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NEW LAWS 2006

By Wayne Durden

In this article Felony Director Wayne Durden provides his annual summary of new laws and changes to existing laws enacted by the Legislature earlier this year and of interest to the law enforcement community.

Effective June 23, 2006, Section 925.1, Florida Statutes, relating to post-conviction DNA testing was amended. That portion of the law relating to retention of evidence by law enforcement has been changed and simplified to permit a governmental entity to dispose of physical evidence collected in a case once the term of the sentence imposed has expired and no other law or rule requires that the evidence be preserved or maintained. Notice to parties prior to disposal is no longer required. Chapter 06-292, Laws of Florida.

Effective July 1, 2006, Section 775.15, Florida Statutes, setting forth Florida's Statute of Limitations, has been amended to provide that prosecution for the crimes of aggravated battery, kidnapping, sexual battery, lewd or lascivious behavior, burglary, robbery, carjacking and aggravated child abuse may commence at any time if:

- the statute has not already expired by

July 1, 2006,

- and DNA identifies the accused, provided law enforcement acted with "due diligence" to make the identification, and preserved enough of the original evidence to allow the defendant to do an independent test.
- Chapter 06-266, Laws of Florida.

Effective June 20, 2006, Section 777.03, Florida Statutes, relating to accessories, has been amended to permit husbands, wives, parents, grandparents, children, grandchildren, brothers and sisters, to be charged as accessories before or after the fact in all second-degree felony, first-degree felony or capital crimes. Such individuals may still not be charged as accessories to most third-degree felonies and misdemeanors. Chapter 06-237, Laws of Florida.

Effective October 1, 2006, Section 903.02, Florida Statutes, relating to bail, has been amended to provide that a judge must set a separate bail for each crime charged. This amendment eliminates "blanket bonds". Also, Section 903.047, Florida Statutes, has been amended to statutorily require that a defendant comply with all conditions of pretrial release. Chapter

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06-279, Laws of Florida.

Effective July 1, 2006, Section 907.04, Florida Statutes, has been amended to require that a person serving a sentence in a state prison facility who is charged with a new crime remain housed at the prison during the pendency of the new case, unless the court in which the new case is pending otherwise enters an order require the prisoner's appearance in court, or until the original sentence expires. Chapter 06-99, Laws of Florida.

Effective July 1, 2006, Section 937.021(3), Florida Statutes, has been created to provide immunity from civil liability for law enforcement agencies, broadcasters and others acting in good faith in releasing Amber Alert or Missing Child Alert information, even if clerical or technical errors are made. Also, the law is clarified to indicate that no duty is created whereby an agency or entity must broadcast or release an amber alert received from law enforcement.

The same bill amends the duties of FDLE. The amendments require FDLE to create and maintain a database of persons prohibited from purchasing a firearm because of mental problems; require FDLE to give online access to criminal justice information to judges without charge; require FDLE to investigate all public assistance fraud cases; and, create a new first-degree misdemeanor for knowingly using the name of FDLE, or its logo or emblem, in a manner suggesting that FDLE has endorsed the use thereof. The law also amends Chapter 943, relating to fingerprints and background checks, and amends officer training requirements. Finally, effective January 15, 2007, FDLE is required to enter all officers' fingerprints into AFIS (automated fingerprint information system). Chapter 06-176, Laws of Florida.

Effective June 20, 2006, Section 768.28(d), relating to sovereign immunity, is created to provide that law enforcement agencies are not liable for

injury, death or property damage occurring during police chases if:

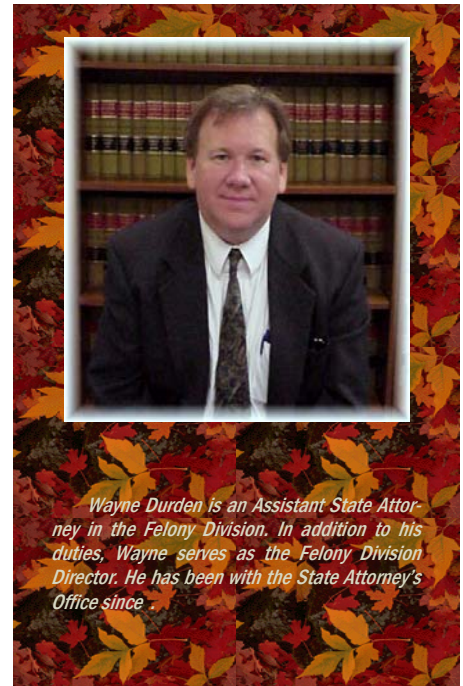
- The officer's pursuit is not needlessly reckless;
- The pursuit is related to the commission of a "forcible felony" as defined in Section 776.08, Florida Statutes; and
- The pursuit is conducted pursuant to specific written policy of an officer's agency and the officer has been trained on the policy. Chapter 06-234, Laws of Florida.

Effective June 12, 2006, a new escape crime has been created at Section 916.1081, and provides that a second-degree felony is committed by a forensic patient who escapes or attempts to escape from a forensic facility. Chapter 06-195, Laws of Florida.

Effective June 26, 2006, Section 790.001(15), Florida Statutes, is amended to re-define a "dart-firing stun gun". Sections 790.01(4), and 790.053(2)(b), Florida Statutes, are amended to provide that dart-firing stun guns may be carried either as concealed weapons or openly, for purposes of lawful self-defense. Section 790.054, Florida Statutes, has been amended to provide that the use of such a weapon against a law enforcement officer engaged in his or her duties is a third-degree felony.

Also, section 943.1717, Florida Statutes, has been created to define when law enforcement may use a dart-firing stun gun. The statute provides that use may occur only during an arrest or custodial situation when the detained person escalates resistance to the officer to active physical resistance and

- The detained has the apparent ability to injure the officer or others, OR
- The detained person is attempting to escape.



Wayne Durden is an Assistant State Attorney in the Felony Division. In addition to his duties, Wayne serves as the Felony Division Director. He has been with the State Attorney's Office since

The Criminal Justice Standards and Training Commission is to develop training for law enforcement officers on the proper use of such weapons. Officers must be trained on proper use before issuance or use of the weapons, and must complete annual training thereafter. Chapter 06-298, Laws of Florida.

Effective July 1, 2006, Section 790.001, relating to weapons, has been amended to re-define the term "weapon" to include a "knife", but not a "plastic knife, or blunt-bladed table knife". (A "common pocketknife" was previously excluded from the definition of a weapon). Section 790.115, Florida Statutes, relating to the possession of weapons on school property, has been amended to provide that the exhibition of a "common pocketknife", as well as other previously listed weapons, on or near school property, in a rude, careless, angry or threatening manner, unless authorized, is a third-degree felony. HOWEVER, the same statute was amended to provide that mere possession of a weapon on school property is now limited only to those items defined as a weapon in Section 790.001, Florida Statutes. So, it is NOT a crime to possess a

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“common pocketknife”, “plastic knife” or “blunt-bladed table knife” on school grounds. Chapter 06-186, Laws of Florida.

Effective July 1, 2006, Section 812.014, relating to theft, was amended to provide that a first-degree felony is committed by one who steals a “semi-trailer” deployed by a law enforcement officer. Section 812.0147, Florida Statutes, was created and provides that it is a second-degree felony to unlawfully possess or use a “fifth wheel” on a commercial vehicle. Also, Section 812.115, Florida Statutes, relating to leasing or leasing-to-own personal property, was amended to delete references to “intent to defraud” requiring instead proof that a defendant knowingly abandoned or refused to redeliver the property. Also, the law now applies in rental-purchase agreements whether or not the leaser retains an interest in the property. Chapter 06-51, Laws of Florida.

Effective July 1, 2006, it is no longer a crime to “scalp” tickets to sporting events, etc., for more than \$1 over their face value. Sections 817.357, and 817.36, Florida Statutes, were created and provide that the \$1 over retail cost limitation still applies to tickets to common carriers and theme parks or entertainment complexes, and that the limitation also applies to sales of tickets over the internet, unless certain conditions are met. Section 817.36(5), Florida Statutes, requires that sales tax is due for such re-sales and must be remitted to the Department of Revenue. Chapter 06-105, Laws of Florida.

Effective July 1, 2006, Section 812.022, Florida Statutes, has been created to provide a new evidentiary presumption: proof that a person is in possession of a stolen car with a broken or bypassed ignition give rise to an inference that the person knew or should have known the car was stolen. Chapter 06-107, laws of Florida.

Effective October 1, 2006, Section 837.055, has been created to provide that it is a first-degree misdemeanor for a person to knowingly and wilfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation, with intent to mislead the officer or impede the investigation. Chapter 06-142, Laws of Florida.

Effective June 6, 2006, Section 943.0581, Florida Statutes, relating to administrative expunction of non-judicial records (such as police records), has been amended to set forth a procedure for an individual to obtain an expunction of records in cases of arrests made contrary to law or by mistake, for example, cases involving the use of another’s name upon arrest. The Chief of Police or Sheriff must sign an affidavit verifying that a mistake was made, but the law further provides that the affidavit is not admissible in evidence or to be construed as an admission of liability in connection with the arrest. Chapter 06-94, Laws of Florida.

Effective July 1, 2006, a new law has been created to require that persons serving sentences in county detention facilities be provided an application for restoration of civil rights by the facility at least two weeks prior to discharge back into the community. Chapter 06-174, Laws of Florida.

Effective July 1, 2006, Section 790.0601, Florida Statutes, relating to firearms, has been created to provide that personal information identifying individuals authorized to carry concealed weapons is exempt from public records disclosure. Chapter 06-102, Laws of Florida.

Effective July 1, 2006, Section 119.071, Florida Statutes, relating to public records, has been amended to provide that fingerprints, palm prints or

footprints in possession of law enforcement or other agencies are not subject to public records disclosure. The concern is that the information specifically identifies individuals, and the release of the information might make it easier to make “improper, illegal or....harmful use of such information”. Chapter 06-181, Laws of Florida.

Effective July 1, 2006, Section 784.07, Florida Statutes, relating to assault or battery of law enforcement officers and others, has been amended to include non-sworn law enforcement agency employees certified as agency inspectors, blood alcohol analysts, and breath test operators while engaged in their official duties, and properly uniformed and licensed security officers. Chapter 06-127, Laws of Florida. Assault or battery on one of these additional persons enhances the crime committed by one degree, and in the case of aggravated assault or battery a minimum mandatory sentence also applies. Chapter 06-127, Laws of Florida.

Effective June 9, 2006, Section 415.102, Florida Statutes, relating to abuse and neglect of the elderly was amended to clarify that “abuse” can be committed by a “relative” or “household member” in addition to a “care giver”. The law also redefines neglect to include self-neglect by “vulnerable adults” and authorizing the Department of Children and Families to petition for protective services on behalf of self-neglecting adults. Chapter 06-131, Laws of Florida.

Effective July 1, 2006, Sections 775.21, Florida Statutes, relating to Sexual Predators, was amended to shorten the length of time it takes to establish a “permanent residence” or a “temporary residence” from 14 to 5 days. (Note that Section 943.0435(1)(c), Florida Statutes, relating to Sexual Offenders, adopts the definitions of “temporary” and “permanent”

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residence contained in Section 775.21). Also, Section 948.063, Florida Statutes, was amended to provide that mandatory electronic monitoring is required whenever a qualifying defendant's probation is revoked or modified. Chapter 06-235, Laws of Florida.

Effective July 1, 2006, Section 787.025, relating to luring or enticing a child, was amended to include a definition of "conviction" and to provide that a first-degree misdemeanor is committed by a person 18 or older who lures or entices, or attempts to lure or entice, a child under 12 into a structure, dwelling or conveyance for any unlawful purpose. A person who is 18 or older and has previously been convicted of misdemeanor luring or enticing or who has previously been convicted of a violation of Chapter 794, Florida Statutes, Sexual Battery, or Section 800.04, Florida Statutes, Lewd Acts involving children, commits a third-degree felony. Section 901.15, Florida Statutes, relating to arrests, was also amended to authorize a law enforcement officer to make warrantless arrests of such persons based upon probable cause. Chapter 06-299, Laws of Florida.

Effective July 1, 2006, Sections 775.21, and 954.0435, Florida Statutes, relating to Sexual Predators and Sexual Offenders, respectively, are amended to provide that they may now only register at the Sheriff's office in their county of residence. They may no longer register at FDL. The law also clarifies that a person designated as a Sexual Predator and Sexual Offender in another state must register as such here whether or not they also qualify pursuant to Florida Law. Chapter 06-200, Laws of Florida.

Effective July 1, 2006, section 810.09, relating to trespass, is amended to create a third-degree felony applicable to a person who trespasses upon the property of a properly posted domestic violence center. Chapter 06-295, Laws of Florida.

Effective October 1, 2006, Section 794.075, Florida Statutes, is created to make it a second-degree misdemeanor for a sexual predator (NOT a Sexual Offender) to possess a prescription drug used to treat erectile dysfunction. A second or subsequent violation is a first-degree misdemeanor. Chapter 06-150, Laws of Florida.

Effective July 1, 2006, the Legislature created Section 16.61, Florida Statutes, thereby establishing within the Attorney General's Office a new law enforcement agency of sorts, the Cyber-crime Office, authorized to investigate violations of state laws pertaining to the exploitation of children via the internet, and imbuing its investigators with the authority of other law enforcement officers. Chapter 06-308, Laws of Florida.

Effective October 1, 2006, Section 787.03, Florida Statutes, relating to Interference with Custody, has been amended to permit a parent "or a person having a legal right to custody" to act for her own safety and that of the child, if domestic violence or other danger has or may occur, by removing the child and seeking shelter from harm. The law also revises and limits the applicability of the statutory defenses contained therein. Chapter 06-114, Laws of Florida.

Effective July 1, 2006, Section 810.04, Florida Statutes, relating to voyeurism, has been amended to delete the phrase "photographs, films, videotapes, or records" from the purview of the statute as such conduct is separately prohibited by Section 810.145, Florida Statutes. Section 810.04, Florida Statutes, now only relates to one who "secretly observes". Chapter 06-267, Laws of Florida. (Make sure you charge whatever conduct is committed under the correct statute).

Effective July 1, 2006, Section 562.61, is created and defines an "alcohol vaporizing device". The law makes it a first-degree misdemeanor to

sell or offer for sale such a device, and a third-degree felony to sell or offer one for sale if convicted previously for sale or offering for sale within the past 5 years. Purchase or use of a device is a non-criminal violation carrying a \$250.00 fine. Chapter 06-128, Laws of Florida.

Effective October 1, 2006, Section 316.027, Florida Statutes, relating to the duty to remain at vehicle crashes resulting in death or injury, has been amended to clarify that the statute applies whether the crash occurred on public or private property. Section 316.027(b), Florida Statutes, has been amended to enhance the crime of leaving the scene involving death from a second-degree felony to a first-degree felony. Also, an exception was written into the statute at Section 316.027(5), to exclude crashes occurring at motor sports events or at closed-course motor sport facilities. Chapter 06-225, Laws of Florida.

Effective October 1, 2006, Sections 316.1932, and 327.352, Florida Statutes, relating to tests for alcohol and drugs and implied consent, have been amended to define what information the defense is entitled to regarding blood and breath tests. This should end efforts by defense counsel to obtain "source code" information from the makers of Intoxilyzer instruments. Chapter 06-247, Laws of Florida.

Effective January 1, 2007, Section 322.20, Florida Statutes, relating to driving history records, has been amended to require DHSMV to allow parents and guardians on-line access to their minor children's driving history records without charge. Access terminates when the child reaches 18. Chapter 06-226, Laws of Florida.

Effective October 1, 2006, Section 562.11, Florida Statutes, relating to selling or giving away alcoholic beverages to persons under 21, has been

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amended, and Section 322.057, Florida Statutes, has been created, to allow a court to suspend or revoke the license of a person who gives alcohol to a minor on premises where alcohol is sold. The option does not apply to an employee of the licensed establishment, only to a third party who violates the law. Chapter 06-203, Laws of Florida.

Effective October 1, 2006, Section 538.04(4), relating to record keeping by secondhand dealers, has been amended to increase the penalty for knowingly giving false verification of ownership to second hand dealers. If the value of money received from the secondhand dealer is less than \$300, the crime committed is a third-degree felony instead of a first-degree misdemeanor. If the value of the money obtained from the secondhand dealer is \$300 or more the crime committed is a second-degree felony instead of a third-degree felony. Section 538.06, Florida Statutes, relating to holding periods by second hand dealers, has been amended to require second

hand dealers to release property subject to a valid hold order to law enforcement for prosecutorial purposes, and requiring the property's return to the secondhand dealer or requiring a court to order restitution to the secondhand dealer from the person pawning the property if the court orders return of the property to the rightful owner. Also, record keeping requirements have been amended, electronic transfer of information to law enforcement is authorized, provisions relating to the inspection of records and premises by law enforcement have been revised, and provisions relating to holding goods believed to be stolen have been revised. Chapter 06-210, Laws of Florida.

Effective July 1, 2006, Section 893.13(12), relating to drugs, has been amended to include regular or volunteer firefighters, EMT's, paramedics, utility employees, animal control officers, or any other local, state or federal employees, who might be injured during the scope of their employment as a result of a violation of Chapter 893, Florida Stat-

utes. The crime is a third-degree felony. Also, Section 907.041, Florida Statutes, relating to pretrial detention, has been amended to include the manufacturing of any substance in violation of Chapter 893, Florida Statutes, in the list of crimes for which pretrial detention is authorized. Chapter 06-306, Laws of Florida.

Effective October 1, 2006, Section 104.31, Florida Statutes, relating to political campaigns, has been amended and subsection (2) created, which provides "[a]n employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty". Violation is a first-degree misdemeanor. Chapter 06-275, Laws of Florida.

Should you have questions regarding any of the above, or if you would like a copy of any of the new laws, please contact Wayne Durden at 534-4824.

...FROM THE COURTS...

CONSENT SEARCH WAS VALID.

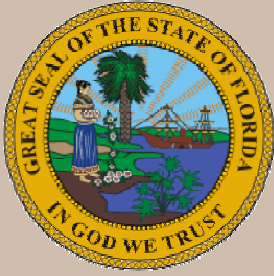
The defendant was charged with possession of cocaine, marijuana, and drug paraphernalia. He filed a motion to suppress. The facts on which the motion was based were that after an officer stopped the defendant for riding a bicycle without his lights on, the officer asked the defendant if he had anything on him which the officer should know about. The defendant said he did not. The officer then asked if he could search him, and the defendant agreed. The officer found a chapstick in the defendant's pocket and opened it, finding the marijuana and cocaine. The trial court denied the

motion, and the defendant was convicted as charged. On appeal, the Fifth District affirmed, holding that the search was valid because the defendant gave a general consent to search and did not verbally or physically indicate a withdrawal of that consent. *Allen v. State*, 30 FLW D1951 (Fla. 5th DCA Aug. 19, 2005).

IMPROPER STOP DID NOT JUSTIFY RESISTING OR BATTERY.

The defendant was charged with possession of cocaine, resisting an officer with violence, and battery on a law enforcement officer. He filed a motion to suppress evidence

which the trial court granted, ruling that the stop of the defendant was illegal. He then filed a motion to dismiss the resisting and battery counts asserting that the officer who stopped him was not engaged in the lawful performance of his duties at the time the offenses occurred since the court had found the stop to be illegal. The trial court denied the motion, and the defendant was convicted of battery on a law enforcement officer and resisting without violence. On appeal, the Second District affirmed, holding that the technical illegality of a stop does not mean that the officer was outside the lawful performance of his duties. *Kaigler v. State*, 30 FLW D2589 (Fla. 2d DCA Nov. 16, 2005).



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TOP COPS



Deputy Matt Williams, Deputy Doug Speirs, K-9 Diogi

This month's issue of the Legal Advisor is dedicated to Deputy Matt Williams and his K-9 Diogi.

On September 29, 2006, Deputy Doug Speirs stopped a vehicle for a traffic violation and was carrying out what should have been a routine traffic stop. Within moments of the traffic stop, Deputy Williams and Diogi were fatally wounded and Deputy Speirs was wounded in the leg.

Many of us were fortunate enough to have known Deputy Williams before he was called home. Since his calling, the rest of us who didn't know him have come to know him from stories told by family members and friends of how he lived his life. He was a wonderful son, husband, father, brother and friend. He was assigned to the Northwest District K-9 Unit and served the Polk County Sheriff's Office for 12 years.

To the Williams Family, our thoughts and prayers are with you and your family. We thank you for giving Deputy Williams the support, love, and encouragement which enabled him to serve and protect the citizens of Polk County for so many years.

As we all know, many officers have died in the "routines" of their job. That is when we are reminded that there



Deputy Matt Williams and his K-9 Diogi.

really are no "routines" in this line of work. Every call for service, every alarm or even a simple traffic stop could be your last. In spite of this, every officer makes the decision to put on his or her uniform, get in a patrol car and patrol our streets in order to keep our communities safe.

These officers died as they lived, committed to duty and serving the public. -USAG Alberto Gonzales

Deputy Doug Speirs we wish you a speedy recovery. Our thoughts and prayers are with you and your family and we thank you for your selfless service.

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