COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK

GENERAL ORDER CIVIL BUREAU	DATE OF ISSUE SEPTEMBER 24, 2024	EFFECTIVE DATE SEPTEMBER 24, 2024	NO. 007-24
SUBJECT: GENERAL ORDER **Enforcement of Writ of Habeas Corpus or Child Custody Orders**		DISTRIBUTION Civil Bureau Personnel	AMENDS
REFERENCE: NYSSA 33			RESCINDS 007-19

Purpose: To define and familiarize members and employees with the Sheriff's Office procedures pertaining to enforcement of Writ of Habeas or custody orders relating to child custody.

Policy: Members shall enforce any Writs of Habeas Corpus or other court orders for child custody that direct the Sheriff to do so. A Writ of Habeas Corpus directs the Sheriff to produce a person. Any other order regarding child custody/visitation directs a parent/guardian to produce the child(ren).

* **I. Requirements from Issuing Attorney/Petitioner**

A. All papers to be served are delivered in person, mailed or faxed.

B. History of case.

C. Full descriptions, including ages of children involved and any available photos of the children and party to be served papers.

D. Clear directions to the Sheriff on how to proceed.

E. Fees for service are prepaid, unless otherwise agreed upon.

* F. Papers filed in Monroe County Family Court if order is from outside of New York State.

II. Situation Assessment

Based on the information provided by the issuing attorney or petitioner, the Bureau Chief or designee, reviews the case file for acceptance by the Sheriff's Office and reviews with the Sheriff's legal counsel. The following factors must be considered:

A. The request for service must be legal.

B. The nature of the transfer of the child(ren) must be decided. Coordinate times with the issuing attorney or petitioner.

Note: Each case presents a different set of criteria to implement service and should be thoroughly reviewed prior to enforcement by the Civil Bureau.

III. Receipt and Recording of Papers

A. The Sergeant has the papers receipted and time stamped.

B. The Bureau Chief or designee, notifies legal counsel that we have received a child custody paper to enforce.

C. The Sergeant enters a civil paper case on the computer system.

D. The Sergeant forwards the case file to the Bureau Chief for final review.

IV. Service of Papers

A. Writ of Habeas Corpus: Papers must be served to the defendant by personal delivery. If service is refused the issuing attorney and Family Court must be informed.

B. Other orders regarding child custody: Papers must be served in the same manner as a summons in accordance with CPLR Section 308.

V. Producing Child(ren) for Transfer

* A. The deputy must request the child(ren) from the defendant/or third party.

B. If the defendant refuses to surrender the child(ren):

1. With a Writ of Habeas Corpus or other order, the deputy has the authority to take the child(ren) in accordance with this order. However, the deputy may not break and enter the premises, unless there is an order to do so.

2. With other orders, the deputy does not have the authority to take the child(ren) unless the defendant voluntarily surrenders. The deputy advises the party of potential consequences of violating the order that has been served upon him/her.

VI. Transfer of Child(ren)

A. The parent/guardian is usually in close proximity of service to accept the surrender of the child(ren).

B. The Sheriff cannot take temporary custody. If the parent/guardian is not available to take custody, arrangements must be made through the attorney to place the child(ren) with the appropriate agency.

VII. Return of Process

* Once service is completed, a certificate of service is prepared, signed, notarized and mailed. The service case file and the computer system case is updated with all appropriate notations.

By Order of the Sheriff,

Todd K. Baxter