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By: Wayne Durden

From the Courts

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New Laws 2009

By: Wayne Durden, Felony Division 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 local Law Enforcement community.

Effective July 1, 2009, "Rachel's Law" was created to govern the use of "confidential informants" by Law Enforcement agencies. Law Enforcement agencies must: Disclose certain information to persons who wish to be informants; provide potential informants an opportunity to consult with legal counsel; properly train persons involved with recruitment and use of informants; adopt policies and procedures to preserve the safety of informants, law enforcement personnel, target offenders, and the public; establish policies and procedures for the recruitment, control, and use of informants, and to assess the suitability of potential informants; establish procedures to maintain security of records relating to informants; and periodically review informant practices. The act also provides that it does not grant any right or entitlement to any person to be an informant and that failure of a Law Enforcement agency to comply with some portion of the act does not create any additional right enforceable by a defendant in criminal proceedings. Law Enforcement agencies in the Tenth Circuit utilizing confidential informants have policies that are probably already consistent with the requirements of this new law, but each agency should, nonetheless, review its policies and procedures regarding C I's to make sure they are in compliance with the new law (and are also in compliance with pre-existing procedures established by the SAO). Chapter 09-33, Laws of Florida.

Effective July 1, 2009, Drug Court programs statewide are being expanded from pre-trial diversion programs to authorize a court to sentence a qualifying defendant to Drug Court as a condition of probation. Chapter 99-64, Laws of Florida.



Assistant State Attorney Wayne Durden is the Director for the Felony division. He has been with the State Attorney's Office since November 1987.

Effective July 1, 2009, Florida's judges are prohibited from sentencing felons who commit non-violent third-degree felonies to prison if they score 22 or fewer points on sentencing guidelines. These felons may only be sentenced to county jail or placed on a community sanction such as probation or community control. The stated purpose of this law is to reduce the statewide prison population, thereby avoiding the costs associated with maintaining inmates in the Department of Corrections. (Of course, no funding has been allocated to Florida's counties to assist with the expense of

housing the potential increase in inmates sentenced to county jail because they are now excluded from eligibility for prison). Another provision of this legislation requires all counties to use a standardized statewide Order of Probation. Chapter 09-63, Laws of Florida.

Effective July 1, 2009, all persons arrested for felonies are required to provide a DNA sample for submission to FDLE's DNA database during book-in. However, the Legislature has not currently appropriated funding to implement this new law so it will be phased in as funding is appropriated over the next 10 years, beginning with certain felonies in 2011, and with additional felonies being added every other year thereafter through 2019. FDLE has interpreted this law to mean that no samples should be collected upon arrest until funding is appropriated in the future. This bill also creates new misdemeanor crimes. A second-degree misdemeanor is committed if a person refuses to provide a DNA sample. A first-degree misdemeanor is committed if a person improperly discloses a DNA record or analysis, uses DNA results for an unauthorized purpose, or tampers or attempts to tamper with a DNA sample. FDLE is also required to provide DNA sample collection kits with instructions, Chapter 09-190, Laws of Florida.

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Effective October 1, 2009, the Legislature has created a new crime called “Human Smuggling.” A person who transports an illegal alien into Florida commits a first-degree misdemeanor for each person transported. This new law is codified at Section 787.07, Florida Statutes, Chapter 09-160, Laws of Florida.

Effective October 1, 2009, new crimes related to “Theft of Utility Services” have been created. First-degree misdemeanors have been codified at Sections 812.14(5), (6) and (7), Florida Statutes, and are committed when a person who owns, leases or subleases a property knowingly permits a tenant or occupant to use unlawfully connected utility services. In addition, a person may also be charged with “Theft of Utility Services for the Purposes of Facilitating the Manufacture of a Controlled Substance”, a first-degree misdemeanor, codified at Section 812.14(8), Florida Statutes. Chapter 09-159, Laws of Florida.

Effective July 1, 2009, Florida’s laws relating to the registration of sexual predators and offenders have again been amended. In addition to existing statutory requirements, sexual predators and offenders are now also required to provide home and cellular telephone numbers as part of the registration process. Failure to provide the information is a third-degree felony. Also, Section 847.0135(7), Florida Statutes, and Section 847.0138(2), Florida Statutes, relating to computer-related pornography and minors, and traveling to meet a minor, have been amended to broaden the State’s jurisdiction by eliminating the requirement that either the child or perpetrator be a resident of Florida, Chapter 09-194, Laws of Florida.

Effective July 1, 2009, Section 794.052, Florida Statutes, has been created to require a Law Enforcement officer, who investigates a sexual battery, to assist the victim in obtaining medical treatment if necessary, a forensic examination, crisis counseling services from a certified rape crisis center, and to

provide the victim with certain information. Fortunately, there is a rape crisis center at the corner of Highway 98 and Crystal Lake Drive South in Lakeland, called the Rape Recovery and Resource Center, at which counseling services and forensic examinations can occur in non-emergency situations. It was created several years ago to provide a more victim-friendly atmosphere, reduce trauma on victims necessitated by lengthy waits at local hospitals, reduce investigation time for Law Enforcement officers and alleviate the burden on local emergency rooms. Local police agencies should review their policies and practices with regard to this new law. The RRRC may be contacted for assistance during regular business hours at (863)413-2708. To contact the crisis hot line at any time call (863)413-2707. Chapter 09-184, Laws of Florida.

Effective July 1, 2009, Florida’s laws related to “zero-tolerance” policies in schools have been amended to delete the requirement that all potential criminal matters be reported to sheriff’s offices and police agencies. “Petty acts of misconduct and misdemeanors” must no longer be reported to Law Enforcement agencies because of “zero-tolerance” policies. “Petty acts of misconduct and misdemeanors” is defined as including, but not limited to, disorderly conduct, disrupting a school function, simple assault and battery, affray, theft of less than \$300, trespassing, and vandalism of less than \$1,000. Instead, the legislation encourages school districts to develop alternatives to reporting, unless a threat to school safety will result. The amendments are codified in Section 1006.13, Florida Statutes, Chapter 09-53, Laws of Florida.

Effective July 1, 2009, Section 39.304(4), Florida Statutes, has been amended to mandate that photographs, medical examination reports and X-rays of abused, abandoned or neglected children be permanently retained by DCF. These retained materials could provide an avenue for additional evidence in some child abuse investigations relating to past abuse of the same or other children, and should be borne in mind by child abuse investigators. Chapter 09-43 and Chapter 09-34, Laws of Florida.

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Effective October 1, 2009, Section 773.06, Florida Statutes, is enacted to require that children under the age of 16 must wear a helmet while riding a horse in public places. It is a civil infraction for a trainer, instructor, renter of horses, or a parent or guardian to allow a child to ride without a helmet. The law does not apply during shows or rodeos, on private property, or while the child is engaged in agricultural pursuits. Chapter 09-105, Laws of Florida.

Effective July 1, 2009, Section 790.335(5), Florida Statutes, has been created to require dealers and pawnbrokers, who submit electronic firearms transactions records to local law enforcement, to include the manufacturer and caliber information of each firearm in FCIC coding, and include the model and serial number of each firearm, Chapter 09-229, Laws of Florida.

Effective October 1, 2009, Section 538.03, Florida Statutes, relating to Secondhand Goods and Dealers has been amended to exclude “cardio and strength training or conditioning equipment designed primarily for indoor use” from the definition of Secondhand Goods. The same piece of legislation creates Sections 538.31 - 538.37, Florida Statutes, to regulate “mail-in” purchases of gold, precious metals or jewelry, requiring dealers to register and keep records, and, providing that dealers who fail to register commit, a third-degree felony for each completed transaction. Persons who provide false information in connection with the transaction and receive less than \$300 commit a third-degree felony. If the value of the goods is \$300 or more it is a second-degree felony, Chapter 09-158 and Chapter 09-162, Laws of Florida.

Effective July 1, 2009, Section 23.1225, Florida Statutes, has been amended to redefine the term “mutual aid agreement” to authorize state university police officers to enforce laws within a specified jurisdictional area as set forth in the mutual aid agreement. Sections 316.640, and 1012.97, Florida Statutes, have been amended to permit university police officers to enforce traffic laws within 1,000 feet of campus, Chapter 09-216, Laws of Florida.

Effective July 1, 2009, the “Law Enforcement Officer’s Bill of Rights”, codified in Chapter 112, Florida Statutes, has been amended to provide that the rights apply in situations in which an officer is facing suspension, as well as other sanctions previously enumerated, and to provide that an officer has a right to review all statements of witnesses, including other officers and all evidence prior to being questioned. The legislation also amends section 112.534, Florida Statutes, to provide a mechanism for dealing with a failure to follow the dictates of the Officer’s Bill of Rights, Chapter 09-200, Laws of Florida.

Effective July 1, 2009, various existing laws relating to service of process have been amended. Section 30.231, Florida Statutes, has been amended to increase fees from \$20 to \$40 that Florida’s sheriffs may charge to serve subpoenas and other process. Section 48.27, Florida Statutes, has been amended to allow certified process servers to serve criminal subpoenas and summonses. Sections 741.30, and Section 784.046, Florida Statutes, have been amended to permit the Clerk of Court, upon request by the sheriff, to FAX to the sheriff a certified copy of an injunction, which may then be served in the same manner as the certified copy itself, once the sheriff first verifies receipt with the sender. Finally, Section 784.046(13), Florida Statutes, has been amended to allow a law enforcement officer to arrest a person, who violates a condition of pre-trial release, if the person was placed on pre-trial release after being arrested for an act of dating violence, Chapter 90-215, Laws of Florida.

Effective October 1, 2009, Section 784.07, Florida Statutes, has been amended to define a “law enforcement explorer” and to include explorers in the list of persons for whom violent crimes committed against them are enhanced by one degree. For example, what might otherwise be a misdemeanor battery would become a third-degree felony battery if the victim is an “explorer,” Chapter 09-102, Laws of Florida.

Effective October 1, 2009, Section 318.18, Florida Statutes, has been amended to increase the fine imposed for failing to stop for a school bus, racing,

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and reckless driving, and to require those drivers to complete a driver improvement course. Section 316.193, Florida Statutes, has also been amended to limit the buy-out provision for community service hours required as a condition of probation, Chapter 09-138, Laws of Florida.

Effective July 1, 2009, the definition of “ATV” (All-Terrain Vehicle) has been amended, and “ROV” (Recreational Off-Highway Vehicle) has been defined. “ROV” does not include a golf cart. The definitions are codified in Sections 261.03, 316.2074, and 317.0003, Florida Statutes, Chapter 09-137, Laws of Florida.

Effective June 30, 2009, Section 316.614(8), Florida Statutes, has been amended to permit law enforcement officers to stop a vehicle for the primary reason that the driver of a car is not restrained by a safety belt or because any passenger in the car under the age of 18 is not restrained by a safety belt or child restraint seat, if applicable. Violation is a non-moving violation, Chapter 09-32, Laws of Florida.

Effective July 1, 2009, Section 327.35, Florida Statutes, has been amended to provide that fines increased last year for DUI offenses with BAL's over .15 also apply to BUI offenses with BAL's over .15. Section 327.70, Florida Statutes, has been amended to authorize municipal police officers to enforce violations of Chapter 327 (Vessel Safety) and Chapter 328 (Vessels: Title Certificates; Liens; Registration), Florida Statutes. A new second-degree misdemeanor has been created at Section 327.66, Florida Statutes, and prohibits persons from carrying gasoline in non-approved containers on boats. Section 379.3381, Florida Statutes, has been created and provides that photographic evidence of illegally taken wildlife, freshwater fish, and saltwater fish is admissible in evidence to the same extent as the actual fish or wildlife and would smell much better. To be admissible, the photographs must bear a written description of the wildlife or fish illegally taken, the name of the violator, the location of the illegal taking, the name of the officer,

the date, and the name of the photographer. These statements must be made under oath by the investigating law enforcement officer and signed by the photographer, Chapter 09-86, Laws of Florida.

Effective July 1, 2009, Section 394.462, Florida Statutes, has been amended to require law enforcement agencies to develop memorandums of understanding with mental health receiving facilities. Law enforcement agencies are to develop, in conjunction with area treatment providers, a single local protocol for the safe and secure transportation of persons to those facilities, including a requirement that custody of the person transported be relinquished to a responsible person at the facility, Chapter 09-38, Laws of Florida.

Effective October 1, 2009, Chapter 119, Florida Statutes, relating to Public Records, has been amended to provide that personal information of individuals contained in DHSMV records (such as operator's permits or ID cards, and vehicle titles and registrations) is confidential and may only be disclosed pursuant to the Federal Driver's Privacy Protection Act of 1994, Chapter 09-153, Laws of Florida.

Effective October 1, 2009, Chapter 119, Florida Statutes, relating to “Public Records,” has been amended to strengthen pre-existing statutory provisions protecting the confidentiality of Social Security Numbers held by public employers, Chapter 09-237, Laws of Florida.

Effective October 1, 2009, Section 455.2274, has been created to authorize representatives of the Department of Business and Professional Regulation to appear in court, provide information to the court, and make sentencing recommendations regarding persons licensed by the department to practice professions regulated by the state when those persons are charged with crimes, Chapter 09-195, 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.



<http://www.sao10.com>

Bartow Phone Numbers:

SWITCHBOARD	534-4800
MISDEMEANOR INTAKE	534-4927
MISDEMEANOR	534-4926
DOMESTIC VIOLENCE	534-4882
VICTIM ASSISTANCE	534-4987
FELONY INTAKE	534-4987
FELONY	534-4964
INVESTIGATIONS	534-4804
VIOLATION OF PROBATION	534-4803
CHILD ABUSE	534-4857
HOMICIDE DIVISION	534-4959
ON CALL PHONE	860-8243
WORTHLESS CHECKS	534-4874
JUVENILE DIVISION	534-4905
FAX-MALROOM	534-4945
WITNESS MANAGEMENT MISDEMEANOR/TRAFFIC	534-4021
WITNESS MANAGEMENT FELONY	534-4020
WITNESS MANAGEMENT FAX	534-4020

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FROM THE COURTS...

MILITARY UNIFORM STATUTE IS UNCONSTITUTIONAL.

The defendant was charged with illegally wearing a military uniform and insignia in violation of section 250.43(2), Florida Statutes. He filed a motion to dismiss, challenging the Constitutionality of the statute. The trial court granted the motion, and on appeal, the Fifth District affirmed, holding that the statute was unconstitutionally overbroad and violated Due Process. *State v. Montas*, 33 FLW D2560 (Fla. 5th DCA Oct. 31, 2008).

THE DEFENDANT WAS NOT IN CUSTODY.

The defendant was charged with manslaughter and filed a motion to suppress his confession. The facts on which the motion was based were that the defendant called the police to tell them that his friend had been shot. When the police arrived, the defendant told them that an unknown person walked up to the friend and shot him. An officer asked the defendant to sit in a police car while they conducted their investigation. The defendant was not handcuffed or restrained in any way. Also, at the time he was not a suspect and was free to leave. When a detective went over to speak to him, the defendant said that he had not been truthful and that he had accidentally shot his friend. Based on this admission, the police gave him Miranda warnings, and he then gave a sworn statement. The Trial Court granted the motion to suppress, finding that the defendant's first statement was the product of custodial interrogation. On appeal, the Third District reversed, holding that the defendant was not in custody when he made his initial admission. *State v. Rincon*, 33 FLW D2549 (Fla. 3d DCA Oct. 29, 2008).

ATTEMPTED TAMPERING WITH EVIDENCE WAS PROVED.

The defendant was charged with tampering with evidence. At his trial, the testimony established that a police officer came upon the defendant in a public restroom. When the defendant saw the officer, he immediately put his hands behind his back. The officer ordered the defendant to show him what was in his hands, but the defendant threw the object into a urinal. When later tested, the object did not prove to be contraband. The defendant was convicted of attempted tampering with the evidence. On appeal, the First District affirmed, holding that the defendant's actions supported his conviction. *Anderson v. State*, 33 FLW D2841 (Fla. 1st DCA Dec. 12, 2008).

GOING UNDER THE HOUSE WAS A BURGLARY.

The defendant was charged with burglary. At his trial, the evidence established that he crawled underneath a vacant wood frame house supported by cinder blocks and cut and removed copper pipe. He was convicted as charged. On appeal, he argued that the evidence was insufficient to establish a burglary because he had not entered the house. The Fifth District rejected this argument and affirmed, holding that the defendant entered the house because he entered the air space of the house. *Tindall v. State*, 34 FLW D76 (Fla. 5th DCA Jan. 2, 2009).