of an institution. For the purposes of [Part I, Ch. 112, s. 112.19\(1\)\(c\)](#) includes within the meaning of "law enforcement officer" any full-time officer whose duties require him to transport, handle, or guard persons arrested for, charged with or convicted of violations of the criminal laws. See also, [s. 121.0515\(2\)\(a\) and \(c\)](#) (defining the criteria for designation as a "special risk member" of the Florida Retirement System, and including both law enforcement officers and certain correctional officers), [ss. 943.13](#) (establishing basic uniform qualifications of law enforcement officers and correctional officers), and [943.1395](#) (concerning certification and decertification of both categories of officers). In view of the above statutes and authorities, Attorney General Jim Smith was persuaded in [AGO 82-40](#) that correctional officers are included within the term "law enforcement personnel" as that term is employed in [s. 119.07\(3\)\(k\)](#).

In 2019, the Florida Senate worked on [H.B.7125 – Administration of Justice, an omnibus criminal justice reform for the state criminal justice system](#) (Flsenate.gov, 2019).

Florida statute 790.052 was re-written ([Leg.state.fl.us](#), 2022). It now reads in part: *“(b) All persons holding an active certification from the Criminal Justice Standards and Training Commission (CJSTC) as a law enforcement officer or a correctional officer as defined in [s. 943.10\(1\), \(2\), \(6\), \(7\), \(8\), or \(9\)](#) meet the definition of “qualified law enforcement officer” in [18 U.S.C. s. 926B\(c\)](#).”* [18 U.S.C.s. 926B](#) is the federal code for LEOSA and, as we can see from the above change, Florida-certified correctional officers are now classified as qualified law enforcement officers. This allows these officers who meet the qualifications of LEOSA to carry concealed nationwide just as our law enforcement partners have since 2004 (George, 2020). This change is not just for actively employed officers, but also includes retired correctional officers who meet the necessary requirements: *(c) All persons who held an active certification from the Criminal Justice Standards and Training Commission as a law enforcement officer or correctional officer as defined in [s. 943.10\(1\), \(2\), \(6\), \(7\), \(8\), or \(9\)](#), while working for an employing agency, as defined in [s. 943.10\(4\)](#), but have separated from service under the conditions set forth in [18 U.S.C. s. 926C\(c\)](#), meet the definition of “qualified retired law enforcement officer.”*

In 2022, according to lines 122-124 of [CS/CS/HB 1563: Homestead Property Tax Exemptions for Classroom Teachers, Law Enforcement Officers, Firefighters, Emergency Medical Technicians, Paramedics, Child Welfare Professionals, and Servicemembers](#) the term "Law enforcement officer" means a law enforcement officer or correctional officer as those terms are defined in [s. 943.10\(1\) and \(2\)](#).” On 6/24/2022, CS/CS/HB 1563 was approved by Governor DeSantis.

Last but certainly not least, according to [Fla. Admin. Code R. 33-208.001](#) “(1) Designation as Law Enforcement Officers. (a) The following officers and employees of the

Department of Corrections are designated as law enforcement officers: Secretary; Deputy Secretary; Assistant Secretary of Community Corrections; Assistant Secretary of Institutions; Deputy Assistant Secretary of Institutions; Regional Directors; Correctional Security Administrator; wardens of all institutions and community facilities; the staff of all institutions and community facilities, including road prisons, vocational centers, community correctional centers, women's adjustment centers and probation and restitution centers, excluding clerical and secretarial employees; Community Corrections Regional Directors; Circuit Administrators, Supervisors and Officers; Inspector General; Deputy Inspector General; and Correctional Inspectors.”

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Florida Legal Precedents Defining Correctional Officers as First Responders

In 2023, on National Fentanyl Awareness Day (May 9th), Attorney General Ashley Moody launched a new program to help fight the national opioid crisis. Flanked by first responders in Clearwater, FL., Attorney General Moody announced [Helping Heroes](#). This new initiative will provide free naloxone to law enforcement, firefighters and paramedics at select Walmart pharmacy locations across the state. Naloxone is a life-saving medication that quickly reverses the effects of an opioid overdose. Helping Heroes will run now until 2033 through an agreement between the Florida Attorney General’s Office and Walmart. Any Florida agency that employs licensed emergency responders may apply to Helping Heroes. According to the Helping Heroes program launched and endorsed by Attorney General Moody, “licensed emergency responders include law enforcement officers, firefighters, paramedics, correctional officers and correctional-probation officers” (Florida Attorney General Ashley Moody, 2023).

In 2020, [HEROS](#) (Helping Emergency Responders Obtain Support) a Florida Health program was endorsed by Governor DeSantis and State Surgeon General Joseph A. Ladapo, MD, PhD and provides free naloxone to emergency response agencies. Since the inception of the program in 2018, over 500,000 doses have been provided through the HEROS program to 385 emergency response agencies in Florida. Any Florida agency that employs licensed emergency responders may apply to the HEROS program online. According to the Governor endorsed Florida Health Department program, “licensed emergency responders include law enforcement officers, firefighters, emergency medical technicians or paramedics, correctional officers and correctional probation officers as defined in Florida Statutes” (Florida Department of Health, 2020).

In 2023, according to lines 46-51 in [HB 101 Homestead Exemption for First Responders \(2023 Session\)](#) “the term "First responder" means a federal law enforcement officer as defined in s. 901.1505(1), a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer.”

In 2023, according to lines 47-52 in [SB 184 Homestead Exemption for First Responders \(2023 Session\)](#) “the term “First responder” means a federal law enforcement officer as defined in s. 901.1505(1), a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer.”

In 2022, according to lines 137-139 in [HJR 1: Additional Homestead Property Tax Exemption for Specified Critical Public Service Workforce](#) “the term "first responder" means a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic.”

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