

# The Rap Sheet

Katherine Fernandez Rundle

Miami-Dade State Attorney



1 October 2010

## POLICE-PROSECUTOR COORDINATING COMMITTEE

### Steering Committee:

Kristi Bettendorf, ASA, Chair  
State Attorney's Office  
(305) 547-0220

e-mail:

KristiBettendorf@MiamiSAO.com

José Arrojo, Chief ASA  
State Attorney's Office  
(305) 547-0309

e-mail: JoseArrojo@MiamiSAO.com

Naim R. Erched, Assistant Director  
Police Services

Miami-Dade Police Department  
(305) 471-2625

e-mail: nerched@mdpd.com

Frank Ledee, ASA  
State Attorney's Office  
(305) 547-0853

e-mail: FrankLedee@MiamiSAO.com

Chief Fred Maas  
Sunny Isles Beach PD  
(305) 947-4440

e-mail: mikegrand@mindspring.com

**Members of the Crimes  
Against Law Enforcement  
Officers Subcommittee are  
listed on the back page**

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## There will be a meeting of the **Crimes Against Law Enforcement Officers Subcommittee**

Immediately following the October PPCC Meeting  
**Wednesday, October 20, 2010 1:45 p.m.**

### Summary of PPCC Meeting September 15, 2010

Agencies represented: SAO, M-DPD, Sunny Isles Beach PD, FDABT, Miami PD, Hialeah PD, Miami Beach PD, Miami Gardens PD, Coral Gables PD, Miami Shores PD, Miami Springs PD, North Miami Beach PD, and Surfside PD

### Agenda Items:

#### E mailing of Police Reports:

As of the meeting date, there were 7 of the 15 agencies that have set up email boxes for the scanning and emailing, or electronic transmission of, police reports to the State Attorney's Office who had not yet begun to utilize them. They were urged to begin sending their reports on arrest (misdemeanor and felony), PTA, and particularly DUI cases to their email box so that they can be accessed by SAO personnel without having to make a request to your agency. If your agency would like to participate in this process, you may contact Hamilton Davies in the Information Systems unit in the State Attorney's Office who can set it up for you almost instantaneously!

#### Crimes Against Law Enforcement Officers Subcommittee:

We discussed the unique function of the Crimes Against Law Enforcement Officers Subcommittee and reminded those present that an officer who wishes to discuss the manner in which a case that they are a victim in is being handled, may contact any member of this subcommittee, who will then bring the matter to the attention of the SAO. The subcommittee member should contact the SAO Co-Chair of the subcommittee, Chief Assistant Jose Arrojo, to initiate an inquiry. Feel free to contact Kristi Bettendorf if you are unable to reach Jose Arrojo. There will be a meeting of this subcommittee immediately following the October PPCC meeting, to be held on October 20th. Members of the subcommittee can plan to attend at 1:45 p.m., if they won't be attending the preceding PPCC meeting, which begins at 1:00 p.m.

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### **IMPORTANT!**

Next PPCC meeting, **Wednesday, October, 2010, 1:00 p.m.**  
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136  
All are invited to attend

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### **Warrantless Searches of Cell Phones:**

Brenda Mezick, who authored the article on this topic in September's issue of *The Rap Sheet*, and fellow ASA in the SAO Cyber Crimes Unit Brad Sturges, attended the meeting in follow-up to the topic. Officers were encouraged to contact the Cyber Crimes Unit for any assistance they needed in obtaining search warrants for cell phones, computers, or other electronic devices.

### **Subcommittee Co-Chairs:**

A couple of the PPCC's subcommittees are in need of co-chairs. ASA Nneka Uzodinma was at the meeting; she has recently taken over as the SAO co-chair of the Pawnshop Subcommittee. We are still in need of a police co-chair. Sgt. Melissa DeJong from Coral Gables PD volunteered to co-chair the Juvenile Subcommittee.

### **Legislative Update:**

Some of the laws enacted by this year's legislature appear in this issue.

### **Minor Victims and Witnesses:**

When you are listing minor victims and witnesses on the back of the pink copy of your A-form, please include the name of the minor's parent or guardian as well. We are required to have this information when we serve subpoenas; your assistance in this area will be greatly appreciated.

### **Issues from the Floor:**

#### **Investigative Cost Recovery Forms:**

Jose Diez from Miami PD asked if these forms could be sent to us electronically. Great question and perhaps that would be possible in the future, but for now we need the hard copies in our files. It was suggested that Cost Recovery forms on misdemeanors and traffic could be stapled to the A-form, forms on felony cases should be brought to the prefile conference. It is important that we receive them prior to arraignment, so that they may be included on cases that close then.

#### **Officers Not Calling to Schedule PFCs:**

Yvonne O'Cana from the SAO Case Screening Unit advised that the number of officers not calling to schedule prefilng conferences on their felony arrests remains high. She has numbers for each department if you are interested in learning if this is a problem at your agency.

#### **Question re: Miranda Rights:**

For the second time in as many weeks, I've received an inquiry about what seems to some to be the "relaxing" of the *Miranda* requirements. Yes, it seems that recent case decisions have been very generous in their interpretations of what can be understood from the manner in which the rights are given. However, when asked if one of the warnings could be dropped from the standard currently in use, all were urged not to make any changes to their rights forms/cards as currently written.

#### **eNotify:**

Elena Reyes, SAO, County Court administrator, advised that there was a meeting scheduled at Coral Gables PD to discuss and try to resolve any problems being experienced with eNotify, as the paper back-up to the electronic notices will soon be eliminated.

The next PPCC meeting will be held on October 20, 2010. All are welcome to attend.

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## **Summaries of a Selection of the New Laws From the 2010 Legislative Session**

### **Effective May 13, 2010:**

Chapter 2010-80 :

#### **316.0083 – Red Light Violations**

New subsection (7) of 316.008 gives counties and municipalities the authority to use "traffic infraction detectors" for violations of 316.074(1) and 316.075(1)(c)1. Most of the rest of this bill is dedicated to spelling out the rules and procedures for their use.

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The traffic infraction detectors must meet DOT specifications and be tested at regular intervals. Signage is required to advise the public of the existence of such a device at a particular intersection. Municipalities are restricted to traffic signals within their municipalities and counties are limited to the unincorporated areas. Citations so issued are to be mailed to the registered owner of the automobile within

30 days. Vehicle owners then have 30 days to either pay the fine (\$158) or submit an affidavit, according to the requirements of the statute, establishing why he should not have to pay it. The submission of a false affidavit is a second degree misdemeanor. New subsection 316.640(1)(b)3 provides for the designation of "traffic infraction enforcement officers" for the purpose of enforcing these violations.

### **Effective May 26, 2010:**

#### **Chapter 2010-92:**

New offenses are created in s. **856.022**. Subsection (3) prohibits **persons convicted of a sexual offense against a minor** from loitering and prowling within 300 feet of a place where children are congregating. It is also illegal [subsection (4)] for such a person to knowingly approach, contact or communicate with a child under 18 in or on any public park or playground with the intent to engage in conduct of a sexual nature or to make any communication with any content of a sexual nature. The underlying offense for which the person was convicted must have been committed on or after May 26, 2010 for this new law to apply. It is also illegal for such a person to be present in a child care facility or school (pre-K through 12<sup>th</sup> grade), or on the real property thereof, when they are in operation unless the person has previously given written notification of his or her intent to be present. If such a person fails to notify the appropriate party of his or her arrival and departure, or fails to remain under direct supervision while on the premises, it is also illegal. These are all first degree misdemeanors. This section does not apply when the locale is a voting location and the person is voting, or when the person is dropping off or picking up their own child or grandchild.

There is a new definition for "transient residence", for registration purposes. It means a place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and that is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. Registration now allows a "transient" address at registration.

Section 794.065 (residency restrictions) is now section 775.215. An amendment provides that a registrant does not violate this section if he or she lives in a certain locale and one of the prohibited properties (i.e., child care facility, park, playground or school) is subsequently established within 1,000 feet of his or her residence. Per subsection 775.215(3)(a), a person who is convicted of an offense in another jurisdiction similar to 794.011, 800.04, 827.071, 847.0135(5) or 847.0145 (adjudication withheld or not) in which the victim was younger than 16, the same residency restrictions apply. If the other jurisdiction conviction was for an offense with a penalty similar to a first degree felony or higher, violation is a third degree felony. If the offense is likened to a third or second degree felony, violation is a first degree misdemeanor. This subsection only applies when the offense in another jurisdiction was committed on or after May 26, 2010.

A new subsection (12) was added to section 947.1405 about the conditional release program. Subsection (12) dealing with sexual offenders and predators with certain specified parameters, whose victims were under 18 at the time of the offense, requires that conditional release programs must impose conditions prohibiting visiting schools, child care facilities, parks and playgrounds without prior approval, unless attending religious services or picking up or dropping off their child or grandchild. In addition, such offenders are to be prohibited from distributing candy or other items to children on Halloween, from wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas, wearing an Easter Bunny or similarly attractive costume on or preceding Easter, entertaining at children's parties or wearing a clown costume, without prior approval. The same provisions are required for those being placed on probation or community control.

#### **Chapter 2010-115:**

The **names, addresses** and phone numbers of **stalking victims** and aggravated stalking victims are made exempt from the public-records requirements, pursuant to this amendment to section **97.0585**.

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**Effective July 1, 2010:**

**Chapter 2010-54:**

The **statute of limitations** for both civil (under 95.11) and criminal (under 775.15) actions for violations of 794.011 (**sexual battery**) involving a child under the age of 16 were eliminated and such actions can be commenced at any time, provided that the action was not time barred on or before July 1, 2010.

**Chapter 2010-62:**

Section **790.065**, which deals with the sale and delivery of **firearms**, was amended with regard to the procedure to be used when an individual who has been "**adjudicated mentally defective**" and is therefore prohibited by federal law from owning a firearm, seeks to remove this designation from the records kept by FDLE for use when they are conducting background checks on firearm purchasers. Previously, the law permitted the individual to simply request that their name be deleted from the list 5 years after they were ordered restored to competency by a court or presented a certificate from a licensed psychiatrist that he or she has not suffered from the disability for at least 5 years. Now, such individuals are required to petition the circuit court, with a copy to the State Attorney, for relief from the firearm disability. The state attorney may object to the petition and request a hearing.

Section 943.05, on the Criminal Justice information Program, was amended such that any criminal justice agencies that submit prints for employment background checks must specifically request, in writing, that they are requesting retention of the submitted prints. The amendment also provides that it is subject to FDLE's ability to fund and equip the request. It further provides that employees must be notified of the agency's intent to request that their fingerprints be retained for future searches against arrest prints and that FDLE be notified when the individual is no longer employed with their agency and the agency, therefore, no longer needs FDLE to report future results to them. Upon such a notice, the agency will no longer have to pay to FDLE the annual fee required for the retention and searching of that person's fingerprints.

An amendment to subsection 943.12(16) provides that the Criminal Justice Standards and Training Commission shall adopt rules requiring the demonstration of proficiency in firearms for all law enforcement officers, including the frequency of the demonstrations and the consequences for officers failing to demonstrate proficiency with firearms.

**Chapter 2010-69:**

New subsection (10) to **775.261** (the Florida Career Offender Registration Act) provides that it is a first degree misdemeanor for a person who believes that a career offender has not registered pursuant to this section, and with the **intent to assist the career offender in eluding law enforcement**, to withhold information from, or fail to notify, the law enforcement agency about the career offender's non-compliance and, if known, the whereabouts of the career offender. It is also an offense to harbor or attempt to harbor, or conceal or attempt to conceal such career offender, or to provide false information to law enforcement.

**Chapter 2010-118:**

**Retail sale of certain smoking pipes** and devices is a first degree misdemeanor in new section **569.0073**, with certain exceptions. The statute does not apply to retail tobacco products dealers permitted under s.569.003 that derive more than 75% of their annual gross revenues from other products or who derive no more than 25% of their gross revenues from the sale of the following items:

- a.) Metal, wooden, acrylic, glass, stone, plastic or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls
- b.) Water pipes
- c.) Carburetion tubes and devices
- d.) Chamber pipes
- e.) Carburetor pipes
- f.) Electric pipes
- g.) Air-driven pipes
- h.) Chillums
- i.) Bonges
- j.) Ice pipes or chillers.

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Chapter 2010-191:

Additional restrictions have been added regarding the **retail purchase of “ephedrine or related compounds”** found in section **893.1495**. Subsection (2) now limits the amounts that may be purchased to no more than 3.6 grams in a single day, no more than 3 packages (regardless of weight) in a single purchase, and no more than 9 grams in any 30-day period by one person. New subsection (5)(a) provides that any purchasers must be over 18, produce a government-issued photo ID and sign their name on a record of the purchase. New subsection (5)(b) provides that FDLE will approve an electronic, real-time, recordkeeping system so that these purchases can be monitored. The law provides for a January 1, 2011 deadline for implementation. Certain pharmacies and retailers may be determined to be exempt from this electronic recordkeeping.

Chapter 2010-198:

Amendments to section **319.30** affect the **sale of derelict motor vehicles**. In subsection (f), the definition of “derelict motor vehicle certificate” changes from that which can be completed by an owner, transporter, and salvage motor vehicle dealer, to one which must be issued by DSHMV after certain procedures are completed. A definition for the “seller” of a derelict motor vehicle has been added, specifying that it is either the owner of record or a person with physical possession and responsibility for the derelict vehicle and who has attested that possession was obtained through lawful means, along with the ownership rights. The “seller” cannot be a towing company, repair shop or landlord unless they have obtained title, salvage title, or a certificate of destruction in their name.

Changes to subsection 319.30(2)(c)2 provide for notification and holding requirements with regard to the sale of a derelict motor vehicle with active liens that are less than 3 years old. Applications to DSHMV for a certificate of destruction must now be accompanied by a legible copy of the seller’s or owner’s Florida DL or ID card (or one from another state) and if the seller is not the owner, a right thumb print must be affixed to the certificate application and a copy of the seller’s DL or ID. Similar requirements apply when the seller is a secondary metals recycler. If you regularly deal with salvage or derelict vehicles, please read the changes to this section carefully; this is just a summary.

**Effective October 1, 2010:**

Chapter 2010-46:

“**Homeless status**” is added to section **775.085**, regarding **crimes evidencing prejudice** while committing an offense. “Homeless status” is defined as a victim who lacks a regular, fixed, adequate nighttime residence or has a nighttime residence that is a shelter or a public or private place not designed for regular sleeping accommodations for human beings.

Chapter 2010-51:

Section **836.10** deals with **written threats to kill or do bodily harm**, a second degree felony. “Electronic communication” was added to the types of ways in which this act may be violated.

Chapter 2010-87:

Section **500.451** is amended to make it a third degree felony to **sell** in the markets of this state **horse meat for human consumption**, except under certain regulated circumstances, or to knowingly transport, distribute, sell, purchase, or possess horsemeat for human consumption, with a minimum mandatory \$3,500 fine and a minimum mandatory period of incarceration for 1 year. It also provides for the suspension of retailers’ licenses upon conviction of an owner or employee for such an offense.

Chapter 2010-107:

New subsection **322.331(b)** provides for a second means of **restoring a license after an HTO revocation**. If the person’s license was revoked [as an HTO pursuant to 322.27(5)] as a result of a third DWLS which occurred prior to July 1, 2010, and the person provides proof of compliance as allowed by 318.14(10)(a) prior to July 1, 2011, the clerk shall submit an amended disposition to remove the habitual traffic offender designation.

Chapter 2010-211:

New rules abound in section **458.3265** about the definition of “**pain-management clinics**”, the registration of pain-management clinics, the ownership of pain-management clinics, records searches at pain-management clinics, annual inspections of pain-management clinics, the revocation of the registration of pain-management clinics, the operation of pain-management clinics – and on and on. There is a new third degree felony in 458.327(1)(e) for knowingly operating, owning, or managing a nonregistered pain-management clinic and a new first degree misdemeanor in 458.327(2)(f) knowingly prescribing or dispensing, or causing to be prescribed or dispensed, controlled substances in a nonregistered pain-management clinic.

Likewise, new section 459.0137 sets forth the same requirements relating to pain-management clinics run by osteopathic physicians. The same felony and misdemeanor offenses exist in subsections 459.013(1)(e) and 459.013(2)(d), respectively.

All PPCC Subcommittees, Chairs and members are listed below. Please contact any of the Co-Chairs or members if you have an issue to be addressed.

**CASE INTAKE SUBCOMMITTEE****CO-CHAIRS:**

Marie Jo Toussaint, ASA, SAO (305) 547-0255;  
e-mail: MarieJoToussaint@MiamiSAO.com  
Bart Armstrong, Police Legal Advisor  
Miami-Dade P.D. (305) 471-2550  
e-mail: barmstron@mdpd.com

**Committee Members:**

Sgt. George Arango, MDPD  
Det. Paul Manzella, SIBPD  
Sgt. Ray Santiago, UMPS  
Lt. Efren Lopez, M-DPD

**COMMUNICATIONS SUBCOMMITTEE****CO-CHAIRS:**

Lt. Adrian Cummings, M-DPD (305) 375-5555;  
e-mail: arcummings@mdpd.com

**Committee Members:**

Lt. Gladys Amato, MPD  
Capt. Wendy Mayes-Sears, M-DCR  
Regla Dominguez, MBPD  
Ray Araujo, ASA, SAO  
Major Michael Mills, SMPD  
Major Kathy Katerman, NMBPD  
Oliver Spicer, Jr., M-DPD

**CRIMES AGAINST LEOs SUBCOMMITTEE****CO-CHAIRS:**

José Arrojo, ASA, SAO (305) 547-0309;  
e-mail: JoseArrojo@MiamiSAO.com  
Chief Steven Steinberg, Aventura PD (305) 466-8996;  
e-mail: SSteinberg@AventuraPolice.com  
Lt. Adrian Cummings, M-DPD (305) 989-9508;  
e-mail: arcummings@mdpd.com

**Committee Members:**

Lt. Lazaro Artime, Hialeah PD  
Det. Robert Garland, M-DPD  
Susan Leah Dechovitz, ASA, SAO  
Audrey Frank-Aponte, ASA, SAO  
Regla Dominguez, MBPD  
Lt. Michael Cole, MSPD  
Ofcr. Alexander Martinez, Corrections  
Abbe Rifkin, ASA, SAO  
Lt. Willie Hill, Pinecrest PD  
Ofcr. Nelson Delgado, VGPD  
Lt. Jerome Berrian Jr., MBPD  
Sgt. Jose Diez, MPD  
Sgt. Carlos Arguelles, M-DPD  
Captain Luis Bazo, M-DPD

**JUVENILE SUBCOMMITTEE****CO-CHAIRS:**

Leon Botkin, ASA (305) 637-1300  
e-mail: LeonBotkin@MiamiSAO.com

Sgt. Melissa DeJong, CGPD (305) 460-5632  
e-mail: MDeJong@CoralGables.com

**Committee Members:**

Capt. Ian Moffett, M-DSBPD  
Ellen Skidmore, SAO

**PAWNSHOP SUBCOMMITTEE****CO-CHAIRS:**

Nneka Uzodinma, ASA (305) 547-0459  
e-mail: NnekaUzodinma@MiamiSAO.com

**Committee Members:**

Det. Melissa DeJong, CGPD  
Pat Kiel  
Jonah Dickstein, ASA

**DOMESTIC CRIMES SUBCOMMITTEE****CO-CHAIRS:**

Leah Klein, ASA, SAO (305) 547-0132;  
e-mail: LeahKlein@MiamiSAO.com  
Major Grace O'Donnell (M-DPD) (305) 418-7206  
e-mail: gmodonnell@mdpd.com

**Committee Members:**

Carrie Soubal, SAO  
Sgt. Jed Burger, Domestic Crimes Unit, MBPD  
Sarah Poux, MBPD

**RAP SHEET SUBCOMMITTEE****CO-CHAIRS:**

Kristi Bettendorf, ASA, SAO (305) 547-0220  
e-mail: KristiBettendorf@MiamiSAO.com

**Committee Members:**

Ed Griffith, SAO

**ROLL CALL/RIDE-ALONG SUBCOMMITTEE****CO-CHAIRS:****Committee Members:**

Shana Belyeu, ASA, SAO  
Audrey Frank-Aponte, ASA, SAO  
Brenda Mezick, ASA, SAO

**TRAINING SUBCOMMITTEE****CO-CHAIRS:**

Lt. Adrian Cummings, M-DPD, Court Services (305) 989-9508;  
e-mail: arcummings@mdpd.com  
Susan Dechovitz, ASA, SAO; 547-0309  
e-mail: SusanDechovitz@MiamiSAO.com  
Tom Headley, ASA, SAO; 547-547-0186  
e-mail: TomHeadley@MiamiSAO.com

**Committee Members:**

Capt. Ian Moffett, M-DSBPD  
Chief Van Toth, Hialeah Gardens PD  
Sgt. Lynnise Jones-Curry, M-DPD  
Capt. Luis Bazo, M-DPD  
David Waksman, ASA, SAO  
Ofcr. Alexander Martinez, Corrections  
Det. David Adlet, EPPD  
Oliver Spicer, Jr., M-DPD  
Ofcr. Chad Rosen, Surfside PD  
Shana Belyeu, ASA, SAO  
Barry Mankes

**OPERATIONS SUBCOMMITTEE****CO-CHAIRS:**

Major Kathy Katerman, NMBPD, (305) 948-2929,  
kathy.katerman@nmbpd.org  
Dreama Oliver, SAO, Administrator, Felony Operations,  
(305) 547-0307, dreamaoiver@miamiSAO.com

**Committee Members:**

Bill Altfield, ASA, SAO  
Jay Pollen, MPD

**LIAISON SUBCOMMITTEE****CO-CHAIRS:**

Kathleen Hoague, SAO, (305) 547-0522;  
e-mail: KathleenHoague@MiamiSAO.com  
Maria Diaz, SAO, (305) 547-0331;  
e-mail: MariaDiaz@MiamiSAO.com  
Lt. Adrian Cummings, M-DPD (305) 375-5555;  
e-mail: arcummings@mdpd.com

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