

LAW ENFORCEMENT NEWSLETTER

September 2013

A MESSAGE FROM BILL CERVONE STATE ATTORNEY

As we do every Fall, the majority of this issue of the Legal Bulletin is dedicated to legislative changes made during the 2013 session. Virtually all are either already in effect or go into effect on October 1st. The brief summaries that are included are intended as just that: a quick summary so that you know that there has been a new law or change in law affect-

ing a particular topic. The full body of any enactment that is of particular concern to you can be found by searching "2013 Laws of Florida," among other internet sites, and indexing to the appropriate Chapter No.

Of particular interest this year are bills that changed Florida's law on expert witnesses (Chapter No. 2013-107), prohibited the

use of drones by law enforcement for surveillance except under very limited circumstances (Chapter No. 2013-33), and banned texting while driving, albeit with significant restrictions on enforcement, (Chapter 2013-58).

I would encourage everyone to at least scan through everything so that you are familiar with what might have changed. Anyone needing specific details or having questions is always welcome to contact the SAO.

Related to this, even while we are still figuring out what the legislature did in 2013 the 2014 session is getting underway. Committee hearings are scheduled to begin this month and many times the

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MESSAGE FROM BILL CERVONE (CONTINUED)

actual work leading to something is done well before the formal session starts in the Spring. If you have a topic of concern or

a suggestion for a change in the law that might help all of us, please pass it on to me.



**Office of the
State Attorney
Eighth Judicial
Circuit**

120 West University Avenue
Gainesville, Florida 32601

Phone: 352-374-3670

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Any changes in agency email addresses should be reported to our office at clendeninp@sao8.org.

For a copy of the complete text of any of the cases mentioned in this or an earlier issue of the Legal Bulletin, please call Chief Investigator Paul Clendenin at the SAO

SAO PERSONNEL CHANGES

ASA Pam Brockway resigned on July 26th to take a position as Senior Attorney for the North Florida Evaluation and Treatment Center in Gainesville. During her ten plus years with SAO8 Pam has worked in virtually every division of the office, and as some know she has almost 10 years experience as a prosecutor in

SAO18 prior to joining us. Good luck to Pam in her new endeavor, where, given the nature of the work at NFETC, she will still be a at least occasional participant in criminal cases.

Returning to the SAO to take Pam's position in August was Jessica Zissimopoulos. Jessica worked with

the SAO for several years under her maiden name of Melnick and has been working with DCF for the last several years.

CONGRATULATIONS TO...

ASA George Wright, who became a first time father on May 9th with the birth of baby Madeline.

ASA Jon Turner, who welcomed his second daughter, Lanier, on July 30th.

FHP Trooper Jimmy Starling, who was recently promoted to the rank of Sergeant and a position in the agency's Traffic Homicide Coordinators Office in Tallahassee.



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FDLE Releases 2012 Crime Stats

FDLE released its annual crime stats report in late May and the figures are again encouraging for the 8th Circuit and Florida. For calendar year 2012, index (serious) crimes in the 8th Circuit were down 6.9%. For the state as a whole, there was also a decrease of 5.7%

achieved, the increase was only .4%; overall, the number of index crimes fell from 4518 per 100,000 in 2012 to 3402 per 100,000 in 2012. Statewide in 2012 the index crime rate was 3805 per 100,000.

FOR COPIES OF CASES...

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This continues a trend that has included reduced numbers of serious crimes in seven of the last ten years. In 2003, the number of reported index crimes in the Circuit stood at 15,703. In 2012, that number had fallen to 12,716. Significantly, the population for the Circuit increased from 347,558 in 2003 to 373,742 in 2012. Comparing these two factors, raw index crime numbers to population, is perhaps even more significant. The 2012 figures show a reduction in the crime rate as measured per 100,000 population of 6.3%, the sixth time in the past ten years that there was a crime rate reduction. In 2009, one of the years when no reduction was

Everyone knows, of course, that statistics can mean many things but it seems safe to draw several conclusions from these numbers. Among these are that our combined efforts on the streets and in the courtrooms are working to make our communities a better and safer place. Officers on the street and in the detective rooms have better tools and are using those tools well in identifying and apprehending those who commit serious crimes. In the courtroom, our prosecutors and their success rates are resulting in those serious offenders being removed from free society more effectively and for longer periods of time. Targeting serious

Cell Phone Searches Require A Warrant (After All)

As many of you know by now, the Florida Supreme Court issued an opinion in May that reversed the 1DCA's previous holding from 2011 allowing law enforcement to search the contents of a cell phone seized pursuant to arrest without a warrant. Under this ruling, which now controls Florida law until and unless the United States Supreme Court rules otherwise, a search warrant is necessary to do this.

The case, Smallwood v State, involved a defendant who was arrested for robbery. A cell phone was taken from him at the time of his arrest, and when officers eventually looked through it without a warrant they found incriminating photos of him with a gun and what appeared to be the proceeds of the robbery.

Generally speaking, the Florida Constitution requires that United States Supreme Court precedent must be followed on 4th Amendment search and seizure issues. The 1DCA had ruled that a 1973 case from the US Supreme Court involving the search of a cigarette pack in which narcotics were found controlled because a cell phone was nothing more than a container for information, much as the cigarette

pack was a container for whatever was physically in it.

The Florida Supreme Court refuses to make that comparison, holding instead that there is both a factual and a legal difference between the two, and that a modern electronic device such as a cell phone that was non-existent and probably not even imaginable in 1973 is not analogous to a static, non-interactive container like a cigarette pack. Expressing concerns about the access to data that a cell phone provides, the Court drew a different comparison, stating that it was more like a key to the front door of someone's home. Clearly, taking a key from a suspect incident to arrest would not allow police to just go to the suspect's home, enter, and rummage around. The Court concluded that "[W]e refuse to authorize government intrusion into the most private and personal details of an arrestee's life without a search warrant simply because the cellular phone device which stores that information is small enough to be carried on one's per-

son."

The door is not entirely closed on this topic. First, there is developing a split of authority among both the states and the federal courts. Some have taken the opposite view from that which the Florida Supreme Court has now adopted. Inevitably a case will make its way to the United States Supreme Court for final resolution of the issue, but that is years away.

More immediately, the Smallwood case did not include an argument that an exigent circumstance existed due to the potential destruction of evidence such as would justify an immediate warrantless search. To the contrary, "no evidence or hint of evidence that this particular phone could be used as a weapon or that evidence could be destroyed remotely" was presented. The question arises, then, as to what ruling would result if that evidence did exist. Clearly, there is technology that would allow for the remote deletion of data from a cell phone or other electronic device, and if the right cir-

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Cell Phone Searches Require A Warrant (After All) (Continued)

cumstances are present a warrantless search might survive. But it might not so law enforcement should proceed with great caution.

Additionally, the possibility of remote destruction of the contents of a phone being accomplished by someone who the defendant is able to speak to once booked raises the suggestion that time is of the essence in obtaining a search warrant. And regardless of the timing, an allegation as to possible destruction may be helpful in a warrant application. The particulars may depend on the exact device in-

volved.

Interestingly, the entire question may be moot in Florida based on legislative action. The 2012 session considered a bill restricting cell phone access, even through a search warrant, in some circumstances, and the legislature could do even more along those lines next year.



LOBBYING POTENTIAL JURORS: A NO-NO

Everyone probably understands that inherent in the power of a jury is the ability to ignore the facts and the law and acquit someone, no matter how strong the State's case might be. It's called jury nullification or jury pardon. Attorneys are not allowed to argue to juries that they should do so, but the phenomenon exists nonetheless and sometimes explains a not guilty verdict. This might, for example be what happens in a pot possession case in Gainesville when the jury looks like it just pulled into the parking lot from last night's Grateful Dead concert. A recent case from the 5th DCA has now said that other people may not approach potential jurors to, in essence, lobby them under the guise of education to grant a pardon.

The case, Schmidter v State, arose in Orlando and involved a group calling itself the Fully Informed Jury Association. FIJA members say that their mission is to "educate the public about their rights as jurors that the judge won't tell you" and "to promote awareness of the jury pardon, or the de facto ability of jurors to nullify a provision of law they deem to be immoral by acquitting criminal defendants." They did this by distributing leaflets to prospective jurors as they were entering the

Orange County Courthouse.

Needless to say, and as the 5th DCA said, "allowing groups or individuals to disseminate materials to summoned jurors, at the courthouse, in an attempt to influence jurors' decisions in cases they are called upon to decide would interfere with the proper administration of the justice system." Prospective jurors who are subjected to such attempts at outside the courtroom influence would hardly pass muster as neutral, whether the material be from FIJA, PETA, anti-death penalty advocates, pro marijuana legalization groups, or anyone.

For that reason, the Chief Judge in Orlando's 9th Circuit entered an administrative order prohibiting the distribution of material in the courthouse or on courthouse grounds. When Schmidter violated that order, he was charged with contempt, convicted, and jailed. On appeal, the 5th DCA upheld that action, holding that courthouses and their grounds are "non-public forums" for purposes of the 1st Amendment, and that reasonable prohibitions on what might otherwise be free speech may be imposed. "The court's responsibility," the

ruling goes on to hold, "is to provide for the orderly administration of justice and to ensure that all litigants have their day in court - a day which is free from influences outside of the courtroom." In other words, FIJA is free to say what it wants about jury service, just not to actual jurors as they gather to do their civic duty.

This is far from an academic issue. Representatives of the Fully Informed Jury Association have shown up at the Alachua County Courthouse attempting to do exactly what they got in trouble for doing in Orange County. At least as of now, the 8th Circuit has no administrative order such as existed in Orlando. That day may yet come. Until then, all of us who might be affected by this type of activity need to be aware of it and, when appropriate bring it to the attention of the judges presiding over our trials or make certain that prospective jurors are questioned about it.



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Florida Prosecuting Attorneys Association 2013 Legislative Update

HB 7015 Relating to Expert Testimony

Provides that witness qualified as expert by knowledge, skill, experience, training, or education may testify in form of opinion as to facts at issue in case; requires courts to interpret & apply principles of expert testimony in conformity with specified U.S. Supreme Court decisions; subjects pure opinion testimony to such requirements; provides that facts or data that are otherwise inadmissible may not be disclosed to jury by proponent of opinion or inference unless court determines that probative value of facts or data in assisting jury to evaluate expert's opinion substantially outweighs prejudicial effect. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-107

HB 0953 Relating to Warrants

Specifies when arrest warrant may be issued; authorizes judge to electronically sign arrest & search warrants if certain conditions are met; provides that such warrants deemed electronically issued & signed by judge at time judge affixes his or her electronic signature to warrant. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-

SB 0092 Relating to Searches and Seizures

Citing this act as the "Freedom from Unwarranted Surveillance Act"; prohibiting a law enforcement agency from using a drone to gather evidence or other information; authorizing an aggrieved party to initiate a civil action in order to prevent or remedy a violation of the act; prohibiting a law enforcement agency from using in any court of law in this state evidence obtained or collected in violation of the act, etc. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-033

HB 7083 Relating to Death Penalty

Prohibits CCRC & replacement regional counsel from accepting an appointment or taking & action that creates actual conflict of interest; establishes procedures for public records production in postconviction capital cases; requires private registry attorneys appointed by court to represent persons in postconviction capital proceedings to contract with JAC rather than CFO; requires persons convicted & sentenced to death to pursue all possible collateral remedies in state court in accordance with FRCP rather than in accordance with statute; requires capital postconviction motions to be filed in accordance with FRCP; requires Florida Supreme Court to annually report certain information regarding capital postconviction cases to Legislature; requires courts to report specified findings of ineffective assistance of counsel to Florida Bar. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-216

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Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

HB 0685 Relating to Parole Interview Dates for Certain Inmates

Extends from 2 years to 7 years period between parole interview dates for inmates convicted of committing specified crimes; requires periodic parole interview for inmate convicted of kidnapping or attempted kidnapping or robbery, burglary of dwelling, burglary of structure or conveyance, or breaking & entering, or attempt thereof of any of these crimes, in which human being is

HB 0155 Relating to Prohibition of Electronic Gambling Devices

Revises provisions relating to drawings by chance offered by nonprofit organizations, game promotions in connection with sale of consumer products or services, amusement games or machines, amusement centers, racketeering activity, & promotional offers; provides that violations are deceptive & unfair trade practices; and provides legislative findings & declarations. Effective Date: April 10, 2013 04/10/13 Approved by Governor; Chapter No. 2013-002

SB 0052 Relating to Use of Wireless Communications Devices While Driving

Creating the Florida Ban on Texting While Driving Law; prohibiting the operation of a motor vehicle while using a wireless communications device for certain purposes; defining the term wireless communications device; specifying information that is admissible as evidence of a violation; providing for enforcement as a secondary action; providing for points to be assessed against a driver license for the unlawful use of a wireless communications device within a school safety zone or resulting in a crash, etc. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-058

HB 7125 Relating to Department of Highway Safety & Motor Vehicles

Provides that certain positions in HSMV are exempt from career service; revises provisions for certain commercial motor vehicles & transporters & shippers of hazardous materials; revises language relating to certain commercial motor vehicles not properly licensed & registered; revises provisions for transfer of ownership by operation of law when motor vehicle or mobile home is repossessed; amends provisions relating to manufacturers, distributors, & importers of motor vehicles; amends provisions relating to review of license suspension when driver had blood or breath alcohol at certain level or driver refused test of his or her blood or breath to determine alcohol level; provides appropriations. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-160

Florida Prosecuting Attorneys Association
2013 Legislative Update
(Continued)

HB 7059 Relating to Driver Licensing

Revises provisions for exemption from obtaining driver license issued by this state; removes requirement that certain nonresidents possess an International Driving Permit; provides that nonresident of certain age possessing valid non-commercial driver license issued outside this state may operate noncommercial motor vehicle in this state; provides for retroactive application. Effective Date: April 2, 2013 04/02/13 Approved by Governor; Chapter No. 2013-001

SB 0628 Relating to Driver Licenses

Authorizing a justice, judge, or designated employee to access reproductions of driver license images as part of the official work of a court, etc. Effective Date: July 1, 2013

HB 7035 Relating to Pretrial Detention

Requires court considering whether to release defendant on bail to determine whether defendant is subject to registration as sexual offender or sexual predator &, if so, to hold defendant without bail until first appearance on case; provides additional factors court may consider when ordering pretrial detention. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-214

HB 1355 Relating to Purchase of Firearms by Mentally Ill Persons

Provides conditions under which person who has been voluntarily admitted to mental institution for treatment & has undergone involuntary examination under Baker Act may be prohibited from purchasing firearm; provides requirements for examining physician; provides for judicial review of certain findings; provides specified notice requirements; provides form & contents of notice; provides requirements with respect to filing of specified records with court & presentation of such records to judge or magistrate; provides lawful authority of judge or magistrate to review specified records & order that such records be submitted to FDLE; provides a timeframe for submission of records to FDLE upon order of record by judge or magistrate. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-

SB 0142 Relating to Intellectual Disabilities

Substituting the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children; substituting the term "intellectual disability" for the term "mental retardation"; clarifying in specified provisions that the meaning of the terms "intellectual disability" or "intellectually disabled" is the same as the meaning of the terms "mental retardation," "retarded," and "mentally retarded" for purposes of matters relating to the criminal laws and court rules, etc. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-162

Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

SB 0142 Relating to Intellectual Disabilities

Substituting the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children; substituting the term "intellectual disability" for the term "mental retardation"; clarifying in specified provisions that the meaning of the terms "intellectual disability" or "intellectually disabled" is the same as the meaning of the terms "mental retardation," "retarded," and "mentally retarded" for purposes of matters relating to the criminal laws and court rules, etc. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-162

SB 0294 Relating to Controlled Substances

Adding to the list of Schedule I controlled substances certain specified materials, compounds, mixtures, or preparations that contain hallucinogenic substances, or any of their salts, isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; providing reduced penalties for possession of 3 grams or less of specified controlled substances; providing criminal penalties for a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, a specified quantity of specified controlled substances, etc. Effective Date: April 24, 2013 04/24/13 Approved by Governor; Chapter No. 2013-029

HB 0049 Relating to Drug Paraphernalia

Prohibits retail sale of certain drug paraphernalia; provides criminal penalties. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-111

HB 0611 Relating to False Reports to Law Enforcement Officers

Provides that it is 3rd degree felony to knowingly give false information to law enforcement officer concerning alleged commission of crime if defendant has previously been convicted of this offense & information, if communicated orally, is corroborated in a specified manner, or was communicated in writing. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-117

HB 0851 Relating to Animal Cruelty

Specifies that person who commits multiple acts of animal cruelty against one animal or acts of animal cruelty against multiple animals may be charged with separate offense for each such act of animal cruelty; specifies that person who owns or has custody or control of an animal & fails to act commits aggravated animal cruelty if certain injuries or death result; prohibits specific acts relating to dyeing or artificially coloring certain animals; prohibit selling, offering for sale, or giving away as merchandising premiums specified fowl or rabbits to be used as pets, toys, or retail premiums; provides exceptions; including illegal animal fighting or baiting as offense within definition of "racketeering activity" for purposes of Florida RICO Act. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-

Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

HB 0691 Relating to Personal Identification Theft

Defines "personal identification information"; provides that it is unlawful for person to intentionally or knowingly possess, without authorization, any personal identification information of another person; provides penalties; provides that possession of identification information of multiple individuals gives rise to an inference of illegality; provides enhanced criminal penalties for possession of such information of multiple persons; provides exemptions; creates affirmative defenses; provides that act does not preclude prosecution for unlawful possession of personal identification information of another person under any other law. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-

SB 0338 Relating to Theft of Utility Services

Providing additional criminal penalties for utility services wrongfully taken; providing that the person who unlawfully took utility services is liable to the utility for an increased civil penalty subject to the amount of the utility services unlawfully obtained, etc. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-030

HB 1325 Relating to Victims of Human Trafficking

Revises mental, emotional, or developmental age of child victim whose out-of-court statement describing specified criminal acts is admissible in evidence in certain instances; provides for expungement of criminal history record of victim of human trafficking; designates what offenses may be expunged; provides that conviction expunged under this act is deemed to have been vacated due to substantive defect in underlying criminal proceedings; provides for period in which such expungement must be sought; provides that official documentation of victim's status as human trafficking victim creates presumption; provides standard of proof absent such documentation; provides requirements for petitions; provides for parties & service; provides for electronic appearances of petitioners & attorneys; provides for orders of relief; provides for physical destruction of records; authorizes person whose records are expunged to lawfully deny or fail to acknowledge arrests covered by expunged record; provides exceptions; provides that such lawful denial is not perjury or subject person to liability. Effective Date: January 1, 2014 Approved by Governor; Chapter No. 2013-098

HB 1327 Relating to Pub. Rec. /Crim. Hist. /Human Trafficking Victims

Provides exemption from public records requirements for criminal history records of victims of human trafficking expunged under s. 943.0583, F.S.; provides exception; provides for future legislative review & repeal of exemption under Open Government Sunset Review Act. Effective Date: January 1, 2014 Approved by Governor; Chapter No. 2013-099

HB 7005 Relating to Massage Establishments

Revises definition of term "board-approved massage school"; provides additional grounds for denial of license or disciplinary action; revises penalties; prohibits operation of massage establishment during specified times; provides exceptions; prohibits use of massage establishment as principal domicile unless establishment is zoned for residential use under local ordinance; provides penalties; declares that massage establishment operating in violation of specified statutes is nuisance that may be abated or enjoined. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-212

Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

HB 1173 Relating to Florida Communications Fraud Act

Provides limitations period for civil & criminal actions under that act; provides that in criminal proceeding period does not run during any time defendant is absent from state or without reasonably ascertainable place of abode or work within state; limits amount of such exception; reclassifies offense of communications fraud with value greater than \$50,000 on offense severity ranking chart. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-208

HB 0935 Relating to Florida False Claims Act

Revises terminology; authorizes DLA to issue subpoenas for specified purposes before institution of civil proceedings; prohibits specified actions by person, knowing or having reason to believe that subpoena is pending; provides that state may elect to pursue available alternative remedies, including administrative proceedings; specifies what constitutes final finding or conclusion in an alternative proceeding that is binding on all parties to an action under act; revises provisions relating to dismissal of an action if substantially same allegations or transactions as alleged in action were publicly disclosed; provides for treatment for statutes of limitations purposes of pleadings filed in interventions by DLA. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-104

HB 1297 Relating to Pub. Rec. /Florida False Claims Act

Provides exemption from public records requirements for complaint & information held by DLA pursuant to investigation of violation relating to false claims against state; provides for future review & repeal of exemption; provides for specified disclosure; specifies duration of exemption; specifies conditions under which investigation is considered complete; provides statement of public necessity; provides for contingent effect. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-105

SB 0002 Relating to Ethics

Prohibiting public officers from accepting additional employment with the state or any of its political subdivisions under specified conditions; providing circumstances under which the Commission on Ethics must determine if an attorney or a certified public accountant failed to disclose information provided by the filing individual on the filed statement; authorizing the commission to collect an unpaid fine within a specified period of issuance of the final order; deleting references to committees of continuous existence, etc. Effective Date: May 1, 2013 05/01/13 Approved by Governor; Chapter No. 2013-036

SB 0004 Relating to Public Records and Meetings/Commission on Ethics

Creating an exemption from public records requirements for written referrals and related records held by the Commission on Ethics, the Governor, the Department of Law Enforcement, or a state attorney; creating an exemption for records relating to a preliminary investigation held by the Commission on Ethics; creating an exemption from public meetings requirements for portions of proceedings of the Commission on Ethics in which the referrals are discussed or acted upon; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act, etc. Effective Date: May 1, 2013 05/01/13 Approved by Governor; Chapter No. 2013-038

Florida Prosecuting Attorneys Association
2013 Legislative Update
(Continued)

HB 0015 Relating to Funerals and Burials

Prohibits engaging in protest activities within specified distance of property line of location of funeral or burial; provides exception; provides criminal penalties. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-019

HB 0407 Relating to Criminal Gang Prevention

Provides enhanced criminal penalties for certain trespassing offenses in school safety zones by person convicted of certain gang-related offenses; provides enhanced criminal penalties for person who intentionally causes, encourages, solicits, or recruits another person under specified age to become criminal gang member in certain circumstances; authorizes county & municipal detention facilities to designate individual responsible for assessing whether each inmate is criminal gang member or associate; provides duties of such individuals; assigns offense severity rankings for specified violations; revises criteria for application of sentencing multiplier for offenses related to criminal gangs; limits application of multiplier if application would result in lowest permissible sentence exceeding statutory maximum sentence. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-080

HB 0113 Relating to Distribution of Materials Harmful to Minors

Prohibits adult from knowingly distributing to minor or posting on school property certain specified materials harmful to minors; defines "school property"; provides exception. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-075

HB 0875 Relating to Licensed Security Officers

Provides penalties for unlicensed person who engages in activity for which ch. 493, F.S., requires license; provides exception; provides penalties if person commits felony while impersonating security officer, private investigator, recovery agent, or other person required to have license under ch. 493, F.S.; authorizes licensed security officer or licensed security agency manager to detain person on premises of critical infrastructure facility in certain circumstances; provides procedures & requirements with respect thereto; authorizes security officer or security agency manager to search person detained; provides identification requirements for certain licensed security officers & security agency managers; provides immunity to law enforcement officers, licensed security officers, & licensed security agency managers. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-221

SB 0454 Relating to Florida College System Institution Police Officers

Providing for mutual aid agreements involving Florida College System institution police officers; providing for enforcement of traffic laws in certain areas by Florida College System institution police officers; revising provisions relating to the jurisdictional authority of Florida College System institution police officers, etc. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-171

Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

HB 0571 Relating to Marshal of Supreme Court

Marshal of Supreme Court: Requires marshal & his or her deputies to comply with specified requirements for law enforcement officers; specifies that marshal & his or her deputies are law enforcement officers with full powers to bear arms & make arrests under certain conditions; limits use of those powers to performance of official duties for Supreme Court; deletes provisions relating to marshal & his or her deputies being conservators of peace. Effective Date: upon becoming a law 05/30/13 Approved by Governor; Chapter No. 2013-086

HB 489 Relating to Railroad Police Officers

Authorizes temporary appointment of special officers who meet certain qualifications; requires special officers employed by railroad or other common carrier to have specified qualifications & meet specified continuing training or education requirements; provides that Class I, II, or III railroad is considered an "employing agency" for specified purposes & shall pay costs associated with training & continuing education; provides for reclassification of certain offenses committed against railroad special officer. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-114

HB 0585 Relating to Law Enforcement

Revises provisions for criminal history record checks for certain county & municipal employees & appointees; revises duties concerning missing person reporting; specifies additional items to be reported by persons required to register as sexual offenders; limits number of lead-acid batteries that secondary metals recycler may purchase in certain transactions; re-designates statewide automated fingerprint identification system as statewide automated biometric identification system; requires collecting additional information from persons charged with or convicted of specified offenses; increases period in which minor may seek expunction of nonjudicial arrest record following diversion; revises language concerning prior criminal history sealings or expunctions that would preclude sealing or expunction; provides for accreditation of correctional facilities, public agency offices of inspectors general & pretrial diversion programs; revises date of report detailing transportation & protective services provided by FDLE; deletes obsolete provisions; revises terminology. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-116

HB 0217 Relating to Money Services Businesses

Requires licensees engaged in check cashing to submit certain transaction information to OFR related to payment instruments cashed; requires office to maintain transaction information in centralized check cashing database; requires office to issue competitive solicitation for database to maintain certain transaction information relating to check cashing; authorizes office to request funds & to submit draft legislation after certain requirements are met; authorizes FSC to adopt rules. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-139

Florida Prosecuting Attorneys Association
2013 Legislative Update
(Continued)

HB 7135 Relating to Pub. Rec. /Money Services Businesses

Provides exemption from public records requirements for payment instrument transaction information held by OFR; provides for specified access to such information; authorizes office to enter into information-sharing agreements & provide access to information contained in database to certain governmental agencies; requires a department or agency that receives confidential information to maintain confidentiality of information, except as otherwise required by court order; provides for future review & repeal of exemption; provides statement of public necessity; provides contingent effective date. Effective Date: on the same date that HB 217 or similar legislation takes effect. Approved by Governor; Chapter No. 2013-155

HB 0665 Relating to Licensure by Office of Financial Regulation

Licensure by Office of Financial Regulation: Authorizes, rather than requires, OFR to deny mortgage broker license application if applicant had mortgage broker license revoked previously; authorizes, rather than requires, OFR to deny mortgage lender license application if applicant had mortgage lender license revoked previously; revises procedures & requirements for submitting fingerprints as part of an application to sell, or offer to sell, securities; removes conflicting language; revises procedures & requirements for submitting fingerprints to apply for license as money services business; requires OFR to pay annual fee to FDLE; removes conflicting language; requires certain licensees to submit live-scan fingerprints before next renewal period. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-201

HB 0311 Relating to Costs of Prosecution, Investigation, and Representation

Provides for withholding of unpaid costs of prosecution & representation from return of cash bond posted on behalf of criminal defendant; requires notice on bond forms of such possible withholding; clarifies types of cases that are subject to collection & dispensing of cost payments by clerk of court; provides for assessment of costs of prosecution against juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; provides that child adjudicated delinquent may perform community service in lieu of certain costs & fees. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-112

HB 0457 Relating to Collection of Worthless Payment Instruments

Defines "payment instrument"; applies certain provisions relating to civil actions brought to collect dishonored checks, drafts, & orders of payment to specified types of payment instruments to permit award of triple damages, court costs, & reasonable attorney fees, imposition of service charges, & requirements for written demands for payment that must be delivered before commencement of collection actions; authorizes payee of dishonored payment instrument to recover bank fees & service charge without filing civil action. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-113

Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

HB 0609 Relating to Bullying in the Public School System

Prohibits bullying or harassment with respect to computer-related activities; provides that bullying includes cyberbullying; revises components of school district policy on bullying & harassment. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-087

HB 0617 Relating to Juvenile Justice Circuit Advisory Boards and Juvenile Justice County Councils

Re-designates juvenile justice circuit boards as juvenile justice circuit advisory boards; requires each board to have county organization representing each county in the circuit; provides exception for single-county circuits; deletes provisions providing for juvenile justice county councils; revises provisions relating to duties & responsibilities of boards; requires submission of circuit plans by specified dates; revises membership of boards; provides for appointment of members; provides for terms of embers; provides for quorums & for passage of measures or positions; revises provisions relating to bylaws; conforms provisions. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-118

HB 7129 Relating to Residential Services for Children

Provides accreditation requirements for boarding schools; authorizes DCF to impose administrative sanctions or civil remedies when residential group care is being provided without license; requires background screening for certain boarding school personnel; requires boarding schools to follow standard school schedules; provides for fines; provides for appropriations from general revenue funds to DOH for certain health programs benefiting children; limits duty of officer or employee of law enforcement agency to provide notice to DCF of reasonable cause to suspect child abuse; limits duty of Central Abuse Hotline to electronically transfer certain calls & reports to county sheriff's office. Effective Date: July 1, 2013 Appropriation Vetoed but otherwise approved by Governor; Chapter No. 2013-219

SB 0964 Relating to Termination of Parental Rights

Providing that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of unlawful sexual battery; creating a presumption that termination of parental rights is in the best interest of the child if the child was conceived as a result of an unlawful sexual battery; requiring the court to accept a guilty plea or conviction as conclusive proof that the child was conceived by a violation of criminal law, etc. Effective Date: July 1, 2013, and applies to all unlawful acts of sexual battery occurring before, on, or after that date. Approved by Governor; Chapter No. 2013-132

HB 1129 Relating to Infants Born Alive

Provides that infant born alive during or immediately after attempted abortion is entitled to same rights, powers, & privileges as any other child born alive in course of natural birth; requires health care practitioners to preserve life & health of such infant born alive, if possible; provides for transport & admittance of infant to hospital; requires health care practitioner or employees who have knowledge of any violations with respect to infants born alive after attempted abortion to report those violations to DOH; provides penalty; provides for construction; revises reporting requirements. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-121

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SB 0056 Relating to Infant Death

Revising the education and orientation requirements for birth centers and their families to incorporate safe sleep practices and causes of Sudden Unexpected Infant Death; revising legislative findings and intent with respect to the sudden unexpected death of an infant under a specified age; defining the term "Sudden Unexpected Infant Death"; revising provisions relating to training requirements for first responders; revising requirements relating to autopsies performed by medical examiners, etc. Effective Date: July 1, 2013
Approved by Governor; Chapter No. 2013-062

HB 0215 Relating to Dependent Children

Provides legislative findings & intent; provides for participation in age-appropriate extracurricular, enrichment, & social activities by children in out-of-home care; provides for use of reasonable & prudent parent standard for decision making about such activities; clarifies standard for reunification & for changing custody; provides for use of reasonable & prudent parent standard in certain decision making; requires submission of plan for judicial review; provides definition for reasonable & prudent parent standard; provides rulemaking authority. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-0021

HB 7017 Relating to Terms Of Courts

Repeals provisions relating to regular terms of Supreme Court & circuit courts; repeals provisions relating to requiring judge to attend first day of each term of circuit court; repeals provisions relating to requirement for judge to state reason for nonattendance, penalty for nonattendance of judge, adjournment of circuit court upon nonattendance of judge, calling all cases on docket at end of each term, regular terms of district courts of appeal, special terms of district courts of appeal, requirement that criminal trials be heard in term of court prior to civil cases, & requirement that persons in custody be arraigned & tried in term of court unless good cause is shown; conforms provisions; allows Supreme Court to set terms of court for Supreme Court, district courts of appeal, & circuit courts; provides that appellate courts may withdraw mandate within 120 days after its issuance. Effective Date: January 1, 2014 Approved by Governor; Chapter No. 2013-025

SB 0556 Relating to Clerks of the Court

Providing requirements for the storage of papers and electronic filings and requiring that they be stamped with the date and time of submission; authorizing the clerk to remove certain court records from the Official Records; requiring that the clerk provide access to public records without charge to certain persons, subject to a limitation and an exception; providing that the state is not required to pay fees to enforce judgment for costs and fines, etc. Effective Date: July 1, 2013 Approved by Governor; Chapter 2013-109

Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

SB 1512 Relating to Clerks of Court

Transferring the Clerks of the Court Trust Fund from the Justice Administrative Commission to the Department of Revenue; specifying that only certain functions may be funded from fees, service charges, costs, and fines retained by the clerks of the court; providing for remission of certain excess collections to the department for deposit into the General Revenue Fund on specified dates; specifying the authorized budget for the clerks of the circuit court and the corporation for specified periods, etc. Effective Date: Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2013. Approved by Governor; Chapter No. 2013-044

HB 0095 Relating to Charitable Contributions

Defines "charitable contribution" & "qualified religious or charitable entity or organization"; provides that transfer of charitable contribution that is received in good faith by qualified religious or charitable entity or organization is not fraudulent transfer; provides exceptions. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-189

SB 0390 Relating to Veterans' Organizations

Prohibiting a business entity from advertising or holding itself out to the public as a veterans' organization or similar entity under certain circumstances; providing that an entity that violates the restrictions on advertising violates the Florida Deceptive and Unfair Trade Practices Act; prohibiting misrepresentation as a service member or veteran and wearing military or veterans' uniform, medal, or insignia, etc. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-126

HB 0361 Relating to Public Meetings/Criminal Justice Commissions

Provides exemption from public meeting requirements for that portion of meeting of duly constituted criminal justice commission at which specified members of commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, commission; provides for future review & repeal of exemption; provides statement of public necessity. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-196

HB 0171 Relating to Disposition of Human Remains

Revises various provisions relating to procedures for registration of certificates of death or fetal death & medical certification of causes of death; procedures for reporting & disposition of unclaimed remains; disposition of remains of deceased persons whose identities are not known; procedures for anatomical board's retention & use of human remains; final disposition of unclaimed remains of indigent persons; selling or buying of human remains or transmitting or conveying such remains outside state; limitations on liability of funeral directors, funeral or direct disposal establishments, & veterans' service organizations; and repeal of provisions relating to claims of bodies after delivery to anatomical board. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-138

Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

HB 5401 Relating to Transparency in State Contracting

Transparency in Government Spending; Requires EOG to establish single website providing access to other websites; requires office to establish website providing information about fiscal planning for state & specifies information to be included on website; requires DMS to maintain website that provides current information on state employees & officers; requires CFO to establish & maintain secure contract tracking system; requires that exempt & confidential information be redacted from contracts & procurement documents posted on system; authorizes CFO to regulate & prohibit posting of certain information that could facilitate identity theft or cause harm; creates User Experience Task Force to develop & recommend design for consolidating existing state-managed websites, etc. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-054

SB 0112 Relating to Filing False Documents Against Real or Personal Property

Prohibiting a person from filing or causing to be filed, with intent to defraud or harass another, a document relating to the ownership, transfer, or encumbrance of, or claim against, real or personal property, or any interest in real or personal property; establishing reclassified penalties for persons who commit the specified offenses a second or subsequent time when the person is a convicted offender who commits the specified offenses while incarcerated in a jail or participating in a community correctional program and when the victim of the offense is a public officer or employee or incurs financial losses under certain circumstances, etc. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-

HB 0903 Relating to Adverse Possession

Revises terminology; requires certain conditions to be met before real property is legally adversely possessed without color of title; requires person claiming adverse possession to make return of property by providing return to property appraiser using uniform return; specifies contents of return; requires return to contain notice; provides criminal penalties. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-

HB 1075 Relating to Public Records

Provides exemption from public record requirements for complaint of misconduct filed with agency against agency employee & all information obtained pursuant to investigation of complaint by agency; provides for limited duration of exemption; provides for future review & repeal of exemption; provides statement of public necessity. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-

HB 0731 Relating to Pub. Rec. /Spouses & Children of Law Enforcement & Agency Personnel

Creates an exemption from public records requirements for names of spouses & children of specified active or former sworn or civilian law enforcement personnel; provides for future review & repeal of the exemption; creates exemption from public records requirements for names of spouses & children of specified state attorneys & statewide prosecutors; provides for future review & repeal of the exemption; provides a statement of public necessity. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-

Florida Prosecuting Attorneys Association 2013 Legislative Update (Continued)

HB 7079 Relating to Review Under Open Government Sunset Review Act

Removes scheduled repeal of public records exemption for certain information contained in records documenting act of domestic violence or sexual violence which are submitted to agency by agency employee. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-215

SB 0050 Relating to Public Meetings

Requiring that a member of the public be given a reasonable opportunity to be heard by a board or commission before it takes official action on a proposition; providing that compliance with the requirements of this section is deemed to have occurred under certain circumstances; providing that a circuit court has jurisdiction to issue an injunction under certain circumstances; providing that an action taken by a board or commission which is found in violation of this section is not void, etc. Effective Date: October 1, 2013 Approved by Governor; Chapter No. 2013-

HB 0623 Relating to Wine

Provides exception to maximum allowable capacity for individual containers of wine sold in this state; provides that wine sold or offered for sale by specified vendors shall be in unopened original container. Effective Date: July 1, 2013 Approved by Governor; Chapter No. 2013-199

