

Tenth Circuit

# Legal Advisor

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*SAO's new program for adult prosecution of juveniles charged with certain crimes is explained by Felony Intake Director Mike Cusick in November Legal Advisor.*

*Also, recent Florida Court decisions relating to law enforcement are reviewed by Tom Wilson.*

# Investigative Procedures

By Mike Cusick

## New program to prosecute some juveniles as adults

In september, Mr. Hill announced a new program for the prosecution of sixteen- and seventeen-year-olds as adults in Polk County.

The purpose of this article is to present an outline of the program.

If you have specific questions, please call Mike Cusick at 534-4888.

This program is voluntary. It is up to each agency to decide if a defendant in a qualifying case will be charged as an adult or as a juvenile.

The qualifying offense must be listed on the schedule below, based on the defendant's age.

### 16 and 17 Years of Age

Sale of Controlled Substance

Armed Robbery  
Sexual Battery (first degree felony or greater, non-domestic)  
Aggravated Battery (firearm or great bodily harm, non-domestic)

Any non-domestic felony where the juvenile has two prior commitments and five prior felony adjudications.

### 17 Years of Age Only

Robbery  
Sexual Battery (non-domestic)  
Arson (first degree felony)  
Commercial or Residential  
Burglary (non-domestic)  
Purchase of Cocaine

Once the decision is made to charge the defendant as an adult, the same felony case preparation must be done as for any other adult felony case.

Procedure for Non-Arrest Cases

The case is to be submitted to the Felony Intake Division with a Case Filing Checklist attached to the top of the packet.

At the top of the checklist type "JUVENILE DEFENDANT -- ADULT PROSECUTION REQUESTED."

Procedure of Arrest Cases

The defendant is arrested as a juvenile.

At the bottom of the probable cause portion of the arrest affidavit is marked: "ADULT PROSECUTION REQUESTED".

A Request for Information Form is be sent to the arresting agency requesting that a felony investigation be submitted.

The Felony Intake Division will

file a Direct Information and a capias will be issued for the juvenile.

The juvenile will be transferred from the detention center to the county Jail if still in custody.

If not in custody, the juvenile will need to be arrested on the capias as soon as possible.

The First Draft notifying the Case Filing Agent that the case has been filed will also notify the Agent that the defendant must be arrested.

If the decision to charge a juvenile as an adult occurs after the juvenile has been arrested, the Case Filing agent should contact Cheryl Congdon at 534-4891.

Again, a Request for Information Form will be sent to the Case Filing Agent.



## FROM THE COURTS

Edited by Tom Wilson

### What constitutes possession for a Trafficking charge

The defendant was charged with trafficking in cocaine.

At his trial, the evidence showed that he met with an undercover officer to initiate a cocaine transaction.

The officer presented a bag of cocaine containing more than 28 grams to the defendant and told him that the cocaine in the bag was already sold.

However, he invited the defendant to sample it.

The defendant took the bag off of the table, dipped a playing card into it, put the card to his nose, and snorted some of the cocaine as a

test for quality.

He then returned the bag to the officer.

The officer never made a sale of cocaine to the defendant at that time or any other occasion.

On appeal, the First District reduced the trafficking conviction to simple possession of cocaine, holding that the defendant's actions did not constitute legal possession of the entire bag of cocaine, but only the small amount he snorted.

Jefferson v. State, 14 FLW 2210 (Fla. 1st DCA Sept. 21, 1989).

### A valid case of self defense

The defendant was charged with the murder of her husband.

At her trial, the evidence showed (See "defense" next page)

**"defense"**

that they had a violent marriage in which they often argued and in which she was often beaten.

On the day of the murder, the defendant drove her car into the victim's car with no aparent damage to it.

This enraged the victim, who came to the passenger side of the car, placed his upper torso through the passenger compartment, and shortly thereafter fell to the ground, stabbed to death.

The keys to the defendant's car were found under him.

The defendant's un rebutted testimony was that she was afraid of her husband and that when he

came to the car he grabbed her by the hair and was attempting to open the door and pull her from the car.

At that point, she searched for a knife on the car console and stabbed him.

She was convicted of second degree murder and appealed.

The Third District reversed, holding that her un rebutted testimony showed that she had done all she reasonably could in order to avoid the victim's assault and that thus her actions were justified as self-defense.

Rodriguez v. State, 14 FLW 2186 (Fla. 3rd DCA Sept. 19, 1989).

**A good carrying a concealed firearm charge**

The defendant was charged with carrying a concealed firearm and filed a motion to dismiss in which he alleged that the firearm was on the floor of the car and was in open view of the law enforcement officer after he exited the vehicle

and the officer shined her flashlight on it.

The trial court granted the motion to dismiss but on appeal, the Third District reversed, holding that  
(See "firearm" next page)

"firearm"

the facts made out a prima facie case.

State v. Strachan, 14 FLW 2262  
(Fla. 3rd DCA Sept. 26, 1989).

### **Consent to search a bag isn't consent to search all its contents**

The defendant was charged with trafficking in cocaine and filed a motion to suppress.

At the hearing on the motion, the evidence showed that narcotics officers approached her at the train station and asked to search her luggage.

She agreed.

The officers looked in her bags and found a very heavy small gift wrapped box under some clothing.

One officer picked up the box and began to carefully remove the wrapping.

The defendant remained silent during this procedure.

In the box was cocaine.

The trial court denied the motion to suppress, and the defendant was convicted as charged.

On appeal, the Third District reversed, holding that the defendant's consent to a general search of her luggage did not extend to the unwrapping of a sealed box.

Shelton v. State, 14 FLW 2255  
(Fla. 3rd DCA, Sept. 26, 1989).

**Tenth Circuit  
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