

**“A Public Office
Is a
Public Trust”**

**Florida Constitution Article II,
Section 8**

Florida Constitution Section 8 (c)

“Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. **The manner of recovery and additional damages may be provided by law.**”

This Constitutional Mandate is Codified in F.S.112

112.3173 FORFEITURE — Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

F.S. 112.3173

Part 1: Any public officer or employee who is convicted of a specified offense committed prior to retirement,

Part 2: or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense,

Part 3: shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

FL S.S. 112.3173(2)(e)

“Specified Offense” Means:

1. The committing, aiding, or abetting of an embezzlement of public funds;
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;

“Specified Offense” – Cont’d.

3. Bribery in connection with the employment of a public officer or employee;
4. Any felony specified in chapter 838, except ss. 838.15 and 838.16 (FS 838 – Bribery Statute)
5. The committing of an impeachable offense;

“Specified Offense”

The “Catch All” Clause

6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or

“Specified Offense” - Cont’d.

7. The committing on or after October 1, 2008, of any felony defined in s. [800.04](#) against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

FS 794 – Sexual Battery crimes – **Forfeiture of retirement benefits.**—The retirement benefits of a person convicted of a felony committed on or after October 1, 2008, under this chapter are subject to forfeiture in accordance with s. [112.3173](#) or s. [121.091](#) if the person is a public officer or employee when the offense occurs; the person commits the offense through the use or attempted use of power, rights, privileges, duties, or position of the person’s public office or employment position; and the victim is younger than 18 years of age when the offense occurs.

Who is This Person?



Who is SRO Scott Peterson?
(current FRS pension is just over \$100K/year)

AND

Why is it relevant to this presentation?

He is charged with six (6) counts of
child neglect

and

One (1) count of perjury in an
official proceeding

All Felonies (7)

(e) “Neglect of a child” means:

1. A caregiver’s failure or omission to provide a child with the care, supervision, and services necessary to maintain the child’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
2. A caregiver’s failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

A Caregiver is Defined in FS 827.01:

Caregiver means a parent, adult household member, or other person responsible for a child's welfare

Back to SRO Scott Peterson:

Is an SRO a “Caretaker”?

39.01 Definitions — When used in this chapter, unless the context otherwise requires:

39.01(9): “Caregiver” means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child’s welfare as defined in subsection (54).

39.01(54): “Other person responsible for a child’s welfare” includes the child’s legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child’s welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child’s care. For the purpose of departmental investigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; employees of municipal or county detention facilities; or employees of the Department of Corrections.

Defense counsel, in its Motion to Dismiss, has argued before Judge Fein (17th Judicial Circuit) that pursuant to FS 39.01 (54) a Law Enforcement Officer is specifically excluded from “caregiver”.

The State argued that a school resource officer is different than other law enforcement officers and so, they are not excluded under the statute.

Who is this person?



Officer Jeffery Stewart Davie Police Department

This police officer (now retired) faced multiple felony counts of grand theft and tampering with evidence after a two-year investigation by the Internal Affairs of his Department.

A plea agreement was reached just in 2021 where the defendant would plead guilty to 2 petty theft misdemeanors charges and provide \$15,000 in restitution to the victims.

The result: no prison time and his pension remains intact.



**HELLO PRISON...
GOODBYE PENSION**

Delray Beach Police Detective Jack Makler

- ▶ In 2006, this 20+ veteran Police Detective (Economic Crimes) was sentenced to five (5) years in Federal Prison for multiple felonies. (64 YOA at the time of sentencing)
- ▶ He was convicted of acting as a cover for a Marks (Gypsy) Family Organization as it preyed on elderly victims and exploited them by stealing millions of dollars.
- ▶ Makler, of Boynton Beach, admitted in federal court in Miami that he used his position to keep Linda Marks (marks Gypsy Family) out of jail and from violating probation.
- ▶ Makler also admitted that he lied to federal investigators, his department's Internal Affairs investigators and to state criminal courts in New Mexico and Key West to help Marks and her husband, Jimmy Marks, avoid stiff criminal penalties.
- ▶ As a result of his conviction, Detective Makler (who was in DROP at the time of his arrest) lost his entire pension benefit.

Board Fiduciary Duty

FORFEITURE DETERMINATION.— (a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to subsection (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board **shall** give notice and hold a hearing in accordance with chapter 120 for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board **shall** order such rights and privileges forfeited.

Additional considerations

FS 112.011 Disqualification from licensing and public employment based on criminal conviction.— (1)(a) Except as provided in s. 775.16, a person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. **However**, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought.

“The Holy Grail”

