STATE ATTORNEY'S OFFICE

EIGHTH JUDICIAL CIRCUIT
WILLIAM P. CERVONE, STATE ATTORNEY

Legal Bulletin 2003-04 **October 2003**
Editor: Rose Mary Treadway

A MESSAGE FROM
STATE ATTORNEY
BILL CERVONE

Here's something that won't surprise many of you: we are sometimes at odds over the disposition of cases.

Like any family, we disagree now and then over something. In the law enforcement community, that is actually a good thing in that it shows the differences between our roles and recognizes that each of us is a balance for the other. After all, the officer on the street needs to solve an immediate problem and requires only probable cause, and the prosecutor in the courtroom is legally bound by proof beyond a reasonable doubt as well as ethical requirements to consider the wishes of not just the arresting officer but also the victim, the community and its expectations, the courts and its limitations, and even the defendant and his or her situation.

Why am I writing this? Let me digress a little. The SAO regularly purges old files, as I'm sure everyone does to one extent or another. After all, with 40-45,000 new cases coming in every year there is hardly space to keep everything forever- the long promised paperless society has not, at least so far, caught up with my office. During that process I recently picked up and reviewed an old case jacket dealing with a sexual assault on a child. The details are unimportant, but the case had ultimately been dismissed after some length of time. What caught my eye was an explanatory note left in the file by the prosecutor, that read as follows:

Case put on continuing absentee docket- defendant banished from 8th Judicial Circuit forever-defendant gave sworn statement to court admitting act took place and his guilt, to be used against him if case ever tried because he comes back- all done because {that} was wish of victim and victim's mother and to spare victim trauma of trial. In fact, the system has damaged child more than defendant did and I acceded to victim's wish not to have to testify. I believe the trial would have damaged the child victim more than the defendant. Do I have as great a moral obligation to the individual victim citizen as I do to the people of the State at large? Is she as much my client as the people at large? The victim was pleased with the disposition of the case. Is this type of moral justice within my discretion? It has to be!

The prosecutor who wrote that was Ken Hebert, and the year was 1975. Some of you will remember Ken. For those who don't, he was the Chief Assistant State Attorney for Gene Whitworth, my predecessor and mentor, from before I started as a prosecutor in 1973 until Gene's death in 1988. Ken was very much the professional and career prosecutor, and he was meticulous and relentless in his preparation and presentation of a case. He was consumed with bringing those who had done evil to justice and he handled some of the most difficult and awful cases that we had during those years. And yet, at a time well before the advent of victim advocacy and rights as we know them now, he was still guided by the need

to consider the justice of the case to all involved.

Whether you agree with Ken's decision or not, I hope his note illustrates the problems and processes we go through in trying to find justice.

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SAO PERSONNEL CHANGES

ASA **ROSA DUBOSE** resigned effective August 1st to accept a teaching position at Florida Coastal Law School in Jacksonville, which will allow her to avoid the long drive she had been making to the Starke office since her husband's job relocation to Jacksonville last year. Her Bradford County felony position was assumed on September 22nd by **TODD HINGSON**, who returned to us after spending the last nine months as the lead ASA in the Third Circuit's Dixie County Office.

ASA **REBECCA SHINHOSLER MICKHOLTZICK** has replaced ASA **MICHELLE SMITH** in the Gainesville Juvenile Division. Michelle resigned to enter private practice in Gainesville. Rebecca is a graduate of the University of Florida Law School.

ASA **JOHN BROLING** has resigned from the Bradford County Office to enter private practice in Starke. No replacement has been named as yet.

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CONGRATULATIONS!

RAY KAMINSKAS has been appointed Chief of High Springs Police Department, succeeding **TOM WOLFE** who retired in June. Chief Kaminskas has over 29 years in law enforcement in Florida and Illinois, most recently as Chief of Police in St. Petersburg Beach.

Alachua County Sheriff's Deputies **DANNY BUCKLEY** and **CHRISTOPHER MONK** have been promoted to the rank of Sergeant.

ASO Sergeants **STAN PERRY** and **JOHN REDMOND** have been promoted to the rank of Lieutenant.

Detective **DRAYTON MCDANIEL** of the Gainesville Police Department retired in August after twenty-two years of service to that agency. His wife, Sergeant **SHELLEY MCDANIEL**, also retired in August after twenty-one years of service to GPD.

On August 8, **DON SPRIGGLE**, **RICKY CREWS** and **BOB MELTON** were promoted to the rank of Sergeant at the Starke Police Department.

The University Police Department held its Annual Awards Ceremony in August where these sworn law enforcement recipients were recognized in several categories:

Police Service Award: Officer **ANGELA MANDRELL**.

Chief's Letter of Commendation: Officer **BONNIE BOLAND**, Sergeant **STACY ETTEL**, Officer **LAURIE-ANN FEDERICO**, Officer **JEFF GUYAN**, Investigator **ERNEST HALE**, Officer **JACOB PRUITT**, PCO **JOHN WILLIAMS**, Officer **PHIL BELL**, and Officer **KENNY BEERBOWER**.

Officer of the Year: Officer **JOHN SAVONA**.

ASAs **RASHEL JOHNSON**, **REBECCA MICKHOLTZICK, LUA MELLMAN,** and **ROBERT WILLIS** all passed the Florida Bar Exam and were sworn in as Bar members in September.

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A MESSAGE FROM THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES: DIVISION OF CONSUMER SERVICES

The Director of the Division of Consumer Services, James R. Kelly, has announced that due to budget reductions, the Department's responsibility as the state's clearinghouse for consumer complaints has been eliminated. The Department will continue to receive and process complaints within the following areas of regulation:

Business Opportunities
Game Promotions/Sweepstakes
Intrastate Moving Companies
Telemarketing
Sellers of Travel
No Sales Solicitation (Florida's Do Not Call Law)
Dance Studios
Health Studios
Motor Vehicle Repair Shops
Pawnshops
Charitable Organizations/
Solicitation of Contributions

Any complaints not falling into one of the above categories can be referred to the Attorney General's Office. The AGO is one of the enforcing authorities of the Florida Deceptive and Unfair Trade Practices Act and is authorized to take enforcement action against a statutory violation if it is determined that action will serve the public interest and if the violation occurs in more than one judicial circuit. The AGO toll free number is 866.966-7226; alternatively, their WEB address is http://myfloridalegal.com/

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CASE LAW UPDATE

CANINE DRUG ALERT RELIABILITY

By Steve Brady, Regional Legal Advisor, FDLE

A trained drug detection dog, Razor, alerted on a vehicle during a routine traffic stop. This provided probable cause to search the vehicle and deputies found assorted drugs in the glove compartment. The defense moved to suppress the drugs on the basis that Razor's ability to detect drugs was unreliable. The prosecution presented Razor's trainer who testified that the dog received training through the Hillsborough County Sheriff's Office (HCSO) and was certified by the United States Police Canine Association (USPCA).

The defense countered with an expert who testified that the HCSO training is deficient. He stated that there was (1) inadequate training for searching vehicles, (2) lack of training for small quantities of drugs, (3) failure to plant novel odors during the training sessions, (4) there was no controlled negative testing, (5) no extinction training was provided which would discourage the dog from alerting on common items sometimes associated with drugs, and (6) the training did not include "stimulus generalization" which conditions the dog trained on one class of

drugs to alert on all drugs in that class. The expert also disparaged that USPCA certification in that (1) there was no controlled negative testing, (2) the training searches were limited to ten minutes instead of "real world" time for searches, (3) the organization requires only a seventy percent proficiency to be certified, and (4) they fail to focus on the dog's ability to detect narcotics as opposed to analyzing the ability of the dog and handler as a team. It should also be noted that Razor's handler admitted that he did not maintain a record of the canine's false alert rate. The trial judge upheld the search and the defendant appealed.

The Second DCA in **Matheson v. State** suppressed the evidence. The court acknowledged that previous cases have held that training and certification of a canine establishes prima facie proof that the dog is reliable. However, this does not preclude the defense from introducing evidence to rebut this assumption. Based on the testimony in this particular case, the court ruled that the training Razor received together with the lack of performance history created doubts as to the canine's reliability. Therefore, his alert did not give the handler probable cause to search the vehicle.

This case does not end the use of K-9 alerts as probable cause to search. It does serve as a reminder that before an "alert" can be accepted as the basis for action, the proper predicate must be established, and the state must be prepared to rebut defense challenges to the dog's reliability. K-9 trainers must be prepared to defend their dog's training, experience, and performance. Prosecutors should keep in mind that "probable cause" for a search is not "proof beyond a reasonable doubt" and strive to keep the court focused on an appropriate level of determination to justify a search.

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SEAT BELTS AND PASSENGERS

It is unlawful for any person 16 years of age or older to be a passenger in the front seat of a motor vehicle unless such person is restrained by a safety belt ***when the vehicle is in motion.*** 316.614(5)

Morrow was a passenger in a car that a police officer stopped for speeding. The officer approached the driver's side and asked the driver for his license and registration. After the driver complied, the officer then asked Morrow, who was in the passenger seat, for identification because he was not wearing his seat belt. Morrow refused to tell the officer his name.

The officer then moved to the passenger side and positioned himself "right outside the passenger door" while he called for back- up. When back up arrived, Morrow gave his name, and it was discovered that Morrow had outstanding warrants for his arrest. A search revealed illegal drugs.

Morrow argued that the trial court should have granted his motion to suppress the drugs because they were found during a search of his person after an illegal detention resulted in his arrest. The State contended that the detention was legal because the officer had made a valid traffic stop, had a reasonable suspicion that Morrow had violated the seat belt statute and that the officer's interaction with Morrow was at best a consensual encounter.

The Second DCA in **Morrow V. State suppressed** the evidence. Morrow had testified that he was wearing a seat belt when the car was in motion, but unbuckled it after the car had come to a stop. The officer was unable to refute that, testifying that he didn't know if Morrow was wearing a seat belt while the car was moving because it was dark and he could

not see in the car while it was moving.

Further, the court held that the contact was not merely consensual, but had turned into a seizure by the officer's positioning himself outside Morrow's door and calling for back-up. "An officer may detain a citizen temporarily if the officer has a reasonable suspicion that the person has committed, is committing or is about to commit a crime." A reasonable suspicion of criminal activity is not necessary if the contact is merely consensual. The officer has the right to approach an individual in public and ask questions or request identification without a founded suspicion of criminal activity. The individual may, but is not required, to cooperate with police at this stage.

The Court held that when Morrow refused to give his name, that should have been the end of the encounter. By positioning himself outside Morrow's door and calling for back-up, the encounter turned into a seizure. "A significant identifying characteristic of a consensual encounter is that the officer cannot hinder or restrict the person's freedom to leave or freedom to refuse to answer inquiries…" Since the officer did not have the reasonable suspicion necessary to authorize an investigatory detention, the detention and subsequent arrest were illegal.

SEARCH AND SEIZURE: KNOCK AND ANNOUNCE

Officers were executing a search warrant at a residence at 5:30 pm. The officer testified that he knocked on Kellom's back door, announced his presence and, upon receiving no response, waited "several seconds" before forcibly entering the residence.

The officer testified that he wasn't sure whether weapons were involved or whether evidence would be destroyed but stated, "They do get rid of the dope once they know- once we knock, they usually get rid of the dope." He admitted that the warrant made no mention of possible weapons or the possibility that the suspected contraband would be destroyed as he had no knowledge of such at that time. The officer further testified that, prior to their forcible entry, the officers did not hear any noise coming from inside , nor did they know, after knocking and announcing, whether there were weapons involved. The State conceded that possibly five seconds had elapsed.

The First DCA **reversed** the conviction in **Kellom V. State** holding that the time elapsed after knocking and announcing was too short to allow the occupant to respond, thus violating 933.09 which provides:

The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of the officer's authority and purpose he or she is refused admittance to said house or access to anything therein.

The court held that 933.09 imposes two requirements. First, law enforcement must provide due notice of their authority and purpose. The statute also requires that law enforcement be refused admittance, which can be express or implied. A lack of response is deemed a refusal. Regardless of whether the ultimate refusal will be express or implied, there is required some quantity of time, sufficient under the particular circumstances, that the occupant is permitted to respond.

The policy under 933.09 "derives from the sentiment that there 'is nothing more terrifying to

the occupants than to be suddenly confronted in the privacy of their home by a police officer decorated with guns and the insignia of his office, that is why the law protects its entrance so rigidly.'" Where officers knock, announce their authority and purpose and then enter with such haste that the occupant does not have a reasonable opportunity to respond, the search violates 933.09.

Here, the State had conceded possibly five seconds had elapsed. The Court distinguished this case from others allowing six to eight seconds where there was evidence that the suspect was likely to destroy the contraband or that the suspect was dangerous or possessed firearms.

Nor did the Court find any exigent circumstances existing to excuse the officers' actions. Citing the four exceptions to the knock and announce rule: (1)where the person within already knows of the officer's authority and purpose; (2) where the officers are justified in the belief that the persons within are in imminent peril of bodily harm; (3) if the officer's peril would have been increased had he demanded entrance and stated the purpose; or (4) where those within made aware of the presence of someone outside are then engaged in activities which justify the officers in the belief that an escape or destruction of evidence is being attempted.

The officers' actions resulted from their generalized belief that individuals in possession of contraband will "usually get rid" of such, however, this generalized belief is not sufficient to excuse the officers' violation of 933.09. Because the officers had no particularized belief that the suspect was likely to destroy the contraband or that he was likely to be armed, no exigent circumstances existed to excuse the violation of 933.09. The officer's belief of weapons or peril must be based on something more than generalized knowledge that a defendant has been known to carry a weapon at some time in the past. An officer's belief of the immediate destruction of evidence must be based upon particular circumstances existing at the time of entry and must be grounded on something more than generalized knowledge as a police officer.

Further the Court held that the "inevitable discovery" doctrine is not applicable in cases in which 933.09 is violated as the application of the doctrine to evidence seized in violation of the knock and announce rule would render 933.09 and the policy behind the rule meaningless.

SEARCH AND SEIZURE: FOUNDED SUSPICION

Officer Brackmeier responded to a call about a suspicious male with long hair, baseball cap, and bad teeth sitting on the steps at an apartment complex. The call came from a resident of the complex who identified herself. Upon arrival, the officer found Chappell, who fit that description, sitting on the steps.

As the officer stepped out of the patrol car, Chappell walked down the steps to the officer. When asked what he was doing there, Chappell responded that he was waiting for a friend to arrive home and that the people residing in the first floor apartment could identify him. Chappell then knocked on the door to that apartment, opened the door, put his two bags inside the doorway, and announced to the occupants that they knew him. The occupants put the bags back outside the door and closed it, stating that they did not know Chappell.

The officer asked Chappell for identification, but when the name and date of birth he gave was run, no record was found. Brackmeier

asked for further information so that he could ascertain Chappell's identity and Chappell began to pace, stating that he had to urinate. The officer told Chappell that he was not going to urinate in public and that as soon as the quick interview was concluded, he could leave. Chappell again stated that he had to urinate. Leaving the larger bag and a pair of shoes behind, he picked up the smaller of his two bags, a waist pouch, and began strapping it to his waist as he walked away. The officer told him to stop, but Chappell continued walking away. When Chappell got to the end of the breezeway, he turned and took a stance that suggested he was about to urinate. Brackmeier told him to stop and Chappell began to run, tossing the bag into the bushes, then he stopped and put his hands up. The bag contained cocaine and other drugs.

The Fifth DCA in **Chappell V. State** held that the officer had reasonable suspicion justifying the stop and detention of the Defendant.

The court reiterated that there are three levels of interactions between officers and citizens: (1) consensual encounters; (2) investigatory stops; and (3) arrests. A consensual encounter does not involve restriction of the citizen's freedom. Here, the initial encounter with Chappell was consensual. Asking Chappell for identification and running a check did not change the encounter into a detention.

When the officer told Chappell that he could not leave, and when he ordered Chappell not to walk away, the encounter obviously became a detention. The court held that the officer had reasonable suspicion to detain Chappell at this point based on the citizen informant's call; Chappell's sitting on the stairway with no apparent purpose; the apartment occupiers who declined to identify or acknowledge knowing Chappell; no record of the name or DOB given by Chappell; and his walking away leaving the rest of his belongings.

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UNAUTHORIZED WEARING OF LAW ENFORCEMENT INSIGNIA

The Third DCA declared **unconstitutional** a Florida statute criminalizing the unauthorized wearing or display of official emblems or other indicia of law enforcement authority, concluding that the law violates First Amendment protected speech and is unconstitutionally overbroad.

Albert Rodriguez was convicted of several charges stemming from a high-speed chase, including unlawful display of authorized indicia of law enforcement authority (section 843.085).

During the chase, Rodriguez rode a motorcycle while wearing a black T-shirt with "POLICE" printed on the front and back. On appeal, Rodriguez claimed that his conviction and sentence for wearing the T-shirt were unlawful because the statute was unconstitutional. The DCA in **Rodriguez v. St** agreed, concluding that the statute is impermissibly content-based and proscribes protected speech.

"The statute is constitutionally infirm because it makes no distinction between the innocent wearing or display of law enforcement indicia from that designed to deceive the reasonable public into believing that such display is official. While there is certainly a legitimate interest in ensuring that the public not be deceived by law enforcement impersonators, we conclude that this statute must be narrowly tailored with an intent requirement so as not to run afoul of the rights guaranteed by the First Amendment," the DCA said.

The State Attorney has already contacted Senator Rod Smith's office in an effort to have legislation introduced next year to

solve the problem.

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***NOTE**: In the July Bulletin we reported on **Aponte v. State** in which the Fifth DCA held that an officer exceeded the scope of a consensual search by opening a cigarette box found in Aponte's shirt pocket (even though Aponte did not object either orally or manually to the opening of the pack) because a "reasonable person in Aponte's position would not understand that the officer's request to search him included a search of sealed containers on his person in which he had a heightened expectation of privacy."*

*In August, that Court withdrew its original opinion and found for the State, holding that "…Aponte's general consent to the search followed by inaction to stop or limit the search could be interpreted by a reasonable officer to be within the bounds of the original consent." As a result, the original **Aponte** decision as discussed in the July issue can be disregarded.*

FOR COPIES OF CASES…

For a copy of the complete text of any of the cases mentioned in this or an earlier issue of the Legal Bulletin, please call ASA Rose Mary Treadway at the SAO at 352-374-3672

2003 CRIMINAL LEGISLATION

2003-10	Creates FS 893.031 to establish an exception for "industrial users" for the possession of 1,4-Butanedoil and GBL; amends FS 893.13 to clarify that the prohibited time frame for sale within 1000' feet of a child care center is from midnight to 6am. EFFECTIVE DATE: May 2, 2003
2003-15	Amending FS 812.014 to add the theft of anhydrous ammonia as a specified property 3F Grand Theft offense; amending FS 893.033 to add anhydrous

ammonia as a listed precursor chemical used in the manufacture of a controlled substance, the possession of which is a 2F offense.
EFFECTIVE DATE: July 1, 2003

2003-23 Amending FS 784.048 to include Cyberstalking, defined as electronic transmission of material directed at a specific person and serving no legitimate purpose which causes substantial emotional distress as a stalking offense, to provide that Aggravated Stalking includes a credible threat of death or bodily injury to the person stalked or his/her child, sibling, spouse, parent or dependent.
EFFECTIVE DATE: October 1, 2003

2003-50 Amending FS 810.115 to create a 3F offense for damaging fences when the fencing is used to contain animals. EFFECTIVE DATE: July 1, 2003

2003-59 Amending FS 370.12 to create 1M and 3F Level 2 offenses for possession of marine turtle eggs in specified quantities; amending 777.04 to provide that an attempt, solicitation or conspiracy to violate provisions of FS 370.12 is not re-classified for guidelines purposes.
EFFECTIVE DATE: July 1, 2003

2003-71 Amending FS 817.568 to require a 3 year mandatory minimum sentence for identity theft crimes involving $5000 or more or using the identification of 10 or more individuals, a 5 year mandatory minimum sentence for crimes involving $50,000 or more or using the identification of 20 or more individuals, and a 10 year mandatory minimum sentence for crimes involving $100,000 or more or using the identification of 30 or more individuals; creating a 2F Level 8 offense for the fraudulent use of identifying information of a person under 18; creating a 2F Level 9 offense for the fraudulent use of identifying information of a person under 18 by a defendant having a parental, guardian or custodial relationship to the victim; creating FS 92.605 to establish procedures governing subpoenas and warrants for electronic records held both in and out of Florida, to provide that out of state records, or copies thereof, are not considered hearsay if they bear a certification attesting to business record predicates, to require the filing of a notice of intent to offer such records no less than 60 days prior to trial, to provide that the failure to file a motion opposing such before trial constitutes a waiver of any objection unless good cause for failing to do so is shown, to require that the content of electronic communications may be obtained only by court order or search warrant. EFFECTIVE DATE: July 1, 2003

2003-82 Amending FS 790.225 to re-define self-propelled knives as "ballistic" self-propelled knives, the blade of which physically separates therefrom.
EFFECTIVE DATE: June 2, 2003

2003-84 Amending FS 810.061 to create a 3F Level 2 offense for damaging telephone or electric wires, lines, or equipment in order to facilitate or further the commission of a burglary of a dwelling.
EFFECTIVE DATE: July 1, 2003

2003-95 Amending FS 893.13 to provide for a prohibition against drug offenses within 1000' to include state, county or municipal parks, community recreation centers, and publicly owned recreational facilities at any time.
EFFECTIVE DATE: July 1, 2003

2003-115 Amending FS 794.0115 to establish the Dangerous Sexual Felony Offender Act, under which any person 18 or older convicted of specified offenses, including under Chapters 794 and 800, who meets certain criteria must be designated a Dangerous Sexual Felony Offender and sentenced to a mandatory minimum term of 25 years to life without eligibility for gain time or any form of early release. EFFECTIVE DATE: July 1, 2003

2003-116 Amending FS 775.15 to eliminate any statute of limitations for a 1F violation of FS 794.011 if the victim is under 18.
EFFECTIVE DATE: October 1, 2003

2003-117 Amending FS 784.046 to establish the Victim's Freedom Act, under which a victim or the parent or guardian of a minor victim of sexual violence may seek an injunction for protection against sexual violence provided that the offense has been reported to law enforcement and there is co-operation with prosecution. EFFECTIVE DATE: July 1, 2003

2003-141 Amending FS 945.091 to provide that DOC inmates authorized for work release or other community ELOS programs may travel only by foot, bicycle, or public transport, or by state vehicle if unable to obtain other permitted transportation; creating FS 945.0913 to prohibit inmates from driving state vehicles to provide other inmates with transportation for work release or ELOS programs. EFFECTIVE DATE: October 1, 2003

2003-148 Amending FS 624.401 to provide that transacting insurance without a certificate of authority to do so is a 3F Level 3 offense with a mandatory minimum one year imprisonment term if the premium collected is less than $20,000, a 2F Level 5 offense with a mandatory minimum 18 months if the premium collected is $20,000 or more but less than $100,000, and a 1F offense with a mandatory 2 years if the premiums

collected are $100,000 or more; creating FS 817.413 to establish a 3F Level 3 offense for the knowing sale of used motor vehicle goods as new; amending FS 860.15 to establish a 3F Level 3 offense for overcharging for vehicle repairs or parts when such is to be paid by insurance. EFFECTIVE DATE: July 1, 2003

2003-155 Creating FS 499.0051 to establish multiple felony offenses related to the mishandling, sale, delivery or possession of prescription drugs or forgery of prescription drug labels; creating FS 499.0052 to establish a 1F offense of trafficking in prescription drugs in any amount having a value of $25,000 or more; creating FS 499.0053 to establish a 1F offense for sale, purchase or possession of prescription drugs resulting in great bodily harm; creating FS 499.0054 to establish a 1pbl offense for sale, purchase, or possession of prescription drugs resulting in death; creating FS 499.0691 to establish various misdemeanor and felony offenses related to mishandling of or false advertising regarding prescription drugs; amending FS 16.56 to give the Statewide Prosecutor jurisdiction over Chapter 499 violations. EFFECTIVE DATE: July 1, 2003

2003-157 Amending FS 119.07 (3)(f) to exempt from public records disclosure any criminal investigative or intelligence information that is a photograph, videotape or image of any part of the body of a victim of a Chapter 794, 800 or 827 offense regardless of whether it identifies the victim, and to provide retroactive application to this provision. EFFECTIVE DATE: June 17, 2003

2003-158 Amending FS 838.015 to increase the crime of Bribery from a 3F to a 2F offense; amending FS 838.016 to increase the crime of Unlawful Compensation For Official Behavior from a 3F to a 2F offense; creating FS 838.022 to establish 3F Level 1 offenses related to public servants falsifying or altering official records; creating FS 838.21 to establish a 3F offense for disclosure or use of confidential criminal justice information regarding warrants, subpoenas or other court process by a public servant; creating FS 838.22 to establish a 2F Level 1 offense for Bid Tampering. EFFECTIVE DATE: October 1, 2003

2003-187 Amending FS 484.0512 to create a 1M offense for the failure to refund payment upon the return of a hearing aid by the purchaser.
EFFECTIVE DATE: July 1, 2003

2003-188 Amending FS 828.122 to add a definition of animal fighting, to add a knowledge requirement to animal fighting offenses, to establish new 3F offenses for facilitating animal fighting or for removal of impounded animals without court authorization, to re-classify from 1M to 3F offenses regarding betting on or attending animal fights, to allow court ordered seizure of animals and equipment related to animal fighting upon probable cause without an Information being filed, and to establish procedures regarding seized

animals.
EFFECTIVE DATE: June 24, 2003

2003-273 Amending FS 322.18 to require that persons over age 79 must submit to a vision test before renewing a driver's license. EFFECTIVE DATE: July 11, 2003

2003-398 Amending FS 386.201, the Florida Clean Indoor Air Act, to implement the previously passed constitutional amendment regarding indoor smoking, including through civil penalties and administrative enforcement and preemption to the state of smoking regulations. EFFECTIVE DATE: July 1, 2003

2003-411 Amending FS 817.234 to create a 3F offense for an insurer to change an opinion in a medical or mental report prepared regarding PIP coverage, to add intent to defraud as an element of soliciting tort or PIP claims or related business, elevating such from a 3F to a 2F offense and imposing a minimum 2 year sentence for such, to create a 3F offense for such solicitation without intent to defraud within 60 days of an accident, to increase knowing participation in a fake motor vehicle crash from a 3F to a 2F offense carrying a mandatory 2 year minimum, and classifying such offenses as Guidelines Level 3 offenses.
EFFECTIVE DATE: October 1, 2003