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PLEASE REPLY TO:

“I WANT TO MAKE A CRIMINAL COMPLAINT”

The information provided here is intended to assist the public in understanding the process of making a criminal complaint in the Eighth Judicial Circuit. The matters set forth herein are derived from a combination of the Laws of the State of Florida, the Florida Constitution, the Model Rules of the American Bar Association, the Rules Regulating the Florida Bar, and the Policy of the Office of the State Attorney for the Eighth Judicial Circuit.

The Structure of the Criminal Justice System

In Florida’s Criminal Justice System, up to 3 distinct entities are involved in the processing of criminal complaints. The first is a law enforcement agency (LEA). In most circumstances (a list of exceptions is provided below), a criminal complaint must come from a LEA. The duty of a LEA is to investigate and determine whether there is “probable cause”¹ to believe that 1) a violation of a Florida criminal statute has occurred and 2) the person subject to the complaint committed the criminal offense. When both conditions are met, a LEA may, but is not required to, forward the complaint to the State Attorney’s Office. The State Attorney’s Office is the second distinct and separate entity in the Criminal Justice System. LEA’s can submit cases to the State Attorney’s Office by several methods including arrest, notice to appear, and “sworn complaint.” If the State Attorney files a criminal charge against a defendant, it is filed with the Courts, the third separate and distinct entity.

¹Here, Probable Cause means sufficient reason based upon known facts to believe a crime has been committed.

Process for Making a Criminal Complaint

Important public policy concerns are met by maintaining the separation of the legal entity investigating a criminal offense and the legal entity prosecuting a criminal offense. The public and trial juries need to be assured that the State Attorney fairly and impartially fulfills the State Attorney's Constitutional and Statutory obligation as gatekeeper to the criminal justice system. That is, that the role of State Attorney is bifurcated into duties as a "minister of justice" and as the "prosecutorial authority." As a minister of justice, the State Attorney reviews criminal investigations submitted by LEAs to ensure that the charges are supported by probable cause, that there is a reasonable likelihood of success on the merits of the action, and that the cause of action is just. As the prosecutorial authority, the State Attorney acts as the legal advocate for the State of Florida in a criminal prosecution.

When cases are submitted by an LEAs, the State Attorney's Office investigates complaints submitted by LEA's to determine 1) whether there is sufficient proof to file a criminal charge in the Courts; and 2) whether the filing of a criminal complaint is appropriate under the facts and circumstances of each particular case.² Except as provided below, the State Attorney does not accept matters for investigation from the public without the matter having first been investigated by an LEA.

When a member of the public attempts to file a criminal complaint directly with the State Attorney's Office, that member of the public will be directed to refer that complaint to the LEA with venue and jurisdiction of both location and nature of the offense. The State Attorney's Office does not investigate matters where an LEA has determined probable cause does not exist. The State Attorney does not act as an "appeal" of a LEA's determination that probable cause

² The American Bar Association suggests that "A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice. 3-4.3(a)

does not exist. When an LEA has already investigated a matter and determined that a probable cause to believe a crime has been committed does not exist, the State Attorney's Office will not accept a case for review of that decision.

After the State Attorney's Office determines that there is sufficient proof to file a criminal charge, and that it is appropriate to do so. Then, and only then, is a criminal charge filed with the Court. The State Attorney then represents the State of Florida as plaintiff in that criminal lawsuit. The State Attorney does not represent the victim in the case. The State Attorney must afford a victim all of the rights and meet all of the attendant responsibilities to observe victims' rights as set out in Florida Statute 960 and the Florida Constitution. The State Attorney does have standing to enforce victim's rights in the Courts on behalf of the victim where permitted. All victims are permitted to be represented by a licensed attorney at the victim's expense.

Exceptions

The State Attorney's Office will accept direct complaints related to the following violations of Florida Law, subject to the conditions set out below:

1. A violation of Florida's Public Records laws (Florida Statute §119). Prior to acceptance of any complaint regarding a Public Records Law, the Complainant must have a pre-complaint meeting with the Public Records Custodian during which the complainant must provide the following information. The failure to produce the required information will result in a rejection of the complaint. Only an accepted complaint becomes a record of the State Attorney's Office.
 - a. A copy of the public records request(s) and all associated correspondence.
 - b. A copy of all notices of failure to comply with the public record laws that are required by statute.
 - c. The name and identifying information of the person and the employing entity who is alleged to have violated the public records laws.

- d. The statutory or rule basis for the existence and preservation of the record.
 - e. Proof of the existence of the record requested.
 - f. All available, known proof that the alleged violation is intentional³.
2. A violation of Florida's Sunshine Law (Florida Statute § 286).
 3. Allegations of a violation of Florida Statute §832.05 (Worthless Checks).
 4. Allegations of violations of Florida Statute § 1003.26 (Criminal failure to send a child to school).
 5. Any other Florida Statute that requires that the State Attorney is the primary investigative agency that is not otherwise listed here.

³ Negligent violations of Florida's Public Records laws and assertions of exemptions and confidentiality by a Public Records holding entity are not violations of Florida's Criminal Public Records Law, and will not accepted as a criminal complaint. (Florida Statute 119.10(1)). Civil complaints fall outside of the jurisdiction of the State Attorney.