

LAW ENFORCEMENT NEWSLETTER

January 2013

A MESSAGE FROM BILL CERVONE STATE ATTORNEY

Over the last year or so my office has been presented with several possible cases involving local law enforcement officers mis-using computer access to one data basis or another. The reasons for that having been done range from the innocuous to the suspicious if not worse, but I

won't go into details. Suffice it to say that this is not a problem unique to us.

For example, as a worse case scenario, at least from a law enforcement point of view, a Tennessee police officer was federally indicted in 2012 and charged with not just ac-

cessing NCIC information without legitimate cause but also then providing information to another person who used it to further a criminal enterprise. To complicate his problems, he then lied about it when confronted, leading to additional charges in the nature of perjury.

Closer to home, one of my fellow State Attorneys elected to leave office last year rather than deal with similar issues of inappropriate or unauthorized accessing of information.

Let's be honest with each other: the temptation is there, the access is easy, and many of us have or know of people who have bent the rules regarding this. Doing so is some-

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SAO PERSONNEL CHANGES

There have been many changes in staffing at the SAO over the last few months, and several more are anticipated.

First, replacing Bo Bayer in Union County is Shawn Thomp-

son. Also in the regional counties, ASA Glenn Bryan has moved from Levy County to Bradford County as the Division Chief there. ASA Bill Ezzell is the new Division Chief in Levy County.

Filling the felony vacancies some of these moves make in Gainesville will be ASA Duane Triplett and Stephanie Burt, an ASA from the 5th Circuit who has trans-

Continued Page 2



MESSAGE FROM BILL CERVONE CONTINUED

where between a violation of agency policy and a criminal violation. And doing so leaves an indelible footprint - nothing electronic goes away with a stroke of the delete key.

In some ways it's a very new day out there. Let's all be smart about what we're doing and make sure we're not doing something deliberately or inadvertently wrong.



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

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SAO PERSONNEL CHANGES

ferred to the 8th Circuit. Stepanie previously interned for SAO8. Also moving into a Gainesville felony position will be ASA Brian Rodgers.

Two new ASAs joined the office in January in the Gainesville County Court division, Victoria Armstrong and Jonathan Turner. Victoria is a recent graduate of

Florida Coastal School of Law. Jonathan has been practicing with the Gainesville firm of Scruggs Carmichael in civil litigation for about three years.

Finally, ASA Erin Simendinger will leave the 8th Circuit in mid-January and transfer to the 13th

Circuit SAO in Tampa. ASA Adam Lee also leaves us in mid-January for a job in private practice in Gainesville with Infinite Energy. Replacements for Erin and Adam will announced shortly.



**We're on the web:
Www.sao8.org**

Any changes in agency email addresses should be reported to our office at manns@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 Spencer Mann at the SAO at 352-374-3670.

CONGRATULATIONS TO...

...ASAs Lindsay Morauer, Jonathan Ramsey, and Macon Jones, all of whom passed the Florida Bar exam and became members of the Florida Bar in September.

...ASA Bo Bayer, who was elected County Judge in Union County in November, and took office on January 8th. Bo served with distinction as Union County's ASA for nearly 15 years.

...Former SAO Investigators Bobby McCallum and Bobby Schultz, who were elected Sheriff in Levy and Gilchrist Counties

respectively and who also officially took office on January 8th.

...County Judge and former ASA Phil Pena on the birth of his first daughter, Lauren, in December.

...ASA Jesse Irby, who resigned in December to take a position as a Deputy Court Administrator with the 8th Circuit courts.

...Judges Ed Philman, Gilchrist County, and David Reiman, Union County, both of whom retired from the bench at the end of 2012 after long careers

serving the people in not just their counties but the entire circuit.

...New Gilchrist County Judge Sherre Lancaster, who took office on January 8th.



State Attorney Bill Cervone with new ASAs Lindsay Morauer and Jonathan Ramsey, who became Bar Members on September 18, 2012.



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How You Read Miranda Warnings CAN Matter!

Like so many other things we deal with in making cases, how you do things can be just as important as what you do. Officers should always remember that while it may seem like form over substance, the reality of trials and suppression hearings is that juries and judges will consider and be swayed by how you do what you do.

A recent case from the 1st DCA, which as you know controls appeals from the 8th Circuit, highlights this in the context of giving Miranda warnings. Although the case provides little detail and while the confession that was involved was not suppressed, one judge wrote a concurring opinion that not only criticized the officers for how they provided Miranda warnings but also and more importantly suggested that the manner of reading them could be a basis

for finding that they were not meaningfully delivered and that a confession that followed should be suppressed.

The judge specifically referred to the warnings as having been given "in a rapid fire manner" and that that "was problematic." The judge goes on to say that Miranda warnings should "be communicated at a normal cadence." As a final parting shot, he goes on to add that "No matter what this officer or any other person feels about the necessity of providing the Miranda warnings to a suspect likely to already be familiar with his or her rights, it is the law of the land. A trick, such as speeding through the warnings, is just the 'slight deviation' that should not be used to circumvent the law or encroach on a suspect's rights."

Fortunately, the majority of the panel that resolved this particular appeal did not agree that there was a problem warranting reversal but the point is nonetheless clear. In a day and age when Miranda warnings are likely to be recorded for all to hear it is important that they be given in a way that prevents any judge or jury from believing that the defendant didn't have a fair chance to understand them. After all, the whole point of the warnings is the end when a suspect is asked if he or she understands. Let's not give the defense any un-necessary ammunition with which to fire off a claim that there could not have been any understanding of the warnings and that a confession should be tossed out.



The Florida Department of Law Enforcement

Important Update: DNA Expansion



Executive Summary:

On January 1, 2013, DNA collection from qualifying offenders will expand to include collection (upon booking) from persons arrested for felony charges defined in Florida Statutes Chapters 810 (Burglary and Trespass) and 812 (Theft, Robbery, and Related Crimes).

The Florida Legislature has provided funding appropriations allowing FDLE to accept and process DNA from arrestees as outlined in Section 943.325(3)(b), Florida Statutes. The state currently has funded the collection of DNA from arrestees charged with felonies defined by chapters 782 (Homicide), 784 (Felony Assault/Felony Battery), 794 (Sexual Battery) and 800 (Felony Lewd & Lascivious).

Beginning January 1, 2013, all persons

arrested for a felony defined by chapters 810 (Burglary and Trespass) and 812 (Theft, Robbery, and Related Crimes) will be required to submit a DNA sample to the FDLE DNA Database at the time they are booked into a jail, correctional facility, or juvenile facility.

DNA should continue to be collected from persons convicted of a felony or specified misdemeanor as defined in Section 943.325, unless a sample has already been collected from the person convicted.

The FALCON Rapid ID system provides a mechanism to biometrically identify the qualifying offender or arrestee and determine if his or her DNA is already on file. This method of collection reduces the number of

duplicate submissions, saves resources and effort at the collecting agency and the FDLE DNA Investigative Support Database, and replaces hand-written cards with a computer generated form and barcode thereby reducing errors and missing data fields.

If you have any questions, please contact the DNA Investigative Support Database by phone at (850) 617-1300 or by email at: dnadatabase@fdle.state.fl.us.

Important Information for: All Law Enforcement Personnel, Agency Heads, Arrest Booking Personnel, all Administrators, Juvenile Facility Personnel, Terminal Agency Coordinators and Local Agency Instructors

TRAVELERS

Contributed by ASA Sean Brewer, Division Chief, Crimes Against Women And Children

No, not the insurance company. The ones who were willing to drive considerable distances thinking that they are about to hook up with an under-aged girl. The ones who didn't know that the person they were chatting up on the Internet was actually a cop. The ones who ended up being surprised at not only being arrested but also being in big trouble. You've seen them on various TV shows covering these kinds of undercover operations.

In Alachua County during 2012 the law enforcement community made a concerted effort to deal with these cases. While some went to the federal courthouse, 30 were brought to the SAO. Of that 30, one case was not filed because of legal issues dealing with entrapment.

The other 29 were filed, and of those so far 10 have entered negotiated pleas with resulting sentences from one to six years in prison followed by a term of years of sex offender probation. Two others pled without a negotiation, both of whom received county jail sentences instead of prison sentences, sentences which the State objected to but which the judges imposed regardless. In one of those two, the State was able to appeal the judge's decision, and that appeal is pending; the circumstances of the other precluded an appeal.

Only one case went to trial, and in that case Assistant State Attorney Katrina Harden won a jury conviction. Sentencing has not occurred as that trial was in December, but the defendant's score

sheet calls for a prison term of at least four years. This trial was the first of its sort in our Circuit in state court; several have been tried successfully in federal court as well.

The remaining 16 cases are still pending, but based on the results to date those defendants probably shouldn't make any immediate plans involving freedom of movement. The moral of the story is that all involved from law enforcement through the courtroom can take pride in what's been accomplished. A special note of thanks goes to ICAC, the Interstate Crimes Against Children taskforce, for a terrific job in putting these cases together.

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2012 Updates to Traffic Laws

Contributed by ASA Erin Simendinger

The following are some important updates for our local law enforcement agencies of legislative changes related to traffic and motor vehicle laws that were enacted during the 2012 Legislative Session. Please review the complete version of the law for further details.

Effective 07/01/2012:

- 316.066(1)(a)—The requirements for law enforcement to utilize a long-form crash report are expanded to include crashes involving a person with indication of pain or discomfort, a crash rendering a vehicle inoperable and all crashes involving a commercial motor vehicle.

- 316.066(1)(e)—the \$500 threshold for property damage relating to crash reports is removed from statute.

Effective 01/01/2013:

- 316.2085(3)— the license plate of a motorcycle must remain clearly visible from the rear at all times. Any deliberate act to conceal or obscure the plate is prohibited. Motorcycle plates may be displayed perpendicular to the ground however the operator must pay any required tolls by whatever means available.

- 316.2397(7)—motorists may intermittently flash their headlamps at oncoming traffic, without regard to intent.

- 316.6135(1)(b)— parents or legal guardians may not leave a child unattended in a motor vehicle for any period of time of the vehicle is running and the child appears to be in distress.

- 320.02(2)- an active duty member of the military is exempt from the requirement to provide the street address of a permanent Florida residence

- 320.061- it is unlawful to alter a temporary license plate.

- 322.04—a nonresident must have in his/her possession a valid driver license from another state or territory of the U.S. or an international driving permit issued by his/her country of residence and a valid license from that country.

- 322.065— a person whose driver license is expired for 6 months or less and drives, commits an infraction.

- 322.251—suspension notices for financial responsibility sanctions are complete upon the expiration of 15 days after deposit in the U.S. mail.

The following are two statutes that are particularly important for attorneys handling traffic cases. These updates become effective 01/01/2013:

- 316.655(2)— the court may only impose a driver license suspension for any additional reason beyond what is already outlined in law if the convicted driver was also involved in a crash.

- 322.251—suspension notices for financial responsibility sanctions are complete upon the expiration of 15 days after deposit in the U.S. mail.





The Florida Department of Law Enforcement
Important Update:
Florida Blue Alert Plan
(Formerly known as Law Enforcement Officer (LEO) Alert Plan)
(Replaces CJIS Memorandum 2010-12)



Released: December 2012

CJIS Memorandum: 2012-18

Executive Summary:

The Florida Blue Alert Plan (formerly known as Law Enforcement Officer Alert Plan) is to ensure that information will be broadcasted through dynamic highway message signs and other appropriate notification methods to increase the chances of capturing the suspect(s) responsible for injuring, killing or abducting a law enforcement officer.

The Florida Blue Alert Plan is a cooperative effort by the Florida Department of Law Enforcement (FDLE), the Florida Department of Transportation (DOT), and the Department of Highway Safety and Motor Vehicles' Florida Highway Patrol (FHP).

On October 1, 2011, an Executive Order was signed to establish the Florida Blue Alert Plan (Florida Statute 784.071). The Blue Alert, which uses some of the technologies employed in an Amber or Silver Alert, was created in response to the increasing number of law enforcement officers in the state who were killed, injured or abducted in the line of duty. In some of these cases, the offenders used vehicles to flee and attempt to escape. Under this plan, when the criteria are met, FDLE, DOT, and FHP will activate dynamic highway message signs to immediately broadcast important information about the offender/vehicle involved in an incident.

Local agencies are encouraged to adopt the standardized criteria identified below and incorporate them into their local plan. When creating a local plan, we also encourage agencies to add other specific information from community resources and to develop policies and procedures that will work best in their respective jurisdictions to assist with the broadcasting of information to the public and the media.

To activate a Blue Alert, the following four criteria must be met:

1. A law enforcement officer must have been seriously injured or killed by an offender(s) or is missing while in the line of duty under circumstances evidencing concern for the law enforcement officer's safety.

2. The investigating law enforcement agency must determine that the offender(s) poses a serious risk to the public or to other law enforcement officers and dissemination of available information to the public may help avert further harm or assist in the apprehension of the suspect.

3. A detailed description of the offender's vehicle or other means of escape, including vehicle tag or partial tag, must be available for broadcast to the public.

4. The local law enforcement agency of jurisdiction must recommend issuing the Blue Alert.

In addition to the criteria being met, the following steps must occur in order to activate a Blue Alert:

1. The local law enforcement agency of jurisdiction calls FDLE's Florida Fusion Center (FFC) Watch Desk at (850) 410-7645 or (800) 342-0820, which is manned 24 hours a day, seven days a week.

2. FDLE's on-call supervisor will work with the investigating agency to offer assistance, ensure that the activation criterion have been met and determine if the alert will be displayed regionally or statewide.

3. FDLE will work with the investigating agency to prepare information for public releases, including suspect and/or vehicle information, as well as agency contact information.

4. FDLE will contact the FHP's Regional Communications Center to send the Blue Alert. The communications supervisor will relay that information to other regional communication centers where the activation is taking place.

5. FDLE will contact FDOT's Regional Transportation Management Center to develop the message content using the FDOT-approved template which includes vehicle information, tag number and other identifiers.

6. FDOT will display the message until the offender(s) is captured or for a maximum of six

hours. The alert will be displayed on dynamic highway message signs on all requested highways unless a traffic emergency occurs, which requires a motorist safety message to be displayed. FDOT also will record a Blue Alert message on the 511 system when the Blue Alert is activated.

Note: The Watch Desk will facilitate the broadcasting of the alert to the public via television and radio through the Emergency Alert System. Law enforcement agencies will receive a Florida Administrative Message (FAM) through the Florida Crime Information Center (FCIC) system regarding the Blue Alert details.

7. The same activation steps will be used if there is revised vehicle information or a broadcast area is changed.

8. Once FDLE is notified that the offender(s) have been captured, FDLE will contact the appropriate parties to cancel the alert.

Each activation will be reviewed by a committee of state agency partners and law enforcement representatives to ensure that the criteria and goals are met and that each activation took place in a timely fashion.

To receive instant notification when a Blue Alert is issued, register on www.floridabluealert.com.

For more information about the Florida Blue Alert Plan, contact the FDLE Florida Fusion Center Watch Desk at (850) 410-7645 or (800) 342-0820

Important Information for: Terminal Agency Coordinators (TAC), Local Agency Instructors (LAI), FCIC Users, Agency Administrators, All Law Enforcement Officers, Public Information Officers, Dispatchers and Policy Makers

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DJJ Roadmap to System Excellence

Contributed by ASA Rebecca Mickholtzick

During the fall of 2012, the Florida Department of Juvenile Justice (DJJ) unveiled the agency's immediate and long-range plans and strategies in the DJJ Roadmap to System Excellence (Roadmap). The Roadmap lays out DJJ's goals and plans for changes within the agency in future years. While the Roadmap proposes some very beneficial changes in DJJ policies and procedures, including a focus on prevention, diversion, intervention, and reentry, some parts of the Roadmap should raise concern with those working in a law enforcement arena, including sections that propose decreases in the use of secure detention and residential commitment.

To fully understand the implications of the Roadmap, it is important to understand the philosophy DJJ has adopted over the past few years. Many of the policies and procedures that DJJ has adopted lack an emphasis on accountability, personal responsibility, and ultimately, public safety. These policies and procedures are often driven by a reliance on assessment tools utilized by DJJ such as the Prevention Positive Achievement Change Tool (P-PACT), (an instrument that is used to assess the needs and risk factors of at-risk youth) and the Detention Risk Assessment Instrument (DRAI). Examples include:

DJJ Detention Pilot Project: A method of "scoring" defendants on the Detention Risk Assessment Instrument that yields lower scores for certain defendants thereby allowing home detention or outright release on juveniles who might have otherwise been detained.

Progressive Action Response Plans: DJJ making internal decisions on how to handle technical violations of probation instead of notifying the State and the Court by filing formal violation of probation affidavits.

Commitment Policy: Not permitting recommendations for commitment to a residential facility if a juvenile scores as a low risk to reoffend on the PACT assessment tool.

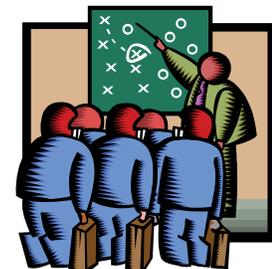
Recently passed statutes and DCA decisions only compound the issues created by DJJ philosophy and policies by significantly tying the hands of prosecutors and Judges. Limitations placed on the Judiciary, coupled with an obligation to adhere to DJJ recommendations and assessment tools, has taken decision making power away from Judges who

may best know the needs of a child and the risk a child poses to the public. This results in a juvenile justice system that is almost an entirely administrative process. Examples include:

Detention Status: Limits on judicial discretion to deviate from the Detention Risk Assessment Instrument Score in secure detention or home detention decisions. This potentially results in release of those who may pose a risk to public safety or those who have repeatedly violated the conditions of their juvenile probation.

Residential Commitment: F.S. 985.441 significantly limits the Courts from committing juveniles on misdemeanor offenses and violations of probation. Furthermore, caselaw limits the ability of the Court to deviate from DJJ disposition recommendations.

While the Roadmap does not lay out specific details of each part of DJJ's plan, a review of the Roadmap goals indicates that the Department of Juvenile Justice plans to advance the type of philosophy it has adopted over the past few years. This promotes a juvenile justice process that relies even more heavily on DJJ policies, procedures, and assessment tools and one that encourages a greater use of community services while reducing or eliminating the use of secure detention and commitment facilities. This system does not effectively establish accountability measures nor does it make public safety a number one priority. It is important for the law enforcement community to be aware of the potential issues and consequences involved in the proposed changes and to be involved in the legislative conversations that will follow in the coming months.



NOISE STATUTE TOSSED BY SUPREME COURT

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As you may recall, FS 316.3045, which
outlaws loud noise audible from more
than 25' away, was ruled to be uncon-
stitutional by the 2nd DCA in 2011.
That was the subject of an article in the
January 2012 Legal Bulletin, and as
was noted then the 2nd DCA opinion
was being appealed to the Florida Su-
preme Court. The Supreme Court has
now agreed with the 2nd DCA, meaning
that this statute is invalid.

The case involved, Catalano v State,
involved people who were cited for play-
ing music in their car at such a volume
that it could clearly be heard further
than 25' away. This violated both the
statute and DHSMV Rule 15B-13.001
that was promulgated to enforce it.
Several challenges to the statute were
involved. First, the defendants claimed
that the statute was unconstitutionally
vague. The Supreme Court dismissed
this complaint, finding that the 25'
standard for what was plainly audibly
provides fair warning and objective
guidance that sufficiently prevents arbi-
trary and discriminatory enforcement.
In other words, it is not a standard that
calls for police to judge whether a par-
ticular noise is excessive, raucous, dis-
turbating, or offensive; if an officer can
hear it from more than 25' away it is in
violation.

That, however, does not save the stat-
ute because the Supreme Court con-
cluded that it is impermissibly over-
broad and infringes on fundamental
rights. The Court explained that the
right to play music, including amplified
music, in public is protected under the
1st Amendment as free speech and
while that right may be reasonable re-
stricted as to time, place and manner,
any restrictions must not be content
based. That is where the statute fails
because it excepts business or political
"noise" being broadcast from a vehicle.
While protecting the public from exces-
sively loud noise is a compelling state
interest, the Court concluded that any
methodology to do that cannot pick and
choose what noise is allowed and what
noise is not on the basis of content.

Interestingly, the Court also comment-
ed that the State's argument that it
also had a compelling interest in traf-
fic safety was not necessarily so, at
least as applied in a situation involving
noise. Apparently, the Court was un-
convinced that noise of the sort at
issue posed a traffic hazard.

In any event, at least until the legisla-
ture takes action, if it does, to revise
FS 316.3045 that statute may not be
used for any purpose, either enforce-
ment through the civil process it sets
out, as a justification for a vehicle stop
when something else such as the dis-
covery of narcotics results, or other-
wise. Likewise, any municipal or coun-
ty ordinance patterned after FS
316.3045 also falls. The Catalano
decision does appear to leave room
for the enactment of valid laws regu-
lating noise so long as those do not
try to say what kind of noise is allowed
and what kind is not, and does clearly
endorse the concept that a distance
limitation such as the 25' rule in FS
316.3045 is valid, meaning that any
local ordinance that does not suffer
from the overbreath problems in FS
316.3045 might still be valid and en-
forceable.

