

"Keep Orlando a safe city by reducing crime and maintaining livable neighborhoods."

ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE

1405.3, STATE ATTORNEY'S INSTANT INVESTIGATIVE SUBPOENA

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1. PURPOSE

To establish a procedure for the issuance and use of an investigative subpoena and ensure authorized service and return.

2. POLICY

The Orlando Police Department will work with the State Attorney's Office to obtain Instant Investigative Subpoenas to further criminal investigations.

3. DEFINITIONS

N/A

4. PROCEDURES

4.1 OBTAINING INSTANT INVESTIGATIVE SUBPOENA

A written request for the issuance of a subpoena will be made on a Request for Investigative Subpoena form provided by the Criminal Intake Bureau of the State Attorney's Office. The Request for Investigative Subpoena form shall be completed, reviewed, and signed by a sworn officer. Upon completion, the officer will scan the original form containing their signature and create a "pdf" copy of this form. Both copies shall be attached and emailed to the State Attorney's Office at the following address: sainvestigativesub@sao9.org.

In cases involving individuals that have not been filed on, the form will be submitted to the Intake/Charge Division of the State Attorney's Office for issuance of the subpoena.

If the case has already been filed, the form will be submitted to the assigned division of the State Attorney's Office.

Members are required to obtain an investigative subpoena to obtain security video from public buildings (i.e. Lynx, etc.) because those types of video records are confidential and exempt from section 119.07(1), public records requests, and section 24(a), Article I, of the State Constitution.

The only exception to the subpoena involves cases that involve exigent circumstances where the time delay in obtaining the subpoena may result in loss of life/great bodily harm or escape of a dangerous violent offender. In that case, the video should be provided to law enforcement without delay.

In some cases, the video record(s) owner may voluntarily provide law enforcement with the video for law enforcement purposes.

4.2 LIMITATIONS OF SUBPOENA

An instant subpoena does not authorize the detention of any kind. It is not the equivalent of an arrest warrant.

Failure to appear on an instant subpoena requires the issuance of a show cause order or *capias* before further action can be taken.

An investigative subpoena should not be used to compel testimony except before the state attorney, or an assistant state attorney with whom an appointment has been made to question the subpoenaed witness.

The witness or tangible evidence subpoenaed by the state attorney should be returned only to the location named in the subpoena, usually the State Attorney's Office.

In the case of tangible evidence, this does not mean that the evidence cannot then be turned over by the state attorney, or an assistant state attorney, to a police officer. Receipts for the exchange should be executed.

A subpoena will not be used in circumstances dictating the need for a search warrant.

4.3 IMMUNITY

Extra care will be exercised in the selection of persons to be served with investigative subpoenas because of the immunity that flows from the process of compelling a person to testify. **The automatic grant of immunity can and will allow the guilty to go free if this power is misapplied.**

If while conducting the investigation it appears immunity will be granted for crimes occurring outside the jurisdiction of the Orlando Police Department, it is incumbent upon the lead investigator to avoid such inquiry until the appropriate officials of other jurisdictions are contacted for authorization.

Only the state attorney has the power to grant immunity under an investigative subpoena. Any officer serving a subpoena, as a deputy or state attorney investigator should make no representations as to the granting of immunity.

However, when questioned by the witness, the serving officer may explain the validity of the subpoena and/or the reason for its issuance.

4.4. SERVICE OF EXISTING SUBPOENA

A municipal officer normally has no power to serve the process.

Municipal officers may serve investigative subpoenas in direct connection with their assigned investigation. The municipal officer may, at the request of the State Attorney's Office, serve an investigative subpoena to obtain testimony before the State Attorney's Office.

Subpoenas of this nature may also be served by anyone authorized to serve them.

4.5 FILING RETURN OF SUBPOENA

The reverse side of the subpoena will be rubber-stamped at the time it is issued. The completion of the rubber stamp form must be done by the member serving the subpoena. This member is responsible for ensuring the executed subpoena is returned to the Clerk of Court.

5. FORMS AND APPENDICES

N/A