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State Attorney

# Legal Advisor

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## NEW LAWS 2007

By Wayne Durden, Felony Director

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, 2007, funds have been allocated to collect DNA swabbing from ALL convicted felons at sentencing for submission to FDLE's DNA Database pursuant to Section. 943.325, Florida Statutes. Chapter 07-72, Laws of Florida.

Effective March 12, 2007, the "Anti-Murder Act" created Section

903.0351, Florida Statutes, and amended Section 948.06, Florida Statutes, to deny bond for certain defendants who have violated probation or community control if they are "violent felony offenders of special concern", which means that a defendant:

1. Was placed on and then violated probation or community control for a listed qualifying offense committed on or after March 12, 2007, or
2. Was placed on and then violated probation or community control for any felony offense committed on or after March 12, 2007, but had previously been convicted of a listed qualifying offense, or
3. Was on probation or community control for any offense committed

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**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

## NEW LAWS 2007

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### STOPS FOR CRACKED WINDSHIELDS LIMITED.

The defendant was charged with possession of marijuana with intent to sell and filed a motion to suppress. The facts on which the motion was based were that officers stopped the vehicle the defendant was driving because it had a cracked windshield. However, according to one of the officers, the crack did not obscure the driver's view. After the stop, the officers discovered that there was a warrant outstanding for the defendant. A subsequent search revealed the marijuana. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Supreme Court reversed, holding that in order for an officer to stop a vehicle for a cracked windshield under section 316.610, Florida Statutes, the cracked windshield must render the vehicle in such unsafe condition as to endanger a person or property. *Hilton v. State*, 32 FLW S401 (Fla. July 5, 2007).

on or after March 12, 2007, and then is arrested for a listed qualifying offense, or

4. Was already on probation or community control for any offense committed at any time, were previously found to be an Habitual Violent Felony Offender, a Three Time Violent Felony Offender, or a Sexual Predator, and is then arrested for a listed qualifying offense.

The list of qualifying offenses may be found at amended Section 948.06(8)(c), Florida Statutes. Chapter 07-02, Laws of Florida.

Effective June 27, 2007, Chapter 551, Florida Statutes, has been amended to change the rules regarding the legal use of slot machines. Chapter 07-121, Laws of Florida.

Effective July 1, 2007, Section 849.086, Florida Statutes, has been amended to permit "Texas Hold-em" games and games of Dominoes in authorized cardrooms. Chapter 07-130, and Chapter 07-163, Laws of Florida.

Effective June 20, 2007, the Department of Corrections is authorized to operate vehicles that have emergency lights and sirens. Also, judges are now authorized to issue notices to appear instead of warrants for certain violations of probation or community control. DOC is also now required to make disposition recommendations to the sentencing court. Chapter 07-210, Laws of Florida.

Effective July 1, 2007, Section 849.0931, Florida Statutes, has been

amended to permit a new and exciting form of Bingo called "Instant Bingo". Chapter 07-228, Laws of Florida.

Effective July 1, 2007, Section 810.011(13), Florida Statutes, has been amended to define the term "Construction Site", and the law relating to Trespass on a Construction Site, at Section 810.09, Florida Statutes, has been amended to redefine the crime and create a new third degree felony by distinguishing between construction sites greater than one acre in size and those less than one acre in size. Chapter 07-123, Laws of Florida.

Effective July 1, 2007, Sections 810.02, relating to Burglary, and 812.014, relating to Theft, to enhance criminal penalties for burglarizing or stealing certain property from emergency vehicles, and to further enhance such penalties if committed during declared states of emergency. Chapter 07-115, Laws of Florida.

Effective July 1, 2007, Section 322.141, Florida Statutes, is amended to require sexual predators and offenders, during their next registration month, to obtain driver's licenses that are marked in a certain way to identify them as predators and offenders. Sexual Predator's licenses should bear the marking "775.21 F.S.", and Sexual Offenders licenses should bear the marking "943.0435 F.S.". New section 322.212(5)(c), Florida Statutes, provides that a third degree felony is committed if such markings are not displayed or have been altered. Chapter 07-207, Laws of Florida.

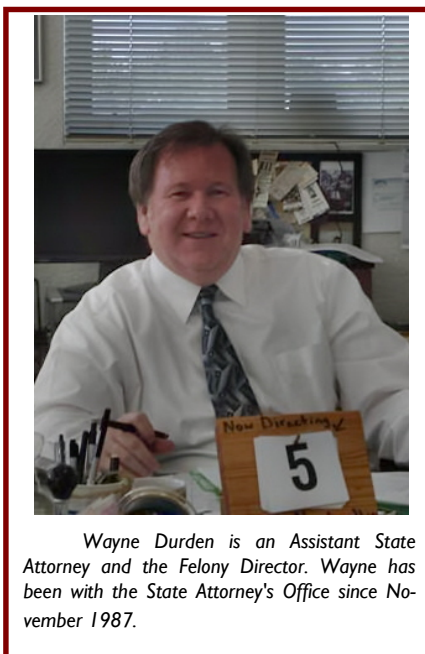
## NEW LAWS 2007

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Effective July 1, 2007, Section 960.001, Florida Statutes, has been amended to provide that alleged victims of sexual offenses may not be required to submit to polygraph or other similar examinations as a condition of proceeding with an investigation or prosecution and to allow rape crisis center victim advocates to be present during forensic medical examinations in sex crime cases. Chapter 07-129, Laws of Florida.

Effective October 1, 2007, Section 16.56, Florida Statutes, is amended to give Statewide Prosecutors jurisdiction to prosecute certain obscenity cyber-crimes facilitated through use of the Internet. Section 775.0847, Florida Statutes, has been created to enhance the penalties for possession of child pornography from a third degree felony to a second degree felony, or from a second to a first degree felony if certain criteria are met. Section 847.0135(3)(b), Florida Statutes, is amended to provide that each conversation designed to solicit a child through the use of a computer is a separate crime. Also, a new crime of Traveling to Meet a Minor has been created at 847.0135(4), and is a second degree felony. Finally, Sections 775.21, relating to Sexual Predators, and 943.0435, relating to Sexual Offenders, have been amended to require predators and offenders to register their e-mail addresses and online screen names. Failure to do so is a third degree felony. Chapter 07-143, Laws of Florida.

Effective October 1, 2007, new first degree, second degree, and third degree crimes relating to Female Geni-



Wayne Durden is an Assistant State Attorney and the Felony Director. Wayne has been with the State Attorney's Office since November 1987.

tal Mutilation of a female under 18 have been created at Section 794.08, Florida Statutes. Chapter 07-245, Laws of Florida.

Effective July 1, 2007, Florida laws relating to sexual predators and offenders have been amended to insure compliance with Federal Law. Predators (F.S. 775.21) and Offenders (943.0435), are now required to register during the month of their birthdays and each third month thereafter. Laws relating to the registration of Juvenile Sexual Offenders have been significantly revised. Finally, a process (dubbed the "Romeo and Juliet Law") by which certain individuals may petition to be removed from the sexual abuse registry has been created at Section 943.04354, Florida Statutes. Under limited circumstances a defendant can petition to be removed from the registry or to not have to register in the first place if adjudication of guilt is withheld, the victim was at least fourteen years of age and

## FIVE STATE ATTORNEY INVESTIGATORS RETIRE

Chief Investigator Chief Investigator Terry Bergum retired on February 28, 2007 after 30 years of service. He began his employment with the State Attorney's Office in March 1977.



Terry Bergum, Chief Investigator

Dan Butler, Trial Support Investigator, retired on February 28, 2007 after 8 years of service. Prior to his employment with the State Attorney's Office, Dan was with the Florida Highway Patrol.



Dan Butler, Trial Support Investigator

## FIVE STATE ATTORNEY INVESTIGATORS RETIRE

...CONTINUED FROM PAGE 3...

Martin Hodges, Trial Support Investigator, retired August 31, 2007. Prior to his employment with the State Attorney's Office, Martin worked for the Eagle Lake Police Department and Polk County Sheriff's Office.



Martin Hodges, Trial Support Investigator

Bob Stamper, Economic and Environmental Crimes Investigator, retired in May 2007 after 20 years of service.



Bob Stamper, Economic & Environmental Crimes Investigator

## NEW LAWS 2007

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the defendant was not more than four years older than the victim at the time of the offense. Chapter 07-209, Laws of Florida.

Effective July 1, 2007, Section 784.07, Florida Statutes, has been amended to re-define the term "law enforcement officer" to include Federal law enforcement officers for purposes of certain enhanced penalties. Chapter 07-112, Laws of Florida.

Effective October 1, 2007, Sections 812.014, and 812.015, Florida Statutes, relating to Theft and Retail Theft, have been amended to enhance the penalty from a third to a second degree felony for a theft of more than \$3000, committed by a person acting in concert with others or coordinating the activities of others. Chapter 07-177, Laws of Florida.

Effective July 1, 2007, various provisions of Chapter 372, Florida Statutes, has been amended to prohibit or regulate the capturing, keeping, possession, transportation or exhibition of venomous or certain other reptiles. Chapter 07-239, Laws of Florida.

Effective July 1, 2007, Florida's Public Records Law, Chapter 119, Florida Statutes, has been amended to allow a custodian of records to designate another to permit inspection or copying of records, and to require that requests be responded to promptly and in good faith. Chapter 07-39, Laws of Florida.

Effective July 1, 2007, Section 741.313, Florida Statutes, has been created to require employers of more than 50 people to allow employees

who are victims of domestic violence certain leave from work to deal with the consequences thereof, with limitations, and prohibiting discharge, demotion, suspension, etc. Chapter 07-107, Laws of Florida.

Effective October 1, 2007, Section 784.041, Florida Statutes, has been amended to create a new crime: Domestic Battery by Strangulation, as defined, a third degree felony. Chapter 07-133, Laws of Florida.

Effective July 1, 2007, Section 316.6135, Florida Statutes, has been amended to enhance the penalty for leaving a child unattended in a car for more than 15 minutes to a second degree misdemeanor, or to a third degree felony if the child suffers great bodily harm, permanent disability or permanent disfigurement as a result. Chapter 07-205, Laws of Florida.

Effective July 1, 2007, Section 316.027, Florida Statutes, has been amended to enhance the penalty for Leaving the Scene of an Accident to include a 2 year minimum mandatory if the defendant was DUI at the time. Also, the penalty for DUI Manslaughter, as set forth in Section 316.193, Florida Statutes, has been enhanced to include a 4 year minimum mandatory. Chapter 07-211, Laws of Florida.

Effective June 15, 2007, Section 324.023, Florida Statutes, has been created to require increased amounts of insurance as a consequence of being convicted of DUI. Chapter 07-150, Laws of Florida.

## NEW LAWS 2007

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Effective July 1, 2007, The Department of Health is mandated to create a counterfeit-resistant prescription blank form. Tampering with, making, delivering, uttering, selling or possession of selling such counterfeit forms to commit fraud or to facilitate a drug crime is a third degree felony. Chapter 07-156, Laws of Florida.

Effective July 1, 2007, Section 112.532, Florida Statutes, has been amended as it relates to the rights of law enforcement and correctional officers to require that all available witnesses be interviewed and copies of those interview statements be provided to an officer who is the subject of an investigation before the officer is interviewed. Chapter 07-110, Laws of Florida.

Effective June 12, 2007, Section 112.533, Florida Statutes, has been amended to require that an officer investigating an complaint against an officer must swear under oath and

penalty of perjury that the contents of the report are true and accurate based upon the officer's personal knowledge and belief. Chapter 07-118, Laws of Florida.

Effective July 1, 2007, the Criminal Justice/Training Commission is directed to create a rule to implement the Federal Law Enforcement Safety Act of 2004 relating to the carrying of concealed weapons by qualified active and retired officers. Chapter 07-11, Laws of Florida.

Effective July 1, 2007, Section 316.21265, Florida Statutes, has been created to authorize law enforcement agencies to use specific off-road vehicles on the streets, roads and highways of Florida. Chapter 07-154, 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.

## VICTIM/WITNESS INFORMATION

Officers...

Please remember to get as much information from your victims and/or witnesses in all cases. We have had several cases where no personal information such as a date of birth, address, telephone number, etc., was obtained from victims and/or witnesses. As you know, a large number of felony cases take 6 months to a year or longer before they are brought to trial. Within this time frame, people often move without notifying our office. When the case is finally set for trial and subpoenas are

returned un-served is when we discover that victims or critical witnesses have moved from their previous locations. When this happens, trial attorneys will generate an investigative services request to locate these individuals. Having the first, middle and last name, date of birth, previous address and phone number, prior employer, or even a cell phone number is helpful in determining whether we need the *John Smith* who lives in Lakeland or the *John Smith* who lives in Winter Haven.

## FIVE STATE ATTORNEY INVESTIGATORS RETIRE

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Terry Wolfe, Highlands County Investigator, retired in April 30, 2007, after more than 30 years of service. Prior to his employment with the State Attorney's Office, Terry worked for Probation and Parole as well as the Highlands County Sheriff's Office.



Terry Wolfe, Highlands County Investigator

While Terry, Dan, Martin and Terry Wolfe decided to trade in their badge and gun for a fishing pole and a hammock, Bob Stamper decided he would rather have a "Bed 'n Breakfast Inn" in Georgia. Combined, they have more than 130 years of law enforcement experience. We wish them all the best on their retirement!



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## ...FROM THE COURTS...

### OFFICER HAD RIGHT TO INVESTIGATE SLEEPING MOTORIST.

The defendant was charged with trafficking in cocaine and filed a motion to suppress. The facts on which the motion was based were that officers answered a call to a 'person in danger'. Upon arriving at the scene, they found a car in front of a convenience store with its motor running. Inside the car was a man slumped over the steering wheel. One of the officers testified that it was impossible to conclude that the man was simply sleeping. An officer opened the car door to render aid. The de-

fendant did not react and only after the officers checked his pulse, shook him, and spoke loudly to him did he begin to come around. In the process of dealing with the defendant they saw a baggie of a white substance which they believed to be cocaine lying in plain view. The trial court denied the motion, and the defendant pled no contest. On appeal, the Fourth District affirmed, holding that the officers' entry into the vehicle was reasonable. *Vitale v. State*, 32 FLW D164 (Fla. 4<sup>th</sup> DCA Jan. 3, 2007).

### VEHICLE STOP WAS VALID.

The defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that an officer was patrolling a parking lot of an establishment known for its drug trade. The officer noticed a pickup truck legally parked in the lot. When the defendant who was the driver of the truck made eye contact with the officer, he put the vehicle in gear and fled at a high rate of speed. The officer radioed these observations to another officer who was on patrol nearby. That officer saw the defendant drive into a parking lot

of an apartment complex, turn off the truck's lights, and crouch down onto the floorboard. The second officer went up to the truck and ordered the defendant out of it. When he did so, he noticed cocaine on the seat in plain view. The trial court granted the motion to suppress, but on appeal, the Fifth District reversed, holding that the defendant's actions created a reasonable suspicion of criminal activity. *State v. Wynn*, 32 FLW D486 (Fla. 5<sup>th</sup> DCA Feb. 16, 2007).

### DEFENDANT DID NOT HAVE EXPECTATION OF PRIVACY IN GREENHOUSE.

The defendant was charged with several drug related offenses and filed a motion to suppress evidence. The facts on which the motion was based were that officers were informed by a neighbor of the defendant that he believed the defendant was growing marijuana in a greenhouse on the defendant's property. The property was a 36 acre parcel surrounded by a rail fence. The greenhouse which could not be seen from outside the property because of a natural vegetative buffer was approximately 100 feet behind the defendant's residence. The officers climbed over the fence, went to the greenhouse and looked in. There

they saw marijuana plants. On a subsequent entry, they were detected by the defendant. After a confrontation, the defendant gave the officers consent to search the greenhouse. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Fifth District affirmed, holding that the officers' entry onto the defendant's property and their peering into the greenhouse did not violate the defendant's reasonable expectation of privacy because the greenhouse was not within the curtilage of the defendant's residence. *Wilson v. State*, 32 FLW D553 (Fla. 5<sup>th</sup> DCA Feb. 23, 2007).