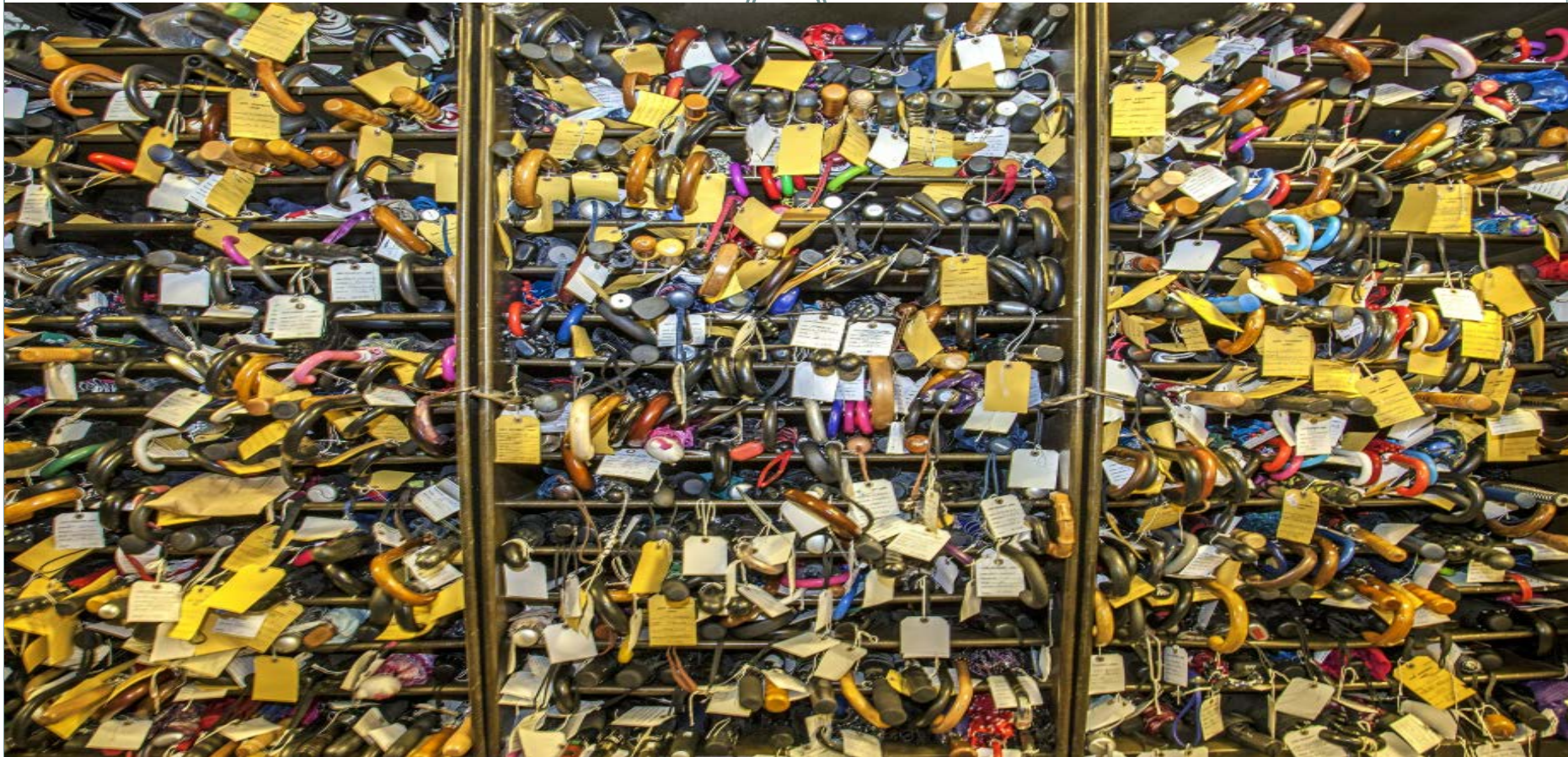


LOST AND ABANDONED PROPERTY

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OVERVIEW



Chapter 705 of Florida Statutes provides detailed requirements and procedures that govern the disposition of each type of property. Once the statutory requirements and procedures have been met, title to unclaimed property vests in the Sheriff's Office.

OVERVIEW



- Chapter 705 governs the way law enforcement agencies handle lost and abandoned property, safekeeping property, and unclaimed evidence.
- While some provisions of Chapter 705 are clearly defined and easy to follow, gaps in the law leave agencies in a position of having to rely on common law principles or follow the “spirit of the law”.

OVERVIEW



- A finder of lost or abandoned property must report the description and location of the property to a law enforcement officer.
- The law requires a person to report lost or abandoned property regardless of the value of the item.
- A person who unlawfully appropriates lost or abandoned property to his or her own use or refuses to deliver such property when required commits the crime of theft. F.S. 705.102.

OVERVIEW



Each day Sheriff's Offices take all kinds of items into custody. Property and Evidence staff then must evaluate each item and determine whether it is Lost Property or Abandoned Property, and apply the procedures set forth in Chapter 705.



OVERVIEW



Some Sheriffs also must deal with the routine “mass transfer” of lost and abandoned items collected by Walmart, Supermarkets, Hotels, etc.





A look at the Numbers



2016 MANATEE COUNTY SHERIFF'S OFFICE STATS:

- 4054 items turned over to Sheriff
- 952 items claimed by rightful owners
- 11 claimed by finder
- 166 of the 4054 items were valued at \$100 or more

Finder Wishing to Claim Property



If an individual turns in Lost or Abandoned property to P&E:

- Determine whether finder wants to make a claim the property if the rightful owner cannot be found.
- If yes, individual must post a reasonable sum sufficient to cover the cost of transportation, storage, and notice of the property.
- If the rightful owner is found, he/she must reimburse this amount to the finder in order to reclaim the property.
- After ninety (90) days have elapsed from the time of taking the property into custody, if no claim has been made by the rightful owner, the property can be given to the finder.
- F.S. 705.102

Lost Property



An item is Lost Property if:

- It's on **public property**, a **place open to the public**, or a premises used at the time for business purposes; and
- It's in a substantially operable, functioning condition; or
- Has an apparent intrinsic value to the owner.

F.S. 705.101

Abandoned



An item is Abandoned Property if:

- **It's on publicly owned property, and**
- **Is wrecked, inoperative or partially dismantled; or**
- **Has no apparent intrinsic value to the owner.**

F.S. 705.101

Terms



- **Public property:** Lands and improvements owned by the Federal Government, the state, the county, or a municipality.
- **Intrinsic value** of something is said to be the value that that thing has “in itself,” or “for its own sake,” or “as such,” or “in its own right.”

Junk Property



Some Sheriff's Offices decline to accept items that clearly have no use or value to anyone (i.e. bag of trash, inoperable bike with no seat or handle bars, broken safe).

Best Practice: A Sheriff's Office may reasonably decline to accept property where it is clear that the property has absolutely no value. Worst case scenario - a rightful owner appears and asserts otherwise, and the Sheriff provides minimal compensation. The benefits of not accepting junk outweigh the minimal burden arising if an individual appears and wants to claim the property.

See Dept. of Agric. and Consumer Services v. Mid-Florida Growers, Inc., 521 So. 2d 101, 104 (Fla. 1988) (state not required to reimburse owner for destruction of decayed fruit because property was valueless).

Lost and Abandoned Property/Easily Removed



If property **is easily removed**:

- Take custody of property and Sheriff shall retain custody for (90) days.
- Make a reasonable attempt to ascertain the rightful owner or lienholder
- Publish notice of the intended disposition of the property once a week for 2 consecutive weeks in a newspaper of general circulation, during the first 45 days of 90 day time period pursuant to F.S. 105.103(2)(b).
- Title to Lost or Abandoned property is vested in the finder upon the expiration of the 90-day custodial time period specified in F.S. 705.103(2)(b) provided that the notice requirements of F.S. 705.103 have been met.

Disposition of Property / Easily Removed



Upon expiration of 90 days, Sheriff may:

- Retain the property for use by the unit of government,
- Donate the property to a charitable organization,
- Surrender such property to the finder,
- Sell the property, or
- Trade the property to another unit of local government or state agency

Property Not Easily Removed



- If property **is not easily removed** then the deputy must follow the detailed notice requirements set forth in F.S. 705.103 (2)
- In addition to posting a notice on the property, the deputy must make a reasonable effort to ascertain **the name and address of the owner**; if reasonably available to the officer, then **deputy must mail a copy of such notice to the owner on or before the date of posting.**

Property Not Easily Removed



- If the property is a motor vehicle or vessel contact the Department of Highway Safety and Motor Vehicles to The name and address of any lien holder.
- Mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder.

Lost Property / Property Not Easily Removed



If, at the end of 5 days after posting the notice and mailing such notice, **Lost Property** has not been removed:

- Deputy shall take custody and the agency shall retain custody of the property for 90 days.
- The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of the 90 day time period.

Abandoned Property/ Not Easily Removed



If the owner does not remove **abandoned property** after 5 days the Sheriff Office may:

- Retain the property for its own use
- Retain the property for use by the state or unit of local government
- Trade such property to another unit of local government or state agency
- Donate the property to a charitable organization
- Sell the property
- Notify the appropriate refuse removal service

F.S. 705.103(2)(a) does not require notice of any kind.

Abandoned Property / Easily Removed



What happens to Abandoned Property that is easily removed and taken into custody by deputies?

F.S. 705.103 does not provide procedures for abandoned property that is easily removed and taken into custody by the Sheriff.

Best Practice: Treat Abandoned Property that is easily removable like Lost Property (retain the property for 90 days, publish notice of the intended disposition during the first 45 days).

Owner with Notice Refuses to Move Property



- If the owner of Abandoned or Lost property has received notice and does not remove the property within the specified period of time, the owner shall be liable to the Sheriff for all costs of removal, storage, and destruction of such property, **less any salvage value** obtained by disposal of the property.
- Upon final disposition of the property, a deputy must notify the owner, if known, of the amount owed.

Owner with Notice/Vessel or Motor Vehicle



What if owner of vessel or motor vehicle refuses to pay cost provided by deputy ?

Any person who neglects or refuses to pay the amount is **not entitled to be issued a certificate of registration** for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid.

Sheriff Retains **Lost Property**



If the Sheriff's Office elects to retain **Lost Property** for its own use, the Sheriff may:

- Retain the property for use by the state or unit of local government
- Trade such property to another unit of local government or state agency
- Donate the property to a charitable organization
- Sell the property
- Notify the appropriate refuse removal service

Sheriff Retains Property



- Notice of such election must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100.
- Note that many counties have smaller newspapers of general circulation that charge much less for publication than the mainstream newspaper

Sheriff Retains Property



- If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the Sheriff's Office.
- The notice must be posted for not less than 2 consecutive weeks in a public place designated by the Sheriff's Office.
- The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

Notice



“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

Kirchoff v. Jenne, 819 So. 2d 959, 962 (Fla. 4th Dist. App. 2002)

Notice



Notice of lost property (motorcycles) published pursuant to F.S. 705.103 found to be insufficient:

- contained only a minimal description of the motorcycles
- omitted the VIN numbers, color, and year of the motorcycles
- didn't include names of known owners
- described motorcycles as “lost or abandoned” when they had been physically taken by the sheriff's office

Kirchoff v. Jenne, 819 So. 2d 959, 962–63 (Fla. 4th Dist. App. 2002)

Notice



Best Practice: Perform reasonable due diligence to obtain information that would help an owner identify the lost or abandoned property, giving consideration to the value of the property.

When the value of a lost item is high, deputies may choose to, but are not required to, perform additional due diligence to locate the owner.

Sheriff Sells Property



- The sale must be held at the nearest suitable place to where the lost or abandoned property is held or stored.
- The advertisement must include a description of the property and the time and place of the sale.
- Sheriff's Office shall deduct from the proceeds of the sale the costs of transportation, storage, and publication of notice

Sheriff Sells Property



- The notice shall include **a statement that the sale shall be subject to any and all liens.**
- The sale may take place **no earlier than 10 days after the final publication.**
- Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

Sheriff Sells Property



- Pursuant to **F.S. 705.103(3)**, the balance of proceeds shall be deposited into an **interest-bearing account** not later than **30 days after the date of the sale** and held there for 1 year.
- Agency shall **provide a bill of sale** clearly stating that the sale is subject to any and all liens.
- The rightful owner of the property may claim the balance of the proceeds within 1 year
- If no rightful owner comes forward with a claim to the property within the designated year, the balance of the proceeds shall be deposited **into the State School Fund**.

Items Located on Private Property



Chapter 705, F.S., governing the collection, storage and disposition of abandoned or lost property located on public property **does not make a local police department responsible for the disposition of such property located on private property.**

“Absent statutorily prescribed procedures, the city may establish reasonable criteria for the disposition of lost and abandoned property located on private property which has been placed in the custody of the police department.”

“Clearly, the provisions in F.S. 705.103 apply to lost or abandoned property which is located on public property and, in the case of lost property, places open to the public.”

Fla. Atty. Gen. Op. 93-30 (1993)

Place of Lodging or Foodservice



- There are several statutes which address lost or abandoned property located on other than public property. F.S. 509.191, for instance, provides that property without an identifiable owner which is found in a public lodging establishment or public food service establishment is subject to the provisions in Ch. 705, F.S.
- See Chapters 715 and 717 of Florida Statutes address lost & abandoned property in specific contexts

Items Located on Private Property



Best Practice: Sheriff's Offices should establish reasonable criteria for the disposition of Lost and Abandoned property located **on property open to the public**, and also decide how they will handle items found on **private property not open to the public**.

- Many Sheriff's Offices make no distinction between items located on private property and items located on public property – uniformly applying the provisions of F.S. 705

Safekeeping Property



Safe keeping - The act or process of preserving in safety or the state of being preserved in safety.

Law enforcement often takes property for the purpose of public safety, preventing theft or holding property for a short period of time until an owner can reclaim it. Safekeeping property should be identified, logged and placed in a secure area until such time it is claimed by the owner.

When Safekeeping Property Taken / Examples



- An abandoned vehicle containing expensive electronics is going to be to be towed to an impound lot
- A domestic violence victim says she would feel more comfortable if guns were removed from the home
- Deputies report to a suicide scene and find \$5000 on the bedside table
- An individual has threatened to harm himself and family members request law enforcement take custody of firearms

Safekeeping Property



Many Sheriff's Offices limit the amount of time they will keep safekeeping property (often 60 – 90 days).

Best Practice: The owner of safekeeping property should always be provided with the date by which the property must be reclaimed and given a property receipt entitling him or her to later claim the property. If safekeeping property is not timely claimed, it may be treated as abandoned property.

Unclaimed Evidence



Title to unclaimed evidence or unclaimed tangible personal property lawfully seized by and in the custody of a law enforcement agency shall vest permanently in the law enforcement agency 60 days after the **conclusion of the proceeding.** F.S. 705.105

Conclusion of the Proceeding



- “A criminal proceeding is concluded when the mandate issues from the appellate court on a direct appeal of a defendant's judgment and sentence.” Monestime v. State, 220 So. 3d 493, 494 (Fla. 3d Dist. App. 2017)
- Crutchley v. Brevard County Sheriff's Off., 688 So. 2d 371, 372 (Fla. 5th Dist. App. 1997) (noting that F.S. 705 does not define the term “conclusion of the proceeding”).
- **Best Practice**: Sheriff's Offices should not treat unclaimed evidence as vested in the Sheriff unless and until the case is dismissed, all appeal periods have expired or all appeals from the judgement and sentence have expired.

Unclaimed Evidence / Due Process



“Although not expressly stated, procedural due process requires that persons having an interest in such property are entitled to reasonable notice and an opportunity to be heard before their rights in the property can be terminated under this statute.”

Darman v. State, 734 So. 2d 552, 553 (Fla. 4th Dist. App. 1999)

Best Practice: Confirm that owner knew or should have known the proceeding had concluded before treating the property as vested in the Sheriff’s Office.

Unclaimed Evidence / Court Proceeding



“[W]hen summarily denying a motion for return of property as untimely under this provision, **the court is obliged to attach portions of the record showing that the property was seized pursuant to a lawful investigation or held as evidence.**

White v. State, 926 So. 2d 473, 474 (Fla. 2d Dist. App. 2006)

Best Practice: Attorney or Sheriff’s representative should make sure that judges attach relevant portions of the court record. Many county judges are unaware of this case law.

Unclaimed Evidence



Once unclaimed evidence is vested in the Sheriff's Office, the agency may elect to:

- Retain the property for the agency's own use;
- Transfer the property to another unit of state or local government;
- Donate the property to a charitable organization;
- Sell the property at public sale, pursuant to the provisions of F.S. 705.103.
- Items with no appreciable value may be destroyed.

Unclaimed Evidence



Sheriffs may use an online or internet auction service to dispose of unclaimed evidence, with the exception of weapons and firearms

Example 1



Walmart (property open to public) brought 300 items to P&E – consisting of IDs, DLs, and Debit / Credit cards

Re: CREDIT and DEBIT Cards:

- Credit/Debit cards have name only
- Difficult to track down owner
- Treat cards as lost property **or**
- Dispose of Credit / Debit Cards because not found on public property

Example 1



Re: DL's / ID's

- If DL/ID is expired then treat as property **with no value**
- If DAVID shows that DL/ID has been reissued then treat as property **with no value**
- For all others, send a form letter and tell owners to reclaim their DL/ID within 90 days
- If not reclaimed treat as abandoned property

Example 2



A broken down four-wheeler is left on public property adjacent to a restaurant. The restaurant asks that deputies remove the property because customers don't like looking at it.

- Agency policy is that P&E does not accept anything that has a VIN or an engine capacity over 50 cc's
- Tag the property and follow the detailed procedures set forth in F.S. 705.103 (2)
- If the property is not removed within 5 days the four-wheeler may be retained, donated, sold or traded as the Sheriff sees fit

Example 2



Sheriff's Offices should identify the types of items that will qualify as "property that cannot be easily removed".

- Examples of items commonly treated as "not easily removed" and not accepted by P&E may include:
- Anything with an engine, vehicle trailers, large riding mowers, HVAC equipment, large coils of copper wire
- Note: Some Sheriff's Offices specifically identify which types of household goods will be accepted (i.e., washers, dryers, refrigerators, ovens)



Please feel free to contact me at with any questions.
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