

Legal Advisor

Volume 17, Issue 9

September 2003



JERRY HILL STATE ATTORNEY

POLK COUNTY COURTHOUSE
255 NORTH BROADWAY
2ND FLOOR
BARTOW, FL 33830

IMPORTANT BARTOW

TELEPHONE NUMBERS:

Switchboard	534-4800
Misdemeanor Intake	534-4928
Misdemeanor	534-4926
Domestic Violence	534-4986
Victim Assistance	534-4989
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse/Neglect	534-4857
Homicide Division	534-4959
On Call Pager	819-1526
Worthless Checks	534-4874
Juvenile Division	534-4905
FAX	534-4945

WITNESS MANAGEMENT:

Misdemeanor/Traffic	534-4021
Felony	534-4020

2003 LEGISLATIVE UPDATE

By Wayne Durden, Director Felony Division

The legislature was relatively quiet this year, making no substantial changes to existing criminal laws. However, some changes were made. The following are synopses of what substantive changes of interest to law enforcement were made this year. The various pieces of legislation are summarized in order of their effective dates.

Effective May 27, 2003, Sections 316.1932, and 327.352, Florida Statutes, were amended to provide that FDLE need not promulgate rules for the collection, storage and testing of urine in DUI/BUI cases before we can use test results as proof in court. This piece of legislation overrules a contrary Supreme Court opinion. 2003-54, Laws of Florida.

Effective June 2, 2003, Section 790.225, Florida Statutes, which bans sale or possession of self-propelled knives, was amended to exempt switchblade knives from the definition of self-propelled knives, so that sale or mere possession of switchblade knives is not a crime. 2003-82, Laws of Florida.

Effective June 10, 2003, Section 827.03(4), Florida Statutes, was amended to provide a definition of the term "maliciously" regarding physical child abuse cases. 2003-130, Laws of Florida.

Effective June 12, 2003, Section 23.1225, was amended to clarify which law enforcement agencies may participate in mutual aid agreements and how such agreements are to be structured. 2003-153, Laws of Florida.

Effective June 17, 2003, Section 119.07, Florida Statutes, was amended to exempt from public records disclosure any information in possession of law enforcement that depicts any part of the body of a sex crime victim whether or not the victim can be identified therein. 2003-157, Laws of Florida.

Effective June 24, 2003, Section 828.122, Florida Statutes, was substantially amended to define "animal fighting," to expand the list of prohibited activities in connection therewith, and to increase penalties therefor. For example, attending or betting on such an event is now a third-degree felony. 2003-188, Laws of Florida.

Effective July 1, 2003, Section 812.014(2)(c), Florida Statutes, was amended to provide that theft of anhydrous ammonia, used to make methamphetamine, is a third-degree felony. Anhydrous ammonia was also added to the list of precursor chemicals in Section 893.033(1)(a), Florida Statutes. 2003-10, Laws of Florida.

Effective July 1, 2003, Section 893.13 (1)(c), Florida Statutes, was amended to in-

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S.A.O. BIRTHDAYS
OCTOBER 2003

2nd

Arlene Waltz, Juvenile

5th

Lori Sturgill, CSE

6th

Sonda Swafford, VOPS

8th

Ann Henderson, Misdemeanor Intake

10th

Candace Preston, Hardee
Kevin Humphries, Felony 3

12th

Steve Houchin, Highlands

14th

Jennifer Ordonez,
Misdemeanor
Stacey Hamlin, Lakeland

19th

Christie Coe, CSE
Lanell Williams, CSE

23rd

Debi Patrucco, Felony 1

24th

Hope Pattey, Juvenile

26th

Harold Bennett, Felony 5

30th

Mike Klockenkemper,
VOPS

31st

Brandy Watson, Juvenile

2003 LEGISLATIVE UPDATE

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crease the penalties for selling drugs at any time within 1000 feet of parks, community centers, or publicly owned recreational facilities. Community center is defined. Also, Sections 893.13(1)(d), and 893.13(1)(f), Florida Statutes, were amended to increase the distance from 200 feet to 1000 feet regarding drugs sales around schools and public housing facilities. 2003-95, Laws of Florida.

Effective July 1, 2003, Section 810.115(2), Florida Statutes, was amended to provide that a third-degree felony is committed if someone breaks or injures a fence used to contain animals. 2003-50, Laws of Florida.

Effective July 1, 2003, Sections 112.532(1) and 112.532(3), Florida Statutes, (law enforcement officers Bill of Rights) were amended to modify certain procedures during Internal Affairs Investigations. 2003-149, Laws of Florida.

Effective July 1, 2003, Section 943.16, Florida Statutes, was amended to require new law enforcement officers to remain employed with their agency for specified periods of time if the agency has paid for their recruit training program and to require new employees to reimburse the agency if employment is terminated early. 2003-264, Laws of Florida.

Effective July 1, 2003, Section 810.061, Florida Statutes, was created to provide a new third-degree felony for damaging power or telephone lines to a dwelling to facilitate the commission or attempted commission of a burglary. 2003-84, Laws of Florida.

Effective July 1, 2003, Sections 948.03, and 943.325, Florida Statutes, were amended regarding the collection and submission of biological specimens to FDLE's DNA databank, placing primary responsibility to collect, secure and transport such specimens from non-incarcerated defendants upon local Sheriff's offices. 2003-185, Laws of Florida.



Wayne Durden is an Assistant State Attorney in the Bartow Office. He is also the Director of the Felony Division and has been with our office for approximately 16 years.

Effective July 1, 2003, Section 794.0115, Florida Statutes, has been rewritten to replace the "repeat sexual offender act" with the "dangerous sexual felony offenders act." The new version is patterned after the 10/20/Life law and requires a 25-year minimum-mandatory sentences for repeat sexual offenders and certain first-time sexual offenders. 2003-115, Laws of Florida.

Effective July 1, 2003, Section 484.0512(3), Florida Statutes, was amended to create a new first-degree misdemeanor for failure of the seller of a hearing aid to return refundable monies to a purchaser who requests a refund pursuant to the statute. 2003-187, Laws of Florida.

Effective July 1, 2003, Section 817.568, Florida Statutes, was amended to lower charging thresholds and increase penalties, including minimum-mandatory sentences, for identity theft involving multiple victims or minimum amounts of loss. 2003-71, Laws of Florida.

Effective July 1, 2003, new crimes were created in 499.0051, Florida Statutes, for illegally selling or purchasing legend (prescription) drugs, mandating paper trails

2003 LEGISLATIVE UPDATE

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for dealers of such drugs and providing penalties for failure to properly maintain such paper trails or for forging required paper trail documents related thereto. 2003-155, Laws of Florida.

Effective July 1, 2003, Section 562.11, Florida Statutes, was amended to create a first-degree misdemeanor for a person with a liquor license to allow an underage employee to consume alcohol on the licensed premises or during the scope of employment. 2003-20, Laws of Florida.

Effective, July 14, 2003, Section 316.3026, Florida Statutes, was amended to create a third-degree felony for operating a commercial motor vehicle in violation of an out-of-service order. 2003-286, Laws of Florida.

Effective October 1, 2003, Section 812.15, Florida Statutes, was amended to increase certain penalties relating to theft of cable television services and to include new technologies. 2003-186, Laws of Florida.

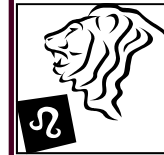
Effective October 1, 2003, Section 784.048, Florida Statutes, was amended to define "cyber-stalking" and provide penalties; and, Aggravated Stalking, contained therein, was amended to prohibit threats against a victim's immediate family. 2003-23, Laws of Florida.

Effective October 1, 2003, Section 775.15, Florida Statutes, is amended to eliminate the statute of limitations for first-degree felony Sexual Battery violations of Section 794.011, Florida Statutes, if the victim was under 18 at the time of commission. However, the amendment applies ONLY to offenses for which the statute of limitations **HAS NOT ALREADY EXPIRED** prior to October 1, 2003. 2003-116, Laws of Florida.

Effective October 1, 2003, Section 119.07(3), Florida Statutes, is amended to provide that videotaped statements of minor victims of sex crimes in possession of law enforcement are confidential and exempt from public records disclosure. 2003-137, Laws of Florida.

Effective October 1, 2003, Chapter 838, Florida Statutes, relating to Bribery, Public Corruption and Official Misconduct, etc., has been substantially rewritten. Definitions are created or modified, conduct constituting offenses is expanded and penalties are increased. 2003-158, Laws of Florida.

If you would like copies of any of the new laws or have questions about them please contact Wayne Durden at 534-4964.



LEO

NEWS...

Deputy Stuart Kuehl of the Polk County Sheriff's Office retired on August 14, 2003 after 27 years of law enforcement service.

Deputy Kuehl began his career in 1976 as a dispatcher. He was sworn in as a Deputy in 1977. Deputy Kuehl worked various patrol districts, but mainly the East side of Winter Haven and the Ridge Area, now known as the Southeast District.

Deputy Kuehl, on behalf of all of us here at the State Attorney's Office, thank you for all your years of service and for your service to the citizens of Polk County. We wish you well on your retirement.

JURY TRIAL SUBPOENAS -VS- NON-JURY TRIAL SUBPOENAS

Lately, there have been problems in Bartow with officers not appearing for County Court TBC's, especially those scheduled for Mondays.

Officers who receive subpoenas scheduled for Monday think they have been subpoenaed for a Jury Trial which will not require their testimony until later in the week. TBC's are held on Mondays, Tuesdays and Wednesdays both in the mornings (generally beginning at 8:30 a.m.) and after-

noons (generally beginning at 12:30). If you receive a TBC subpoena for Monday, call Witness Management on the Friday before the court date to check the status. **DO NOT WAIT UNTIL MONDAY TO CALL.** The Witness Management phone numbers for Misdemeanor, Traffic and Felony Cases are listed on the front page of every Legal Advisor under the "Important Bartow Phone Numbers" section for your convenience.

To assist you in determining the difference between a TBC subpoena (also referred to as a Non-Jury Trial subpoena) and a Jury Trial subpoena, we have changed the format of the TBC subpoena. "TBC WITNESS SUBPOENA" will now appear above the officer's name. Please pay close attention to your subpoenas as the Judges will no longer be forgiving of any officer who fails to appear because of confusion about an appearance date on the subpoena.



HARDEE COUNTY
124 SOUTH 9TH AVENUE
WAUCHULA, FL 33873
PHONE: (863) 773-6613
FAX: (863) 773-0115

HIGHLANDS COUNTY
411 SOUTH EUCALYPTUS
SEBRING, FL 33870
PHONE: (863) 402-6549
FAX: (863) 402-6563

POLK COUNTY
P.O. BOX 9000, DRAWER SA
BARTOW, FL 33831-9000
PHONE: (863) 534-4800
FAX: (863) 534-4945

CHILD SUPPORT ENFORCEMENT
215 N. FLORAL AVENUE
BARTOW, FL 33830
PHONE: (863) 519-4749
FAX: (863) 519-4759

LAKELAND BRANCH OFFICE
930 E. PARKER STREET
SUITE 238
LAKELAND, FL 33801
PHONE: (863) 499-2596
FAX: (863) 499-2650

WINTER HAVEN OFFICE
GILL JONES PLAZA
3425 LAKE ALFRED RD. 9
WINTER HAVEN, FL 33881
PHONE: (863) 401-2477
FAX: (863) 401-2483

LEGAL ADVISOR STAFF

Jerry Hill, Publisher
jhill@sao10.com

Chip Thullbery, Managing Editor
cthullbery@sao10.com

Michael Cusick, Content Editor
mcusick@sao10.com

Lorena Diaz, Graphic Design
ldiaz@sao10.com

For comments or suggestions,
contact us at the above e-mail
addresses.

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...FROM THE COURTS...

SEARCH ALLOWED BASED ON CONSENT

The defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that during an encounter with the defendant an officer asked the defendant if he could search him. The defendant said ok. During the search, the officer discovered a cigarette pack in the defendant's pocket. When he opened the pack, he found it contained crack cocaine. The trial court denied

the motion, and the defendant was convicted as charged. On appeal, the Second District affirmed, holding in an opinion issued on rehearing that the search of the cigarette pack was within the consent given by the defendant in light of the fact that the defendant did not object to the officer opening the pack once the officer discovered it. *Aponte v. State*, 28 FLW D1921 (Fla. 2d DCA Aug. 15, 2003).

SEARCH OUTSIDE OFFICER'S JURISDICTION WAS ILLEGAL

The defendant was charged with trafficking in oxycodone and filed a motion to suppress. The facts on which the motion was based were that when the defendant was arrested for several traffic offenses, he told police officers that he had drugs located in his home in a neighboring jurisdiction. The officers took the defendant in handcuffs to his home, had him execute a consent form, and

then searched for and found oxycodone. The trial court granted the motion to suppress, and on appeal, the Fourth District affirmed, holding that because the officers were acting under color of their office to obtain evidence not available to private citizens, they had no right to seize evidence located outside of their jurisdiction. *State v. Sills*, 28 FLW D1943 (Fla. 4th DCA Aug. 20, 2003).

MORE INFORMATION REQUIRED TO ESTABLISH RELIABILITY OF INFORMANT

The defendant was charged with possession of cannabis and filed a motion to suppress. The facts on which the motion was based were that an officer received information from a confidential informant that a black man named Wayne who was five feet five and wearing shorts but no shirt was standing at a particular location with marijuana in his pocket. The officer went to the location where he found the defendant standing. He searched him and found marijuana. The officer testified

that he had used the informant in the past and considered him to be reliable. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that the informant's information did not provide probable cause to search because there was insufficient testimony as to his reliability and the basis of his knowledge. *Owens v. State*, 28 FLW D1966 (Fla. 2d DCA Aug. 22, 2003).

KILLING OF INNOCENT BYSTANDER CAN BE SELF DEFENSE

The defendant was charged with manslaughter with a deadly weapon. At his trial, his defense was that a man was chasing him with a brick. Unable to get away, he shot at the man. However, he hit a bystander, killing the bystander. He requested an instruction on self defense, but the court denied

his request. He was convicted as charged. On appeal, the Fourth District reversed, holding that in the case of a transferred intent crime, a defendant may transfer his self defense argument to the victim as well. *Nelson v. State*, 28 FLW D2070 (Fla. 4th DCA Sept. 3, 2003).