IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	:	
Petitioner,	:	
vs.	:	Case No. 92,831
CAROL LEIGH THOMPSON,	:	
Respondent.	:	
	:	

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

SUPPLEMENTAL ANSWER BRIEF OF RESPONDENT ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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STATEMENT OF TYPE USED

I certify the size and style of type used in this brief is Courier 12 point, a font that is not proportionally spaced.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the state's statement of the case and facts, with the following exception: Respondent disputes the state's assertion that "In Chapter 96-388 Laws of Florida, the legislature amended and reenacted the Gort Act career criminal provisions." PSB[1], p. 2 (emphasis added). As will be discussed below, Chapter 96-388 did not reenact the Gort Act as a whole, but rather only amended part of it and reenacted one section of it.

[1] "PSB" refers to Petitioner's Supplemental Brief on the Merits.

SUMMARY OF THE ARGUMENT

Respondent agrees with the state that, assuming the shorter window period of Salters v. State, 24 Fla. Law Weekly D1116 (Fla. 4th DCA May 5, 1999) applies, Respondent is still within the window period. PSB, p. 4. As did the state, Respondent will address the issue anyway, for the Court's guidance.

The passage of Chapter 96-388 did not close the window period for all Gort Act challenges because Chapter 96-388 did not reenact the entire Gort Act.[2] Rather, that chapter reenacts only one section of the Gort Act: the section that enacted Section 790.235, which defined and provided penalties for the offense of "possession of a firearm by a violent career criminal." Thus, at best, the shorter window period applies only to defendants convicted of that offense; the longer window period applies to defendants affected by the other Gort Act provisions.

However, the longer window period still applies to those convicted of the possession offense because Chapter 96-388 itself violates Article III, Section 6 of the Florida Constitution. That chapter contains numerous subjects, including: providing for the regular revision and updating of the Florida criminal statutes;

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[2] The Gort Act is not mentioned by name in Chapter 96-388. When this brief refers to the Gort Act being mentioned in Chapter 96-388, it is referring to those sections of Chapter 96-388 that amended or reenacted those sections of the Florida Statutes that were affected by the passage of the Gort Act in Chapter 95-182, Laws of Florida.

creating, amending, and repealing numerous statutes regarding the membership and duties of numerous advisory councils and commissions that are all involved in some way with some aspect of the criminal justice system; creating and amending statutory provisions regarding juvenile criminal history records and public records pertaining to children who have been reported missing; creating and amending numerous statutes regarding sentencing, forfeiture, and a prisoner's eligibility for gain-time and early release; amending statutes regarding the jurisdiction of agencies involved in the prosecution of certain criminal offenses; amending the definitions of certain criminal offenses, eliminating other criminal offenses, and creating new offenses; amending statutes regarding the civil commitment of sexual predators; providing for medical treatment for injured arrestees; and amending statutes regarding the imposition of civil damages awards on violent criminals. These disparate topics cannot be combined under a single subject such as "the public safety" or "the criminal justice system" because such "subjects" are too broad and vague for single subject purposes, particularly when the legislature tries to use them as catch-alls for a hodge-podge of provisions that are, at best, only marginally related.

ARGUMENT

THE ENACTMENT OF CHAPTER 96-388 DID NOT AFFECT THE WINDOW PERIOD FOR CHALLENGING CHAPTER 95-182 BECAUSE 1) CHAPTER 96-388 DID NOT REENACT CHAPTER 95-182, AND 2) CHAPTER 96-388 ALSO VIOLATES ARTICLE III, SECTION 6.

Salters held that the window period for challenging the Gort Act closed on October 1, 1996, when Chapter 96-388 took effect. 24 Fla. Law Weekly at D 1116. Salters relied on State v. Johnson, 616 So. 2d 1 (Fla. 1993) and Scott v. State, 721 So. 2d 1245 (Fla. 4th DCA 1998) to support this conclusion. Neither case is on point.

Johnson stands for the undisputed proposition that the biennial reenactment of the Florida Statutes as a whole cures any single subject violation. Chapter 96-388 is not such a reenactment. Scott did not address the window period issue at all; in fact, that opinion specifically declined to address the issue because the defendant there was outside even the longer window period. 721 So. 2d at 1246, fn.1.

Salters apparently implicitly accepted the argument expressly made in the state's supplemental brief: that Chapter 96-388 "reenacted the career criminal portions of chapter 95-182 without including the objectionable civil damage provisions [and thus] cured the problem."[3] PSB, p. 8. However, this logic is flawed on

[3] In the course of making this argument, the state asserts "[o]nce reenacted, a chapter law is no longer subject to challenge on the grounds that it violates the single subject provi-

two points.

First, Chapter 96-388 did not reenact the entire Gort Act; rather, it reenacted one section of it and amended several other sections in minor ways. Second, even if Chapter 96-388 can be said to have reenacted the entire Gort Act, Chapter 96-388 itself violates Article III, Section 6.

A. Chapter 96-388 Did Not Reenact The Entire Gort Act.

The provisions that were contained in the Gort Act are mentioned twice in Chapter 96-388, in Sections 44 and 45.

Section 44 begins:

> Effective October 1, 1996, paragraphs (a), (b), and (c) of subsection (1), and subsections (2), (3), and (4) of section 775.084, Florida Statutes, are amended, and subsection (6) of said section is reenacted, to read:

(Emphasis added).

The changes wrought by Section 44 are as follows, with the emphasized language being added to the existing statute:

> 1. Paragraphs (a)2, (b)2, and (c)3 of section 775.084(1) were all amended to add a

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sion [because t]he reenactment of a statute cures any infirmity or defect." PSB, p. 6. This statement is not literally accurate. It is true that the biennial reenactment of the Florida Statutes cures any single subject violation; the cases the state cites to support the statement just quoted all stand for this proposition. It is not accurate to say that any reenactment of a statute cures a single subject violation. The reenactment itself must be independently valid, i.e., it must conform to all applicable substantive and procedural limitations; surely, one need not resort to such cliches as "two wrongs don't make a right" to prove that point.

> new subsection a, which provides that a defendant qualifies for sentencing as a habitual offender, a habitual violent offender, or a violent career criminal if his current offense was committed "[w]hile the defendant was serving a prison sentence or other commitment imposed as a result of a prior conviction of [a qualifying] felony."
>
> 2. Section 775.084(2) was amended to change the word "he" to "the person."
>
> 3. Sections 775.084(3) and (4), which deals with the procedures for imposing the enhanced sentences, were amended in minor ways, primarily to clear up ambiguous language.
>
> 4. Section 775.084(6) -- the only provision to be specifically "reenacted" -- was unchanged; it still provides: "The purpose of this section is to provide uniform punishment for those crimes made punishable under this section, and to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference."

(Emphasis added).

Section 45 of Chapter 96-388 begins:

> Effective October 1, 1996, for the purpose of incorporating the amendments to s. 775.084, Florida Statutes, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

(Emphasis added).

The only section or subdivision reenacted in Section 45 is Section 790.235, which is the part of the Gort Act that defines and provides penalties for the offense of "possession of a firearm by a violent career criminal."

These two sections were not intended to, and did not, reenact the whole Gort Act. Rather, these two sections amended several sections of the Gort Act in minor ways, and reenacted one section of it.[4] Sections 44 and 45 of Chapter 96-388 do not contain all of the provisions of the Gort Act originally contained in Chapter 95-182. The following statutory sections included in the Gort Act were not mentioned in Chapter 96-388: Sections 775.084(5), 775.08401, 775.0841, 775.0842, and 775.0843. Cf. Ch. 95-182, secs. 2-6 with Ch. 96.388 secs. 44-45. Thus, if Chapter 96-388 intended to reenact the Gort Act, it either 1) decided to eliminate several sections of the Act, or 2) did a darn poor job of copying the original.

The state argues that Chapter 96-388 did reenact the Gort Act, as follows:

> [T]he subsequent modification and readoption cures a single subject problem because of other Constitutional requirements placed on the passage of legislative bills. Article III Section 6 Fla. Const. requires when a bill is passed which amends a law in existence, that the sections being amended must be set out in full. Additionally, the enacting clause of the legislation must state, Be it enacted. By complying with the constitutional requirements, the legislature reenacts the statutory provision when it makes modifications.

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[4] The provision that was reenacted in Section 44 of Chapter 96-388 -- Section 775.084(6) -- was not part of the original Gort Act. That section was already in existence when the Gort Act was enacted, and the Gort Act made no changes to it. See Ch. 95-182, sec. 2. Thus, the only part of the Gort Act that was reenacted in Chapter 96-388 is Section 790.235, which was reenacted in Section 45.

PSB, p. 9.[5]

The state cites no authority for these conclusions, other than the general reference to the cited constitutional provision. However, this constitutional provision does not support the state's conclusions.

Article III, Section 6 of the Florida Constitution provides in pertinent part:

> . . . No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection, or subparagraph of a subsection. The enacting clause of every law shall read: "Be It Enacted by the Legislature of the State of Florida."

The purpose of the first two sentences here -- the "set out in full" requirement -- is as follows:

> [This] requirement . . . regulates the form in which the body of the amendatory act is to be put. The effect is that when the new act as amended is a revision of the entire original act or is an amendment [to part of it], that the new act [or the amended part of it] shall be set forth at length, so that the provisions as amended may be seen and understood in their entirety by the Legislature. . . .
>
> . . . The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination

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[5] The state also implies that Chapter 96-388 "ratified" Chapter 95-182, which in turn means that "any prior 'logrolling' has been mooted." PSB, p.9. However, Chapter 96-388 clearly did not "ratif[y]" Chapter 95-182.

> and comparison, failed to become apprised of the changes made in the laws. . . .

Lipe v. City of Miami, 141 So. 2d 738, 741-42 (Fla. 1962)(emphasis in original)(citation omitted).

The "set out in full" provision does not stand for the proposition for which the state cites it. This provision is essentially a notice provision, designed to insure that significant changes in statutes are not slipped past unsuspecting legislators or the public in the guise of some minor amendatory bill. It is inherent in the very notion of a "revised or amended" statute that the entire statute is not being reenacted; rather, the existing statute is only being revised or amended. The purpose behind the "set out in full" requirement could also be accomplished by a constitutional provision that did not allow for revised or amended statutes, but instead required that all revisions or amendments be accomplished by reenacting the entire revised or amended statute. Article III, Section 6 does not contain such a requirement; it allows for the separate enactment of amendments and revisions to existing statutes.

And that is what was accomplished in Chapter 96-388: That chapter did not reenact the entire Gort Act, but rather only amended parts of it and reenacted one section of it. As noted earlier, Chapter 96-388 did not even "set out in full" the entire Gort Act, but rather "set out" only part of it. If the state's position is correct, we would be left with a Section 775.084 that

contains subsections (1), (2), (3), (4), and (6), but no subsection (5): Section 44 of Chapter 96-388 "sets out in full" those five subsections but skips subsection (5). Ch. 96-388, sec. 44. Further, several other sections of the original Gort Act would have been repealed sub silentio by Chapter 96-388.[6] Surely, the legislature did not intend to reenact the Gort Act with such gaps. What the legislature intended is exactly what it stated at the beginning of Sections 44 and 45: It intended to amend Sections 775.084(1), (2), (3), and (4), and to reenact Sections 775.084(6) and 790.235.

Thus, the "set out in full" requirement does not support the state's conclusion that Chapter 96-388 reenacted the entire Gort Act.

The "Be It Enacted" constitutional language does not support the state's position either. In an amendatory law, what is being enacted are the amendments, not the entire statute that is being amended. Again, if the state's reading is correct, all the language in Chapter 96-388 (and many other chapter laws) about "revising", and "amending" the various existing statutes would be unnecessary;

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[6] The sub silentio repeal of statutory sections through the procedure of simply deleting them from an amendatory bill would run afoul of the accepted tradition of noting statutory deletions by the use of "struck-through type" in the books of chapter laws published each year by the Joint Legislative Management Committee (although it appears this tradition does not have the force of law, see sec. 11.07, Fla. Stat. (1999)).

Further, if the state's position is correct, then the current official Florida Statutes are erroneous, because they still contain the Gort Act statutory sections that were not, by the state's logic, "reenacted" in Chapter 96-388.

the legislature would simply assert it is enacting (or reenacting) the revised or amended versions of the statutes at issue. Also, again, if the state's reading of this constitutional provision is correct, Section 775.084(5) and several other sections of the original Gort Act would have been repealed sub silentio by Chapter 96-388.

Further, the state's reading of these constitutional provisions runs afoul of the

> [W]ell established [principle] that, where the Constitution expressly provides for the manner of doing a thing, it impliedly forbids it being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it. . . . Therefore, when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision.

Weinberger v. Board of Public Instruction, 112 So. 253, 256 (Fla. 1927).

If the state's reading of the "set out in full" and "Be It Enacted" requirements is correct, then the single subject requirement (and the other constitutional requirements contained in Article III) could be circumvented by a procedure similar to the one the state is urging in the present case. After passing a chapter law that violates some provision of Article III, the

legislature could come back the next day and, with a minor amendatory bill that "set out in full" the provisions that violated the constitutional requirement, effectively reenact the offending provisions under the guise of minor amendments. Surely, such important constitutional provisions cannot be avoided so easily by such underhanded tactics.[7]

Thus, the "set out in full" and "Be It Enacted" provisions of Article III, Section 6 do not support the state's conclusion that Chapter 96-388 reenacted the entire Gort Act.

The state also relies on Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991); the state asserts "what happened in this case is analogous to what transpired in [Martinez]." PSB, p. 8. But Martinez is clearly distinguishable; further, the facts of that case undermine the state's argument regarding the meaning of the provisions of Article III, Section 6.

In Martinez, a trial court held that Chapter 90-201, Laws of Florida violated the single subject provision. Before this Court could address the issue, "the legislature convened a special session [and] separated [the two subjects of Chapter 90-201] into two distinct bills and reenacted both into law." 582 So. at 1172 (emphasis added). Although holding that Chapter 90-201 violated the

[7] "Underhanded tactics", of course, refers to the hypothetical facts just discussed and not to anything in the argument the state advances in the present case. The state's argument is legitimate, just seriously flawed.

single subject requirement, this Court noted that the reenactment "clearly cured the single subject violation and demonstrated the legislature's intent to amend the preexisting workers' compensation act without the appendage of the international trade legislation." Id. (emphasis added).

We have no such facts in the present case. When Chapter 96-388 was enacted, there were no trial court rulings holding Chapter 95-182 unconstitutional. Chapter 96-388 was not a reenactment of either the provisions of Chapter 95-182 in general or of the Gort Act in particular. Chapter 96-388 contains no "clear[] . . . demonstrat[ion of] the legislature's intent to [reenact the Gort Act] without the appendage of the [second subject]", id.; indeed, Chapter 96-388 did not reenact the whole Gort Act. Nor was there any simultaneous reenactment of the other (i.e., the domestic violence) provisions of Chapter 95-182. As far as the Gort Act is concerned, Chapter 96-388 is exactly what it appears to be: some minor amendments to an existing statute that the legislature assumed was already good law, coupled with a reenactment of one section. If the enactment of Chapter 96-388 would have the effect of reenacting the Gort Act, then the legislature went through a lot of unnecessary trouble to cure the single subject problem identified in Martinez: If an amendatory law reenacts the whole statute "set out in full" in the amendatory law, then the legislature could have cured the problem with Chapter 90-201 with

a simple amendment.

Thus, Martinez does not support the state's conclusion that Chapter 96-388 reenacted the entire Gort Act.

The state's final argument on this point is as follows:

> The other reason that the problem is cured by subsequent legislati[on] is obvious. A criminal defendant must be sentenced in accordance with the law in effect when he committed the crime. When a statutory section is modified, a defendant is not prosecuted or sentenced under the original statute, but, rather, under the version in effect at the time of the commission of the crime. Thus, for those individuals who committed their crimes after October 1, 1996, the governing law is Chapter 96-388 . . . . As to them, Chapter 95-182 . . . and its manner of passage is irrelevant.

PSB, p. 9-10.

The flaw in this logic is the unspoken assumption that the amendments to the Gort Act contained in Chapter 96-388 effectively reenacted the whole statute; this flaw has already been discussed. A defendant whose crime was committed after October 1, 1996 is not sentenced solely under the provisions of Chapter 96-388, but rather under the provisions of Chapter 95-182 as amended by Chapter 96-388.

In sum, Chapter 96-388 did not reenact the entire Gort Act[8],

[8] The conclusion that Chapter 96-388 did not reenact the Gort Act is not changed by consideration of the only provision to be specifically reenacted in Section 44 of Chapter 96-388: Subsection 775.084(6), which still provides "The purpose of this section is to provide uniform punishment for those crimes made punishable under this section, and to this end, a reference to

but rather only reenacted one section of it and amended other sections of it in minor ways. Thus, the enactment of Chapter 96-388 did not totally close the window period for Gort Act challenges but rather, at best, only closed it for defendants convicted of violating Section 790.235.

B. Chapter 96-388 Also Violates Article III, Section 6.

Even if we assume that Chapter 96-388 reenacted the entire Gort Act, the longer window period still applies because Chapter 96-388 also violates the provisions of Article III, Section 6.[9]

Chapter 96-388 begins by asserting it is "[a]n act relating to

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this section constitutes a general reference under the doctrine of incorporation by reference." With this language, the legislature intended to provide for the problem identified in cases such as Reino v. State, 352 So. 2d 853 (Fla. 1977); Hecht v. Shaw, 151 So. 333 (Fla. 1933); and Williams v. State, 125 So. 358, rev'd on other grounds on rehearing, 131 So. 864 (Fla. 1930). The question addressed in these cases is this: When one statute incorporates or refers to another statute, what happens to the meaning of the first statute when the second statute is amended, repealed, or otherwise changed? The answer depends on whether the reference is considered a "specific reference" (in which case the first statute will be considered to have permanently adopted the second statute as it existed when the first statute incorporated the second) or a "general reference" (in which case the first statute will continually incorporate future changes to the second statute). In reenacting Section 775.084(6), the legislature merely provided that references to Section 775.084 in other statutes will be considered "general references" for this purpose; this reenactment did not have the effect of reenacting anything other than Section 775.084(6).

[9] This same argument applies even if we conclude that Chapter 96-388 only reenacted Section 790.235 of the Gort Act: Defendants convicted of that offense must be given the benefit of the longer window period as well.

public safety"; it then continues on for approximately four full pages, to include a summary of all of its contents. Chapter 96-388 contains 74 sections, which may be briefly summarized as follows:

> Section 1 -- creates a new Section 775.0121, which requires the legislature to revise and update the Florida criminal statutes on a regular basis.
>
> Section 2 -- amends Section 187.201, which deals with the "State Comprehensive Plan" for the criminal justice system.
>
> Section 3 -- amends Section 943.06 regarding the membership of the "Criminal and Juvenile Justice Information Systems Council."
>
> Sections 4-16 -- amends and creates several statutes dealing with the membership and the duties of the "Criminal and Juvenile Justice Information Systems Council" and its relation to other government organizations.
>
> Section 17-21 -- amends several statutes regarding juvenile criminal history records.
>
> Section 22 -- amends the statutory provisions regarding the preparation of sentencing guidelines scoresheets.
>
> Section 23 -- repeals Section 6 of Chapter 94-209, Laws of Florida, which had imposed duties on the Juvenile Justice Advisory Board.
>
> Section 24 -- requires the "Justice Administrative Commission [to] report to the Legislature no later than January 1, 1997, itemizing and explaining each of its duties and functions."
>
> Section 25 -- amends Section 27.34(4) by eliminating the provision that allowed the Insurance Commissioner to contract with the "Justice Administrative Commission for the prosecution of criminal violations of the Workers' Compensation Law . . . ."

Section 26 -- repeals Section 27.37, which had created the "Council on Organized Crime" and detailed its membership and duties.

Section 27 -- repeals Sections 282.501 and .502, which had directed the Department of Education to establish the "Risk Assessment Coordinating Council", which was to "develop a population-at-risk profile for purposes of identifying at an early age, and tracking for statistical purposes, persons who are probable candidates for entering into the criminal justice system so as to develop education and human resources to direct such persons away from criminal activities", and providing for membership and duties of this council.

Section 28 -- repeals Sections 648.25(2), .265, and .266, which had established the "Bail Bond Advisory Council", which was to monitor and make recommendations regarding pre-trial release procedures.

Section 29 -- amends Sections 648.26(1) and (4) to eliminate the Bail Bond Advisory Council from the regulatory process over bail bond agents.

Section 30 -- repeals the "Florida Drug Punishment Act of 1990", which had attempted to identify offenders whose criminal activity was the result of drug problems and divert those offenders into treatment programs.

Section 31 -- repeals Section 827.05, which had created the offense of "negligent treatment of children."

Section 32 -- repeals Section 943.031(6), which had provided for automatic repeal of Section 943.031, which in turn created, provided for membership, and imposed duties upon, the "Florida Violent Crime Council."

Sections 33-43 -- amends Sections 39.053, 893.138, 895.02, and Chapter 874 regarding the prosecution of offenders who are members of a "Criminal Street Gang", including new

definitions, the creation of new offenses, and provisions for punishment and forfeiture.

Sections 44-46 -- amends the habitualization sentencing statutes in minor ways.

Sections 47-48 -- amends the definitions of burglary and trespass.

Section 49 -- amends the definition of theft.

Sections 50-53 -- amends the sentencing guidelines in minor ways.

Section 54 -- significantly amends Section 893.135(1), regarding the offense of trafficking in controlled substances.

Sections 55-59 -- amends various statutes regarding enhanced offenses and a defendant's eligibility for gain-time or early release.

Sections 60-67 -- creates the "Jimmy Ryce Act", which significantly amends the Florida Sexual Predators Act and establishes provisions regarding the release of public records regarding missing children.

Section 68 -- creates Section 943.15(3), which requires "the Florida Sheriffs Association and the Florida Police Chiefs Association [to] develop protocols establishing when injured apprehendees will be placed under arrest and how security will be provided during any hospitalization [and] address[ing] the cost to hospitals of providing unreimbursed medical services . . . ."

Section 69 -- amends Section 16.56 to give the statewide prosecutor jurisdiction over violations of "s. 847.0135, relating to computer pornography and child exploitation prevention . . . ."

Sections 70-71 -- amends definitions and creates new offenses regarding computer pornography.

> Section 72 -- amends Section 776.085 regarding the provision of a civil damages action against perpetrators of forcible felonies.
>
> Sections 73-74 -- provides for an effective date.

Article III, Section 6 provides in pertinent part: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." These provisions are interrelated, and are designed to serve three purposes:

> (1) to prevent hodge podge or "log rolling" legislation, i.e., putting two unrelated matters in one act; (2) to prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (3) to fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

State ex. rel. Flink v. Canova, 94 So. 2d 181, 184 (Fla. 1957).

The single subject case law was discussed at length in the original answer brief[10]. That discussion may be summarized as follows: Provisions in a chapter law will be considered as covering a single subject if they have a cogent, logical, natural, or intrinsic relation to each other; a tenuous relationship is insufficient. The legislature will be given some latitude to enact a broad law, provided that law is intended to be a comprehensive

[10] ABM, p. 3-20, 26-28.

approach to a complex and difficult problem that is currently troubling the public. However, separate subjects cannot be artificially connected by the use of broad and vague labels like "the criminal justice system" or "crime control".

The title requirement is primarily a notice provision. It is designed to "prevent the evil of matters being inserted in a body of an act whose title does not properly put the people on notice of such content." State ex. rel. Flink, supra, 94 So. 2d at 184. The title "define[s] the scope of the act." County of Hillsborough v. Price, 149 So. 2d 912, 914 (Fla. 2d DCA 1963). The title cannot be an "inartificial expression of the subject matter to be dealt with therein . . . ." City of Ocoee v. Bowness, 65 So. 2d 7, 11 (Fla. 1953):

> The title need not be an index to the body of an act, nor need it embrace every detail of the subject matter. All that is required is that the propositions embraced in the act shall be fairly and naturally germane to that recited in the title. But if the title is deceptive or misleading, or if by recourse thereto a reader of normal intelligence is not reasonably apprised of the contents of the act, the title is defective . . . .

Boyer v. Black, 18 So. 2d 886, 887 (Fla. 1944).

Two questions need to be answered at this point: What is the subject of Chapter 96-388 and what is its title? Since the subject must be contained in the title, it appears there are two ways to begin to answer these questions.

The first is to assume that the title is the first six words

in the chapter: "[a]n act relating to public safety." The second is to assume that the entire four pages of summary is the title. Under either assumption, Chapter 96-388 violates the provisions of Article III, Section 6.

If we assume the title is "[a]n act relating to public safety", it is clear that such a broad and vague title cannot qualify as a single subject; if it could, the single subject requirement would be meaningless.[11] Basic principles of due process

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[11] In her Answer Brief on the Merits, Respondent made the following observations regarding the single subject requirement:

> It has been said that "the subject of a law is that which is expressed in the title, . . . and may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection." (Citation omitted). However, this statement cannot be read too literally. [A]n enormously broad topic will not necessarily be considered a single subject merely because the legislature labels it so. Courts have some obligation to insure that legislative "subjects" do not become so abstract and amorphous that article III, section 6 is rendered nugatory. Thus, in recent cases . . . , [some] topics . . . have been held to be too broad to be considered as single subjects. This is only common sense. If it were otherwise, <u>the legislature could simply assert that the subject of a particular session law is something like "the public health, safety, and welfare" and then combine a wide variety of topics under this broad "subject"</u>.

ABM, p. 4 (emphasis added).

At the time this was written, Respondent was unaware of Chapter 96-388. The emphasized observation just noted was offered for illustrative purposes only; Respondent did not actually believe the legislature would be so bold as to give a chapter law such a title. Apparently, Respondent is more prescient than she

inform us that the legislature has no authority to enact a statute unless it can reasonably be said that the statute promotes the public health, safety, or welfare. In Re Forfeiture of 1969 Piper Navajo, 592 So. 2d 233, 235 (Fla. 1992). Thus, if promotion of the public health, safety, or welfare is a valid single subject, then any combination of statutory provisions the legislature has the authority to enact would satisfy the single subject requirement.[12]

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realized.

[12] With all due regard to the law's penchant for expressions phrased in triplicate -- e.g., "give, bequeath, and devise"; "freely, voluntarily, and intelligently"; and that Perry Mason favorite, "irrelevant, incompetent, and immaterial" -- there is little practical distinction among the phrases "the public health", "the public safety", and "the public welfare"; or, at least, there is not enough distinction to establish any practical difference in the present case between the phrase "the public health, safety, and welfare" and its abbreviated cousin (used by the legislature as the title to Chapter 96-388) "the public safety." Imposing harsh sentences on recidivist criminals certainly promotes the public safety; it also both promotes the public health (because the incarcerated miscreants are no longer inflicting damage on members of the public) and promotes the public welfare (because the public is better off without these predators roaming the streets, not only because they are no longer able to inflict injury, but because of the public peace of mind that results from knowing they are behind bars). Similarly, a standard "public welfare" measure, such as food stamps, also both promotes the public health (because those who receive the stamps will eat better and thus be less likely to need public health assistance) and promotes the public safety (because those receiving the stamps will not have to resort to criminal acts to feed themselves).

In short, the fact that Chapter 96-388 adopts the title "An act relating to the public safety" does not mean that the title is significantly narrower than a title phrased "An act relating to the public health, safety, or welfare"; the one title may be slightly shorter but it is no less broad and ambiguous, as a substantive matter.

This would effectively eliminate that requirement, leaving as the only limitation on legislative power the substantive limitation that the legislation must promote the public health, safety, or welfare.

Approving a title like "[a]n act relating to public safety" would also render the constitutional title requirement meaningless. If the title is to define the scope of the act and provide some reasonable notice about the act's contents, "the public safety" tells us nothing except that the legislature is intending to enact some statute that is within the limits of its substantive constitutional authority.

We run into the opposite problem if we consider the title of Chapter 96-388 to be the four pages of summary. Does a four page title satisfy the constitutional requirement of brevity? And, since the title must contain the subject, what is the "single" subject of an act whose title requires four pages to summarize its contents?

Chapter 96-388 violates Article III, Section 6 because it contains a variety of provisions that can be related to each other only by the use of a broad and vague "subject" like "the public safety", "crime control", or "the criminal justice system." Chapter 96-388 is not a "comprehensive law" for single subject purposes, as that term is understood in cases such as Burch v. State, 558 So. 1 (Fla. 1990). See ABM, p.12-15, 20, 26-28. Chapter 96-388 contains no legislative findings of fact regarding any

crisis and its various sections are not designed to be a "comprehensive[,] systematic [and] coordinate[d] . . . effort[] toward a unified attack on a common enemy, crime . . . ." Id. at 2-3 (citation omitted). Rather, Chapter 96-388 is a much bloated version of the laws found invalid in State v. Johnson, supra and Bunnell v. State, 453 So. 2d 808 (Fla. 1984).

In Johnson, the Court held that "the habitual offender statute, and . . . the licensing of private investigators and their authority to repossess personal property" do not comprise a single subject because "it is difficult to discern a logical or natural connection between [the two]." 616 So. 2d at 4 (citation and internal quotes omitted). The Court said these were "two very separate and distinct subjects" that had "absolutely no cogent connection [and were not] reasonably related to any crisis the legislature intended to address." Id. Noting "no reasonable explanation exists as to why the legislature chose to join these two subjects within the same legislative act", the Court "reject[ed] the State's contention that these two subjects relate to the single subject of controlling crime." Id.

In Bunnell, the Court voided a chapter law that created a new offense of "obstruction by false information" and amended statutes that detailed the membership of the "Florida Council on Criminal Justice" (which was an advisory board composed of various officials in the criminal justice system). Rejecting the district court's

conclusion that the law was valid because "the general subject of the act [is] the `Criminal Justice System'"[13], this Court asserted the two sections "ha[d] no cogent relationship" because they addressed "separate and disassociated . . . object[s] . . . ." 453 So. 2d at 809. Bunnell implicitly accepted the logic of Williams v. State, 459 So. 2d 319 (Fla. 5th DCA 1984), which had disagreed with the district court Bunnell decision because "such a general subject [as the 'Criminal Justice System'] for a non-comprehensive law would write completely out of the constitution the anti-logrolling provision of article III, section 6." Id. at 321.

Like the chapter law in Bunnell, Chapter 96-388 contains both provisions relating to administrative bureaucracies and provisions that create, amend, and repeal substantive criminal statutes that bear no logical relation to the affected bureaucracies. Like the chapter law in Johnson, Chapter 96-388 contains both sentencing provisions and civil regulatory provisions. There simply is no cogent and inherent relation among such things as juvenile criminal history records, the prosecution of criminal violations of the Workers' Compensation Law, the development and tracking of a "population-at-risk" profile, the regulation of pretrial release procedures, treatment for drug offenders, the prosecution of criminal street gangs, the definition of "curtilage" in the

[13] State v. Bunnell, 447 So. 2d 228, 230 (Fla. 2d DCA 1983), quashed, Bunnell, supra.

burglary statute, drug trafficking, the civil commitment of sexual predators, the costs of hospitalizing injured apprehendees, and civil damages action for victims of violent crimes; and this, of course, only covers maybe half of the provisions in Chapter 96-388.

Chapter 96-388 violates the provisions of Article III, Section 6, which in turn means that all defendants affected by Chapter 95-182 get the benefit of the longer window period.

CONCLUSION

Regardless of which window period applies, Respondent is within it. If this Court is going to decide the window period issue in this case, the longer window period applies because Chapter 96-388 itself violates the single subject requirement. Alternatively, assuming Chapter 96-388 is valid, the shorter window period applies only to prosecutions brought under section 790.235 because that is the only part of the Gort Act that was reenacted in Chapter 96-388.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Attorney General, The Capitol, Tallahassee, FL 32399-1050, on this ____ day of December, 1999.

Respectfully submitted,

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