



# Legal Advisor

**Jerry Hill,**  
**State Attorney**

**AUGUST 2005**

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## NEW LAWS 2005

BY WAYNE M. 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.

Perhaps the most significant piece of legislation enacted this year is labeled, "An act relating to the protection of persons and property" and creates or amends several statutes. The various provisions are effective October 1.

Section 776.013, Florida Statutes, has been created to provide a presumption that a person has a reasonable fear of imminent peril to himself or another, justifying the use of deadly force, against a person trying to forcefully enter the home or car where the person using defensive deadly force is located. This presumption, however, will not apply when law enforcement is making forcible entry in the performance of their duties and have identified themselves "in accordance with any applicable law", or if the person inside, who uses force, otherwise knew or should have known the persons making a forcible entry were law enforcement officers. Among several other excep-

tions, the presumption will likewise not apply between lawful co-residents or others who have a right to be present, such as landlords, or when the person inside using force is engaged in illegal activity at the time.

Section 776.013, creates a second presumption that a person forcefully entering a home or occupied car is presumed to be doing so to commit a violent act.

Finally, section 776.013, Florida Statutes, provides that all persons not engaged in unlawful activity have **no duty to retreat wherever they may**

BARTOW PHONE NUMBERS:

SWITCHBOARD	534-4800
MISDEMEANOR INTAKE	534-4928
MISDEMEANOR	534-4926
DOMESTIC VIOLENCE	534-4882
VICTIM ASSISTANCE	534-4861
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 - MAILROOM	534-4945
WITNESS MANAGEMENT MISDEMEANOR/TRAFFIC	534-4021
WITNESS MANAGEMENT FELONY	534-4020
WITNESS MANAGEMENT FAX	534-4034

### **INSIDE THIS ISSUE:**

NEW LAWS 2005 ...CONTINUED FROM PAGE 1...	2
FROM THE COURTS	2
NEW LAWS 2005 ...CONTINUED FROM PAGE 2...	3
EMPLOYEE BIRTHDAYS	3
NEW LAWS 2005 ...CONTINUED FROM PAGE 3...	4
FROM THE COURTS	4
NEW LAWS 2005 ...CONTINUED FROM PAGE 4...	5
FROM THE COURTS	5
NEW LAWS 2005 ...CONTINUED FROM PAGE 5...	6

## ...FROM THE COURTS...

### EVIDENCE OF RECENT OCCUPATION OF VEHICLE IS NECESSARY FOR SEARCH OF VEHICLE INCIDENT TO ARREST

The defendant was charged with possession of a controlled substance and filed a motion to suppress evidence. The facts on which the motion was based were that police received information that the defendant was illegally receiving drugs from a pharmacy. Subsequently, the pharmacy notified the police that the defendant had just dropped off a prescription. An officer who went to the scene found the defendant standing ten to twelve feet from a Ford Explorer belonging to the defendant which was parked in front of a restaurant owned by the defendant's sister. The officer handcuffed the defendant and searched both him and his vehicle, finding drugs in each place. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Fourth District reversed, holding that while the search of the defendant's person was appropriate, the search of the vehicle was improper because there was no evidence that the defendant had recently occupied the vehicle. *Slope v. State*, 30 FLW D1126 (Fla. 4th DCA May 4, 2005.)

## NEW LAWS 2005

...CONTINUED FROM PAGE 1...



*Wayne Durden is an Assistant State Attorney in the Felony Division. He serves as the Felony Director, and currently supervises 5 Felony Divisions, which will become 6 in the Fall. Wayne has been with our office since November 1987.*

be confronted by deadly force prior to resorting to the use of deadly force in defense of themselves or others.

Section 776.012, Use of Force in Defense of Person, and Section 776.031, Use of force in defense of others, have been amended to make them consistent with the above new statute.

The law also creates Section 776.032, Florida Statutes, which provides that a person using force as permitted by the above is "immune from criminal prosecution and civil action", except as against a law enforcement officer under circumstances similar to above. The law provides that "criminal prosecution" includes arrest, detention, charging and prosecuting, and provides that an investigating law enforcement agency may NOT arrest without probable cause that the force used was unlawful. Chapter 05-27, Laws of Flor-

ida. **I STRONGLY RECOMMEND THAT OFFICERS AND ESPECIALLY SUPERVISORS REVIEW THIS BILL IN ITS ENTIRETY PRIOR TO ITS EFFECTIVE DATE, OCTOBER 1, 2005.** It will undoubtedly have an impact on decisions you make in the field, and that we make in our office, relating to the arrest and prosecution in certain violent incidents.

Effective September 1, 2005, the "Jessica Lunsford Act", has amended Florida's laws relating to the registration of sexual offenders (F.S. 943.0435) and predators (F.S. 775.21), and creates several new crimes. In summary, sexual offenders and predators will be required to register twice each year and failure to do so is a third-degree felony. It will also be a third-degree felony to fail to respond to an address verification request from local law enforcement. Withholding information or providing false information to law enforcement about a sexual offender/predator's whereabouts or harboring a sexual offender/predator are new third-degree felony offenses. The legislature has increased the number of points assessed on sentencing guidelines for registration violations so that all registration violators will be subject to increased minimum guideline sentences.

The law upgrades lewd or lascivious molestation by a person 18 or older on a victim under 12 (Sec. 800.04(5)(b), Fla. Stat.) from a first-degree felony to a life felony and provides a 25-year minimum mandatory sentence for conviction of same. The "Lunsford

## NEW LAWS 2005

...CONTINUED FROM PAGE 2...

Act” also amends several required conditions of probation, requires electronic monitoring of certain offenders, and creates a third-degree felony for intentionally altering, tampering with, damaging or destroying electronic monitoring equipment. Ch. 05-28, Laws of Florida.

Effective January 1, 2006, Chapter 948, Florida Statutes, has been amended as relates to certain mandatory conditions of probation imposed upon sexual offenders and predators. The conditions, which must be met prior to a court allowing contact between a sexual offender/predator and children, have been significantly rewritten. The provision limiting where a sexual offender/predator may work or volunteer has been revised. There are also additional limitations on computer use by sexual offenders/predators. Ch. 05-67, Laws of Florida. **All officers investigating sex crimes or registration violations and probation officers supervising sex offenders should familiarize themselves with the details of this law and the “Lunsford Act.”**

Effective July 1, 2005, the legislature has amended Florida’s sentencing guidelines to increase the points assessed and therefore the minimum sentencing guidelines penalties for possession of child pornography, transmission of pornography by electronic means, and transmission of harmful materials to a minor. Ch. 05-33, Laws of Florida.

Effective October 1, 2005, Florida’s DUI DL suspension laws have been amended to provide for six-month reg-

istrations and validation stickers upon reinstatement of a persons driving privilege following a DUI suspension, and requiring proof of non-cancelable liability coverage for three years after reinstatement. Ch. 05-72, Laws of Florida.

Effective January 1, 2006, Section 828.30, Florida Statutes, has been amended to provide that all dog, cat and ferret owners must have their pet (s) re-vaccinated for rabies 12 months after the initial vaccination (and thereafter) or face a civil penalty. Ch. 05-74, Laws of Florida.

Effective July 1, 2005, the “Freedom to Worship Safely Act”, created as Section 775.0861, Florida Statutes, provides that assault, aggravated assault, battery, felony battery and other violent crimes, are reclassified up by one degree if committed on the property of a religious institution while the victim is attending services. (For example, an M1 becomes an F3, an F3 becomes and F2, etc.) Ch. 05-77, Laws of Florida.

Effective July 1, 2005, Florida has adopted the “Interstate Compact for Juveniles” at Section 985.502, Florida Statutes, which regulates the movement of juvenile offenders across state lines. Ch. 05-80, Laws of Florida.

Effective May 26, 2005, Section 787.03(6) (a), Florida Statutes, which previously provided an exception to the crime of interference with custody for a spouse who removes or hides his or her child out of fear of violence, has been amended to provide a public records exception for location informa-

### EMPLOYEE BIRTHDAYS OCTOBER 2005

October 2  
Arlene Waltz

October 5  
Lori Sturgill

October 6  
Sonda Swafford

October 8  
Margaret A. Henderson

October 10  
Candace Preston

October 12  
Steve Houchin

October 14  
Jennifer Ordonez  
Stacey Van Leue

October 16  
Josephine Colon

October 17  
Latoya Bagan

October 18  
Tracy Sumner-Brickner

October 19  
Christie Coe

October 20  
Autumn Burgess

October 23  
Debi Patrucco

October 24  
Hope Pattey

October 26  
Harold Bennett  
Laurie Brayton  
Raceal Jones  
Mike Klockenkemper

October 31  
Brandy Watson

*Happy Birthday!*



...FROM  
THE  
COURTS...

.....  
**DECEPTION DID NOT  
RENDER CONSENT  
INVALID.**

The defendant was charged with burglary, robbery, and criminal mischief and filed a motion to suppress evidence. The facts on which the motion was based were that an officer asked the defendant to give him a saliva swab for DNA testing concerning a burglary the defendant was suspected of committing. This was a fictitious story as the officer was actually investigating a sexual assault. The defendant consented, but the DNA testing showed that the defendant was not involved in the sexual assault. However, another officer used the test results to connect the defendant to the crimes with which he was charged. The trial court denied the motion, and the defendant was convicted of burglary, grand theft, and criminal mischief. On appeal, the First District affirmed, holding that the police deception did not render the defendant's consent involuntary. *Wyche v. State*, 30 FLW D1537 (Fla. 1<sup>st</sup> DCA June 20, 2005).

## NEW LAWS 2005

...CONTINUED FROM PAGE 3...

tion provided to the sheriff or state attorney by the fearful spouse. Ch. 05-89, Laws of Florida.

Effective for actions arising on or after July 1, 2005, Section 112.19, Florida Statutes, has been amended to provide death benefits for families of officers killed in the line of duty while at the scenes of traffic accidents or while otherwise enforcing traffic laws. Section 112.532, Florida Statutes, relating to disciplinary actions against officers has also been amended to create a 180 day statute of limitations for disciplinary actions against officers, with exceptions. Ch. 05-100, Laws of Florida.

Effective July 1, 2005, Section 775.15, Florida Statutes, Florida's general criminal statute of limitations has been re-organized but without any substantive changes to existing law. Ch. 05-110, Laws of Florida.

Effective October 1, 2005, Section 316.193, Florida Statutes, has been amended to provide that a person driving under the influence who thereby causes the death of an "unborn quick child" commits DUI Manslaughter. Likewise Section 782.09, Florida Statutes, has been amended to provide that the unlawful killing of an "unborn quick child" by injury to its mother is murder in the same degree as would have been committed against the child's mother if she had died, and if they should both die the defendant can be charged with the same degree of murder for each death. However, persons may not be charged under this law in connection with the lawful termination of pregnancies. An unborn quick

child is defined by law as a fetus which is "capable of meaningful life outside the womb through standard medical measures." Ch. 05-119, Laws of Florida.

Effective July 1, 2005, Chapter 893 (Drugs), Florida Statutes, has been amended in some significant respects. "Listed precursor chemicals" and "listed essential chemicals" have been revised. Minimum mandatory prison terms now apply to situations where methamphetamine or phencyclidine are manufactured and children are present or suffer harm. Failure to properly store "anhydrous ammonia" is now a third-degree felony. Ch. 893 offenses resulting in injury to officers can be charged as a separate felony, the degree of which depends on the degree of harm to the officer. Selling or attempting to sell, manufacturing, or deliver drugs within 1,000 feet of an "assisted living facility" is either a first or second-degree felony depending on the drug involved. "Pseudoephedrine" has finally been included in Florida's Drug Trafficking statute (F.S. 893.135), which should facilitate state prosecution of "meth labs." Retail display and sales of over-the-counter cold medications containing ephedrine, pseudoephedrine or related compounds are restricted, with criminal penalties provided for violations. Ch. 05-128, Laws of Florida. **Officers investigating drug crimes and their supervisors should review the various provisions of this law.**

Effective July 1, 2005, Section 322.2715, Florida Statutes, is created to provide that DHSMV is authorized

## NEW LAWS 2005

...CONTINUED FROM PAGE 4...

to require an "ignition interlock device" if a judge fails to order it otherwise at sentencing for DUI/BUI. Ch. 05-138, Laws of Florida.

Effective October 1, 2005, Section 843.19, Florida Statutes, has been amended to provide that injuring a police dog or horse, fire dog, or search and rescue dog, is a misdemeanor or felony offense depending on the degree of harm to the animal and harassing, interfering with, or teasing such an animal while in the performance of its duties is a second-degree misdemeanor. A person convicted of these crimes must pay to replace the animal if it can no longer perform its duties. Ch. 05-139, Laws of Florida.

Effective July 1, 2005, "hazing" (as defined) is prohibited in high schools and criminalized as a first-degree misdemeanor or third-degree felony, depending on the degree of resulting harm to the victim. The existing law prohibiting hazing in colleges (F.S. 1006.63) has been amended in like manner. Ch. 05-146, Laws of Florida.

Effective July 1, 2005, Section 784.062, Florida Statutes, has been amended to provide that it is a third-degree felony to shine a laser device at a person operating a car, boat or plane, and a second-degree felony if the operator is harmed as a result. Ch. 05-159, Laws of Florida.

Effective July 1, 2005, Section 316.614, Florida Statutes, is amended to provide that an officer may use as the primary reason to stop a vehicle the

fact that a child (person under 18) who is not properly restrained is riding in or driving the vehicle, but requires the officer to record the race and ethnicity of the violator if a citation is issued. Section 316.0775, Florida Statutes, is amended to provide that it is a moving violation to possess or use a "traffic signal preemption device." Also, new misdemeanor and felony crimes involving title violations for off-road vehicles have been created at Sections 317.0017, and 317.0018, Florida Statutes. Ch. 05-164, Laws of Florida.

Effective October 1, 2005, Section 318.18, Florida Statutes, has been amended to provide a \$125.00 penalty for failing to stop at a traffic signal as required by Section 316.074(1), or Section 316.075(1)(c)1, Florida Statutes. Ch. 05-194, Laws of Florida.

Effective July 1, 2005, Section 403.413, Florida Statutes, has been amended to increase the fine for non-criminal littering from \$50.00 to \$100.00. Ch. 05-200, Laws of Florida.

Effective July 1, 2005, Section 796.07, Florida Statutes, has been amended to provide that in prosecuting violations of Section 796.07 crimes "a police officer may testify as an offended party." Ch. 05-219, Laws of Florida. (Courts had previously said officers could not be an offended party).

Effective October 1, 2005, Section 316.191, Florida Statutes, has been amended to increase the penalty for "drag racing" from a second-degree misdemeanor to a first-degree misde-

### ...FROM THE COURTS...

#### ..... OFFICERS HAD RIGHT TO FOLLOW DEFENDANT INTO HOUSE IN HOT PURSUIT

The defendant was charged with possession of cocaine with intent to sell and possession of a firearm by a convicted felon and filed a motion to suppress. The facts on which the motion was based were that officers were chasing a stolen car in which the defendant was a passenger. When the car stopped, the defendant got out of it and ran into a house with officers pursuing him. Once inside, they found cocaine and a gun in plain view which belonged to the defendant. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the defendant argued that the officers could not pursue him into the house because at most they had probable cause to believe he had committed a misdemeanor. The Third District rejected this argument and affirmed, holding that the hot pursuit exception to the warrant requirement applies when officers are chasing a fleeing misdemeanant. *Ulysse v. State*, 30 FLW D1038 (Fla. 3d DCA Apr. 20, 2005)



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Wauchula, Fl 33873  
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#### 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  
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Fax: (863) 519-4759

#### Lakeland Branch Office

930 E. Parker Street, Suite 238  
Lakeland, Fl 33801  
Phone: (863) 499-2596  
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## NEW LAWS 2005

...CONTINUED FROM PAGE 5...

meanor, to increase the fine for "drag racing" to not less than \$500 nor more than \$1000, to authorize impoundment of a vehicle used in "drag racing", and to authorize forfeiture of a vehicle used by a person for "drag racing" within five years or a prior conviction for "drag racing." Ch. 05-226, Laws of Florida.

Effective October 1, 2005, Section 713.345, Florida Statutes, has been amended to reduce monetary thresholds for prosecutions of misapplication of construction funds. Ch. 05-227, Laws of Florida.

Effective July 1, 2005, Section 817.568, Florida Statutes, relating to "Identity Theft", has been amended to include a person's postal or e-mail address, telephone number, mother's maiden name, debit card number, debit card PIN number, medical records and any other number that could be used to access a person's financial resources in the definition of "personal identification information." New felony crimes are created at Section 817.568(8), Florida Statutes, relating to stealing the identities of dead persons, and at Section 817.568(9), Florida Statutes, relating to fraudulent creation or use of counterfeit or fictitious personal identification information. Finally, section 817.568(11), Florida Statutes, has been created to provide that a defendant may mitigate his or her sentence for identity theft by providing "substantial assistance" with the capture of other identity thieves. Ch. 05-229, Laws of Florida.

Effective July 1, 2005, Section 564.09, Florida Statutes, has been created to describe how a bottle of wine, partially consumed with dinner, must be properly packaged in one's car so as not to be a violation of Florida's "open container law", Section 316.1936, Florida Statutes. Ch. 05-250, Laws of Florida.

Effective October 10, 2005, Chapter 119, Florida Statutes, relating to Public Records, has been significantly re-organized. Ch. 05-251, Laws of Florida.

Effective July 1, 2005, Section 985.208 (2), Florida Statutes, has been amended to authorize law enforcement officers to take into custody juveniles who have escaped from residential commitment facilities or who have absconded from non-residential commitment facilities and deliver them to their juvenile probation officers. Ch. 05-263, Laws of Florida.

Effective July 1, 2005, Section 501.160, Florida Statutes, has been amended to provide that selling goods or services without an occupational license during a state of emergency declared by the Governor is a second-degree misdemeanor. Temporary detention is authorized if there is an allegation that the unlicensed vendor is "price gouging." Ch. 05-283, 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.