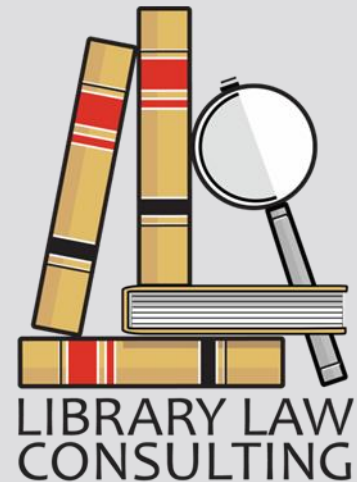


Top 10 Legal Concerns from Florida Public Librarians

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Legal Disclaimer

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- These materials are provided as general information only.
- No legal advice is being given by the Florida Library Association or any other person.
- Consult your attorney for advice on making decisions about legal issues.

Access

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PATRON ACCESS TO THE LIBRARY AND THE INFORMATION INSIDE

What limitations are legal?

Right to Access the Public Library

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- The First Amendment of the United States Constitution creates a right to access information.
- The U.S. Supreme Court has said that public libraries play a crucial role in the citizenry's exercise of that right.
- Therefore, placing restraints on a public library user's access to the library could implicate First Amendment concerns.
- The right to receive information and the associated right to access public libraries are not absolute.



Illegal Behavior



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Library users who behave unlawfully may be evicted.

- Cursing, disruptive noise
 - Breach of the Peace; Disorderly Conduct: § 877.03
- Panhandling—no state law
 - Many Florida cities, towns, and counties have anti-begging ordinances. Check your jurisdiction.
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- Child Abuse/Neglect: § 827.03
 - Mandatory child abuse reporters: § 39.201 (does not specify librarians) myflfamilies.com/service-programs/abuse-hotline

Registered Sex Offender

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- Cannot work or volunteer at a library: § 948.30 (f)
- No statewide prohibition on being in a library
- Municipalities may have ordinances creating “child safety zones” that could include libraries. Check your jurisdiction.
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10th Circuit Court of Appeals held that a blanket ban on sex offenders coming into public libraries is unconstitutional. *Doe v. City of Albuquerque*, 667 F.3d 1111, 1115 (10th Cir. 2012).

Gender Specific Bathrooms

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- North Carolina's law requires public agencies to ensure that multiple occupancy bathrooms are "designated for and only used by" persons based on their "biological sex," defined as the sex listed on their birth certificate. Held unconstitutional by trial court, on appeal.
- No law in Florida.
- Guidance by Obama administration requires public schools to allow students to use restroom associated with "gender identity." 21 states have sued to repeal---not Florida.

Illegal Activity=Call to the Police

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According to the American Library Association, “Clear evidence of illegal behavior is best referred to law enforcement who know the processes of investigation that protect the rights of the accused.”



Annoying, Disruptive, Offensive Behavior

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"Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me . . ."

Statue of Liberty or the public library?

Kreimer v. Bureau of Police for Town of Morristown, 958 F.2d 1242 (3d Cir. 1992): Citizens have a right to use the public library; however, the use by one cannot disrupt the use by others.



Managing Patron Conduct Through Policies

- **Legitimate Policies**

- Offensive hygiene: *Kreimer*, 958 F.2d at 1261
- Dress code: *Neinast v. Columbus Metro. Lib.*, 346 F.3d 585, 589 (6th Cir. 2003)

- **Unlawful Policies**

- Sleeping: *Pottinger v. Miami*, 810 F. Supp. 1551, 1554 (S.D. Fla. 1992) - not a library-specific case.
- Breastfeeding: § 383.015—affirmative right to breastfeed in public place.

Are these policies legal?

- Prohibiting diaper changing?—no right for parents to change diapers in public, falls into hygiene policies.
- Prohibiting bags?—if related to a reasonable goal (preventing bedbugs) likely ok, but MUST be applied consistently. Cannot single out one category of bag holders.
- Requiring evacuation?—promotes public safety; staff should continue with evacuation procedures, and, from a safe location, call 911 to inform the police department of the location of the individual.
- Unattended children?—no law in Florida imposing responsibility on library employees; school officials stand *in loco parentis*, not extended to librarians. Check for local regulations.

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Creating Legitimate Policies

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- Reflect library mission
- Legitimate purpose related to traditional reasons library exists
- Specific
- Uniform application
- Properly communicated
- Due process—notice and right to be heard

Punishment for Policy Violation

Discretionary, consider these factors:

- Single infraction or part of a pattern?
- Seriousness of the wrongdoing.
- Past infractions by this patron.
- Credible source: Infraction witnessed by library personnel or other patrons?
- Proportional response: Outright ban of indefinite duration not reasonable punishment for two instances of aggravating behavior directed toward a library employee. *Brinkmeier v. City of Freeport*, 1993 WL 248201 (N.D. Ill.)
 - ✦ System-wide ban for infraction at single location?

Americans With Disabilities Act

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HOW DOES THE LIBRARY COMPLY?

Access: Title II ADA

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Prohibits provider of public services from discriminating against or excluding “qualified individual” with a “disability.”

- Disability: impairment that substantially limits ability to perform major life function; temporary impairment is not disability.
 - Major life function: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and reproducing.
- Qualified individual: not if condition poses a direct threat to the safe operation of the library or if the individual “poses a direct threat to the health or safety of others.”

Accommodations: Title II ADA

- “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7).
- Does not require government entities “to employ any and all means to make services accessible to persons with disabilities ... It requires only ‘reasonable modifications’ that would not fundamentally alter the nature of the service provided ... [or] impose an undue financial or administrative burden.” *Tennessee v. Lane*, 541 U.S. 509.

Library-Specific Guidance on Access

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- ALA’s “ADA and Libraries” ala.org/tools/ada-and-libraries
- Access Advocates accessadvocates.com/ada-compliance-library Includes the following twelve areas: parking lot, signage, path & doors, elevators & stairs, floors, lighting, catalogs & computer stations, furniture, periodicals & stacks, checkout, reference or help desk, and restrooms.

ADA Profiteers

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- Increasing trend: lawsuits generated by “frequent filers” hoping for quick settlement.
- Often accuse businesses or governmental entities of technical violations of the ADA, such as: fading paint on disabled parking spaces, miniscule height discrepancies of soap dispensers or paper towel holders, square handrails rather than round.
- Profit driven, not legitimate efforts to raise awareness and seek correction of violations.

Animals

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WHEN CAN PATRONS BRING THEM INSIDE?



Federal Law: ADA

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- Dog individually trained to do work/perform tasks for the benefit of an individual with a disability, including: physical, sensory, psychiatric, intellectual, or other mental disability.
- Tasks performed can include: pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button.
- Emotional support animals, comfort animals, and therapy dogs are not service animals under the ADA. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals either. Exception: miniature horses.

Questions Allowed by Law

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- Asking whether an animal is a service animal and what tasks the animal has been trained to perform is allowed.



- Do NOT ask:
 - Nature of the individual's disability.
 - For documentation that the service animal is trained.

Florida Law, § 413.08

- Dog or miniature horse trained to perform tasks for an individual with a disability, including: physical, sensory, psychiatric, intellectual, or other mental disability.
- Tasks may include: guiding, alerting, pulling a wheelchair, assisting with mobility/balance, retrieving objects, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack.
- Tasks excluded: crime deterrent, emotional support, well-being, comfort or companionship.

Fakers

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- Becoming common for people to disguise pets as service animals to break laws regarding health and safety.
- Some states have enacted laws making it a crime to misrepresent the status of an animal as a service animal. Florida has not, but there are some limitations in § 413.08:
 - Restraint: harness, leash, tether
 - Housebroken

Concealed Weapons

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**IS IT LEGAL FOR PATRONS TO BRING THEM
INSIDE THE LIBRARY?**

Florida Weapons Law

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- A license is required for an individual to carry a concealed weapon or firearm. § 790.06.
- With limited exceptions, it is illegal to openly carry a firearm or electric weapon or device. § 790.053.



Affirmative Rights to Bring Gun to the Library?

- During the last decade many states have enacted laws giving licensed gun owners the *affirmative right* to carry firearms in certain public places.
 - Texas: Government agencies are prohibited from banning weapons.
 - Georgia: Permit holder may bring gun into any government building that is not restricted by screened security personnel.
- Florida: no affirmative right, but implied right to bring anywhere except a particular location delineated in the statute (§ 790.06).

Library Policy Banning Weapons?



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In Florida, the legislature has expressly preempted the entire field of firearm and ammunition regulation. §790.33(1).

- Local ordinance/policy by a government entity banning firearms may be unenforceable. *Private entities* are free to ban weapons.
- Public library policy has not been addressed by courts in Florida.
- Michigan 2012 – Library forced to change policy:
 - Michigan Court of Appeals: “Our job is not to determine who has the better moral argument regarding when and where it is appropriate to carry guns. Instead, we are obligated to interpret and apply the law, regardless of whether we personally like the outcome.”

Privacy Rights

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CAMERAS & SECURITY VIDEO

Taking Photos in the Public Library

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- Generally, it is not illegal to take a photograph of another person (even a child) who is in a *public place*. (Exception for registered sex offenders.)
- Good reasons for restrictions:
 - Could disrupt quiet enjoyment and use of the library by others.
 - Could implicate patron confidentiality issues.
 - Could embroil library in dispute between third parties.



Using Photos Taken in the Public Library

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- Florida law recognizes “right of publicity” § 540.08:
 - Creates a property right in a person’s likeness (includes still or moving photography).
 - Must obtain permission before publishing or displaying to promote or publicize an event or service.
 - Exception for news media with legitimate public interest.

HEALTHY CHOICES AT HOME

Make a commitment to eat well by making healthy choices a “habit.”

Start your day with breakfast: try lowfat yogurt with fruit, whole wheat toast with reduced fat peanut butter, or cereal with lowfat or nondairy milk.

Eat foods high in fiber to help you feel full and with fewer calories. Whole grain cereals, legumes, vegetables, and fruits are good sources of fiber.

Be physically active before you go to work – take a walk, ride a bike, or move to your favorite exercise video.

Limit television and computer time.

HEALTHY CHOICES AT WORK

Instead of chips, cookies, soda and candy, try nutritious and filling snacks such as a piece of fresh fruit, cut raw vegetables, baby carrots, dried fruit, raisins, celery sticks with reduced fat peanut butter.

Be size wise about muffins, bagels, croissants and biscuits. A jumbo muffin has twice the fat grams and calories than a regular size muffin.

Wash your portion sizes.

Portion sizes at restaurants are usually more than one serving, which can result in overeating.



HEALTHY CHOICES FOR YOUR FAMILY

Keep a bowl of fresh fruits in your refrigerator for a quick snack for your family.

Keep easy-to-eat vegetables and lowfat dip in the refrigerator where your kids can reach them.

Set a good example by snacking on fresh fruit like oranges, apples, grapes, and bananas.

Eat two or more vegetable servings with dinner.

Only purchase healthy foods when grocery shopping for your family.

Read the food label to know what you are eating, especially when it comes to checking serving sizes on snacks, juices, or sweetened beverages.

Drink only 100% fruit juices, but NO more than 6 oz. of juice per day.

Drink water instead of sweetened drinks.

Choose nondairy or 1% lowfat milk.

Pack healthy snacks and lunches for your family, like trail mix, raw vegetables, or fruit.



INCREASING PHYSICAL ACTIVITY AT WORK

Strive to do at least 60 minutes of physical activity every day to maintain heart health and a healthy weight.

Choose to eat fruits and vegetables before and after physical activity.

Take an activity break every two hours. Use the stairs instead of the elevator, do stretches at your desk, or go for a walk.

Devote a portion of your lunch break to physical activity (e.g. walking).

Walk to someone’s desk rather than using the intercom or email.

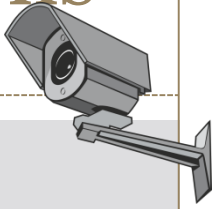
Walk five times a week instead of three. Boost the intensity of your workout. Turn your walks into jog/walks.

Park the car AS FAR AWAY from the entrance as possible to increase physical activity.



Requests to View Security Video by Patrons

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- Surveillance tapes from a security system for a public building constitute information that is confidential and should not be disclosed except:
 - To the property owner or leaseholder;
 - In furtherance of the official duties and responsibilities of the agency holding the information;
 - To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
 - Upon a showing of good cause before a court of competent jurisdiction.
- § 281.301