

**501 POLICE ACTION AT PUBLIC LODGING OR FOOD SERVICE
ESTABLISHMENTS AND EJECTION OF TRANSIENT GUESTS**

- I. PURPOSE: This policy is issued to clarify officers' powers and duties involving arrests on premises of a public lodging or food service establishments as defined in F.S. § 509.013.
- II. DISCUSSION: Under F.S. Chapter 509, public lodging and public service establishments are required to be licensed and are regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. These establishments may ask law enforcement to eject undesirable guests. However, this statute contains numerous definitions and exclusions and officers must understand when guests qualify for ejection under this statute. Often officers are called to scenes where the location or person sought to be ejected does not qualify for law enforcement assistance in the removal. Officers must therefore pay close attention to whether the person is “transient” or “nontransient” and whether the location qualifies for requesting removal.

Under F.S. § 509.141, the "operator" of any “public lodging establishment” or “public food service establishment” (hereinafter both will be referred to as “the establishment”) may remove or caused to be removed from the establishment any guests of the establishment who, while on the premises, violate certain qualifying offenses. These qualifying offenses or circumstances are defined and include:

- a. Possession or dealing in drugs;
- b. Intoxication;
- c. Profanity;
- d. Lewdness;
- e. Brawling,
- f. Disturbing the peace and comfort of other guests;
- g. Injuring the reputation, dignity, or standing of the establishment; or
- h. For public lodging establishments, a guest who fails to make payment of rent at the agreed-upon rental rate by the agreed-upon checkout time;
- i. For public lodging establishments, a guest who fails to check out by the time agreed upon in writing at check-in, unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout;
- j. For public food service establishments, a guest who fails to make payment for food, beverages, or services; or
- k. When in the opinion of the management, it would be detrimental to the establishment to continue to entertain the guest.

F.S. §509.141(3), provides that any guest who has violated a qualifying offense and who remains or attempts to remain in a public lodging or food service

establishment after being requested to leave is guilty of a second degree misdemeanor if the following have occurred:

- a. The operator has notified the guest that the establishment no longer desires to entertain the guest and has requested the guest to immediately depart from the establishment;
- b. Notice had been given from an operator of the establishment to the guest orally or in writing as provided under F.S. § 509.141(2);
- c. The establishment at the time the notice is given has tendered the unused portion of the advance payment if the guest has paid in advance; however, the establishment may withhold payment for each full day that the guest has been entertained at the establishment for any portion of the 24-hour period of such day; and
- d. The guest has remained or attempted to remain in the establishment.

[See also LB # 2015-13 for residential transient occupants, essentially a couch surfer guest who has overstayed welcome. See LB # 02-4 and 99-10 for landlord-tenant issues. Trespass warnings are covered under SOP 541.1 and IDP 301.07. When a situation arises concerning a fraudulent lease, refer the matter to CIB as discussed in the adverse possession investigative guide.]

III. DEFINITIONS (F.S. § 509.013):

Public lodging establishment: includes both transient and nontransient public establishment. **Transient** public lodging establishment means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. **Nontransient** public lodging establishment are the same locations but rented or advertised to guests for at least 30 days or 1 calendar month. The definition however, then provides a list of exclusions from public lodging establishments to include:

- a. School sleeping facilities or dorms;
- b. Licensed health care facilities;
- c. Any place renting four units or less unless advertised as regularly rented to public to transient guest;
- d. Condominiums, timeshares, and one to four dwelling units that are:
 - i. Rented for at least 30 days or 1 calendar month;
 - ii. Not advertised or held out to public as being rented for periods less than 30 calendar days or 1 month; and

- iii. No more than 4 units within a single complex of buildings are available for rent;
- e. Permitted migrant labor camps or residential migrant housing;
- f. Establishments inspected by Department of Health;
- g. Private nonprofit care facilities or housing;
- h. Senior living facilities inspected by HUD; and
- i. Roominghouse, boardinghouse, or other sleeping facilities that are not classified as a hotel, motel timeshare, project, vacation rental, nontransient apartment, bed and breakfast, or transient apartment.

Public food service establishment: means any building, vehicle, place or structure, or any room or division in a building, vehicle, place, or or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term excludes the following:

- a. Public or private school place or events;
- b. Church, religious or nonprofit place place or events;
- c. Common carrier (train, airport, bus) places;
- d. DCF or AHCA approved places;
- e. Places issued permits from or inspected by the Department of Agriculture and Consumer Services;
- f. Places where only drinks or prepackaged items are sold without preparation;
- g. Food sold to theatre users;
- h. Vending machines; and
- i. Private test kitchens.

Operator: means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of the public lodging establishment or public food service establishment.

Guest: means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

Transient means a guest in a transient occupancy. (In essence, a transient guest is a person who rents a room in a hotel or motel on a temporary basis, particularly if the guest has another place of residence.)

Transient establishment: means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

Transient occupancy: means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a presumption that when the dwelling unit occupied is not the sole residence of the guest that the occupancy is transient.

Nontransient: means a guest in nontransient occupancy.

Nontransient establishment: means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

Nontransient occupancy: means occupancy when it's the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that when the dwelling unit is the sole residence of the guest that the occupancy is nontransient.

IV. POLICY:

- A. When police officers are called to public lodging or food service establishments, they should enforce all laws just as they would when called to any other establishment. When an officer feels it is necessary to make an arrest for a violation of law at a public lodging or food service establishment for which a warrantless arrest is authorized the arrest would typically be made without unnecessary involvement of the operator or licensee. However, for violations of F.S. § 509.141(3), officers will need the involvement of the operator.
- B. In accordance with F.S. § 509.141(4), an operator of the establishment may call upon officers for assistance in ejection of an undesirable guest. Upon request of an operator of the establishment, officers shall place a guest under arrest for a violation of unlawfully remaining in a public lodging or public food service establishment under § 509.141(3) when a violation occurs in the presence of the officer, and no warrant or capias has been issued, and the each of the following elements of the crime are present:
 - a. The establishment meets the definition of **public lodging or food service facility** in F.S. §509.013;
 - b. The guest is **transient**, i.e., temporary;
 - c. The person requesting the action is an **operator** of the establishment;
 - d. The operator has **offered to return any unused payment** to the guest;
 - e. The operator **requested the guest to leave** for one of the **qualifying offenses** as provided above;

- f. The guest, in the officers' presence, **fails to comply** with the request to leave; and
 - g. The admission to or removal from any such establishment is not based upon race, creed, color, sex, physical disability, national origin, age (as appropriate) or sexual orientation.
- C. If a warrant has been issued, the officer shall serve the warrant and arrest the person.
- D. While an officer is required to observe that a guest has remained or attempted to remain in an establishment after being requested to leave by an operator, according to case law, the operator may tell the officer to provide the notice to the guest that the establishment no longer desires to entertain them as a guest and that the guest is required to leave at once or face an arrest for a misdemeanor. State v. Williams, 751 So. 2d 170 (Fla 2nd DCA 2000; Zinojinovich v. Barner, 525 F. 3d 1059 (11th Cir. 2008).
- E. Unless the operator at the time of the request to vacate tenders any entitled refund for the unused portion of an advance payment to the guest, officers are not justified in arresting a guest for violation of unlawfully remaining in a public lodging or public food service establishment under § 509.141(3) even though a guest refuses to leave. Brown v. State, 891 So. 2d 1120 (Fla. 4th DCA 2004).
- F. Once an officer determines a guest is subject to arrest, an officer must arrest the person prior to physical removal from the establishment. Florida Op. Atty. Gen., 072-139 (April 13, 1972).
- G. For Fourth Amendment purposes a public lodging establishment is considered a private dwelling where the occupant is legally there, has paid for the room, and has not been asked to leave. State v. M.B.W., 276 So. 3d 501 (Fla 2nd DCA 2019).
- H. Upon arrest, a guest will have been deemed to have given up any right to occupancy or to have abandoned such right of occupancy of the premises and the operator of the establishment may make the premises available to other guests. The operator is responsible for taking reasonable care to any personal property which may be left on the premises by the guest.
- I. Public lodging establishments are not authorized to eject a guest under this law unless the guest falls squarely within the law. Officers should use caution prior to ejectment if there is any doubt as to the authority of the public lodging establishment to use this law rather than the eviction process under F.S. Chapter 83 which is civil in nature.

Supersedes SOP 501, dated 12/20.