

IN THE SUPREME COURT OF FLORIDA

GREGORY W. VALENTINE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 96,502

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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ISSUE

WHETHER PETITIONER HAS STANDING TO CONTEST THE CONSTITUTIONALITY OF CHAPTER 95-184, LAWS OF FLORIDA AND, IF SO, WHETHER CHAPTER 95-184, LAWS OF FLORIDA VIOLATES THE FLORIDA CONSTITUTION? (Restated) . . . . .	3
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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Gregory W. Valentine, the Appellant in the district court and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

The record on appeal consists of three volumes. This brief will refer to a volume according to its respective designation within the Index to the Record on Appeal. A citation to a volume will be followed by any appropriate page number within the volume. "IB" will designate Petitioner's Initial Brief, followed by any appropriate page number.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the facts summarizes Petitioner's view of the trial testimony. (IB 3). Since the only issue raised on this appeal is the constitutionality of the sentencing statute, the events leading to Petitioner's conviction are largely irrelevant and Petitioner's account should be rejected. The only relevant facts from Petitioner's trial are that

Petitioner was convicted of aggravated battery for events occurring on March 2, 1997. (I, 1-2, 48-52).

The opinion of the First District is attached as an Appendix.

#### SUMMARY OF ARGUMENT

Petitioner lacks standing to challenge the constitutionality of Chapter 95-184, Laws of Florida. He committed his crime on March 2, 1997. Chapter 96-388, Laws of Florida, which reenacted the provisions of the sentencing guidelines relevant to Petitioner's crime, became effective on October 1, 1996. Since Petitioner committed his crime after the effective date of Chapter 96-388, his sentence is governed by that chapter and that chapter does not violate the single subject requirement. Further, Chapter 95-184 does not violate the single subject requirement because a reasonable and rational relationship exists between all sections of the act. The opinion of the District Court affirming Petitioner's sentence should be affirmed.

ARGUMENT

ISSUE

WHETHER PETITIONER HAS STANDING TO CONTEST THE  
CONSTITUTIONALITY OF CHAPTER 95-184, LAWS OF  
FLORIDA AND, IF SO, WHETHER CHAPTER 95-184, LAWS  
OF FLORIDA VIOLATES THE FLORIDA CONSTITUTION?  
(Restated)

Petitioner lacks standing to challenge the constitutionality of Chapter 95-184, Laws of Florida. He committed his crime on March 2, 1997. Chapter 96-388, Laws of Florida, which reenacted the provisions of the sentencing guidelines relevant to Petitioner's crime, became effective on October 1, 1996. Since Petitioner committed his crime after the effective date of Chapter 96-388, his sentence is governed by that chapter and that chapter does not violate the single subject requirement. Further, Chapter 95-184 does not violate the single subject requirement. The opinion of the District Court affirming Petitioner's sentence should be affirmed.

I. Relevant History of the Sentencing Guidelines

Petitioner was convicted of aggravated battery for a fight that occurred on March 2, 1997. Pursuant to section 921.0014, Florida Statutes (1993), aggravated battery was a level 7 offense that scored 42 points. Chapter 95-184, § 6, Laws of Florida, amended section 921.0014, Florida Statutes, and increased the guidelines points for level 7 offenses to 56. Chapter 96-388, § 53, Laws of Florida, effective October 1, 1996, amended portions of section 921.0014 but did not alter the points scored for aggravated battery.

## II. Standing

Petitioner claims that he was sentenced pursuant to the sentencing guidelines, reenacted under Chapter 95-184, Laws of Florida. (IB 7). Petitioner committed his crime on March 2, 1997. (I, 1-2; IB 7). Therefore, the State submits that the version of the guidelines relevant to Petitioner were reenacted in Chapter 96-388, Laws of Florida and became effective October 1, 1996. Any single subject infirmity in Chapter 95-184 was cured when the Legislature reenacted section 921.0014, Florida Statutes (1995), by passing chapter 96-388, § 53, effective October 1, 1996. This reenactment and amendment superseded § 921.0014, Florida Statutes (1995) and closed the window under which the changes in the sentencing guidelines, enacted by Chapter 95-184, could be challenged as violating the single subject rule. Ordinarily, this window would not have closed until May 24, 1997 with the two-year reenactment of Florida Statutes. Because Petitioner's offense occurred on March 2, 1997, over five months after the reenactment and amendment by Chapter 96-388, Petitioner does not have standing to contest the constitutionality of Chapter 95-184. Only a defendant who committed his offense within the period of alleged unconstitutionality has standing to challenge the constitutionality of statute.

Florida Statutes are not required to conform to the single subject provision, because the single subject provision applies only to chapter laws. State v. Combs, 388 So. 2d 1029 (Fla.

1980). Once reenacted, a chapter law is no longer subject to challenge on the grounds that it violates the single subject provision of Article III, Section 6, of the Florida Constitution. State v. Johnson, 616 So.2d 1, 2 (Fla. 1993). The reenactment of a statute cures any infirmity or defect. State v. Carswell, 557 So. 2d 183, 184 (Fla. 3d DCA 1990); Honchell v. State, 257 So. 2d 889 (Fla. 1972); Alterman Transport Lines, Inc. v. State, 405 So. 2d 456 (Fla. 1st DCA 1981). Thus, with single subject issues an important question is whether the incident being prosecuted arose prior to the constitutional problem being cured by reenactment.

In Bortel v. State, 24 Fla. L. Weekly D2259 (Fla. 4th DCA September 29, 1999), the court specifically held that the passage of chapter 96-388 closed the window to raise single subject attacks on chapter 95-184 effective October 1, 1996. Accordingly, because Bortel's crime occurred after October 1, 1996, the court rejected Bortel's attack on the 1995 sentencing guidelines. In Salters v. State, 731 So.2d 826 (Fla. 4th DCA 1999), rev. granted, case no. 95,663, the State argued that Salters could not challenge the constitutionality of chapter 95-182 (the "Gort Act"), as Salters committed the offense after October 1, 1996, the effective date of Chapter 96-388 Laws of Florida, which cured, or mooted any single subject problem of Chapter 95-182. The Fourth District agreed with the State's argument and found that Salters did not have standing to challenge the statute. Salters properly held that the petitioner did not have standing to challenge the constitutionality of the

chapter 95-182. Similarly, the State urges this Court to follow Bortel and Salters and hold that the window period for raising single subject claims closed on October 1, 1996. Accordingly, since Petitioner's offense of March 1997 occurred outside the window period of Chapter 95-184, this Court should hold that he does not have standing to challenge the amendments to the sentencing guidelines made by chapter 95-184.<sup>1</sup>

The position of the Fourth District is supported by both case law and logic. In Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991), this Court found a single subject violation occurred when the legislature combined workers compensation legislation with international trade legislation. In determining the effective dates, this Court held that the problem was cured by the legislature in a special session reenacting the legislation in a manner which separated these two distinct concepts. Id. at 1169. Thus, this Court has recognized that the biennial reenactment of the statutes is not the only way to close the window. The State asserts that what happened in this case is analogous to what transpired in Scanlan. In the 1996 legislative session, the

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<sup>1</sup>The State did not present this argument to the First District. However, the trial court imposed sentence and the First District affirmed Petitioner's sentence. The State, as appellee/respondent, can argue for affirmance of the lower court based on any ground supported by the record. See Dade County School Bd. v. Radio Station WQBA, 731 So. 2d 638, 645 (Fla. 1999) ("an appellee, in arguing for the affirmance of a judgment, is not limited to legal arguments expressly asserted as grounds for the judgment in the court below. It stands to reason that the appellee can present any argument supported by the record even if not expressly asserted in the lower court.").

legislature reenacted the sentencing guidelines portion of chapter 95-184 relevant to Petitioner without including the objectionable civil damage provisions. Applying Scanlan, the legislative action should be held to have cured the problem. Therefore, the State maintains that this Court should follow the decision of the Fourth District and hold the window period ended on October 1, 1996.

Approving this cure would be an appropriate resolution of the problems presented by any single subject violation. This Court has long held that the purpose of the single subject provision is to prevent logrolling. Scanlan, 582 So. 2d at 1172; State v. Lee, 356 So.2d 276, 282 (Fla. 1978). The evil that the single subject provision protects against is the attaching of unrelated legislation onto popular measures, thereby, bootstrapping the passage of the unrelated legislation upon the popularity of the primary legislation. Advisory Opinion to the Atty. Gen. re Fish and Wildlife Conservation Com'n, 705 So.2d 1351, 1353 (Fla. 1998). When a statutory section created in this manner is ratified by subsequent legislative reenactment, any prior "logrolling" has been mooted.

It is also appropriate to hold that the 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. By complying with the constitutional requirements, the legislature reenacts the statutory provision when it makes modifications. In this case, the legislature reenacted the relevant provisions of the sentencing guidelines by passage of chapter 96-388, Laws of Florida. Thus, the State maintains that the date of October 1, 1996, closes the window period for the purposes of a single subject challenge to the sentencing guidelines.

The other reason that the problem is cured by subsequent legislation 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, 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, Laws of Florida. As to them, Chapter 95-184 Laws of Florida and its manner of passage is irrelevant.

This Court should hold that Petitioner's sentence is governed by chapter 96-388, Laws of Florida, and hold that Petitioner lacks standing to challenge the constitutionality of chapter 95-184. Accordingly, the trial court and the district court should be affirmed.

Petitioner has not challenged the constitutionality of chapter 96-388 here. However, Salters, which does present the issue, has been briefed in this Court and is pending as case number 95,663.

### III. Preservation

As Petitioner acknowledges (IB 8), his claim was not preserved in the trial court. The State recognizes that State v. Johnson, 616 So. 2d 1 (Fla. 1993), holds that single subject violations are fundamental errors and may be raised for the first time on appeal but continues to maintain that Johnson erred in so holding. However, if this Court does not recede from Johnson and finds that Petitioner has standing to challenge the constitutionality of chapter 95-184, Petitioner can raise the claim in this case pursuant to Johnson.

### IV. Constitutionality of Chapter 95-184<sup>2</sup>

The Petitioner contends that the enactment of Chapter 95-184, Laws of Florida, violates the single subject rule and is therefore unconstitutional. The argument is without merit because a reasonable and rational relationship exists between all of the sections of the act.

#### A. Presumption of Constitutionality

Legislative acts are strongly presumed to be constitutional. See State v. Kinner, 398 So. 2d 1360, 1363 (Fla. 1981). Courts should resolve every reasonable doubt in favor of the constitutionality of a statute. Florida League of Cities, Inc. V. Administration Commission, 586 So. 2d 397, 412 (Fla. 1st DCA 1991). An act should not be declared unconstitutional unless it

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<sup>2</sup>The argument regarding the constitutionality of chapter 95-184 is the same argument the State presented to this Court in Trapp v. State, Case No. 96,074, currently pending before this Court.

is determined to be invalid beyond a reasonable doubt. Todd v. State, 643 So. 2d 625, 627 (Fla. 1st DCA 1994). Single subject challenges, like all constitutional challenges, are governed by these principles. State v. Physical Therapy Rehabilitation Center of Coral Springs, Inc., 665 So. 2d 1127, 1130 (Fla. 1st DCA 1996)(noting, in the context of a constitutional challenge to a statute alleging a defective title, that a presumption exists in favor of the validity of the statute).

B. Standard of Review

The constitutionality of a statute is a question of law to be reviewed on appeal de novo. See United States v. Cardoza, 129 F.3d 6, 10 (1st Cir. 1997); United States v. Bailey, 115 F.3d 1222, 1225 (5th Cir. 1997); United States v. Wilson, 73 F.3d 675, 678 (7th Cir. 1995); United States v. Crawford, 115 F.3d 1397, 1400 (8th Cir. 1997); United States v. Michael R., 90 F.3d 340, 343 (9th Cir. 1996). An appellate court reviews the constitutionality of all statutes, including sentencing statutes, de novo. United States v. Quinn, 123 F.3d 1415, 1425 (11th Cir. 1997). Thus, the standard of review is de novo. See also Phillip J. Padovano, Florida Appellate Practice § 9.4 (2d Ed. 1997).

C. Merits

The single subject provision, Article III, Section 6, of the Florida Constitution, provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The purpose of

this constitutional prohibition against a plurality of subjects in a single legislative act is to prevent "logrolling." Scanlan, 582 So. 2d at 1172; Lee, 356 So. 2d at 282. However, an act may be as broad as the legislature chooses to make it provided the matters included in it have a natural or logical connection. Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981); Board of Public Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969). Broad and comprehensive legislative enactments are not in violation of the single subject provision. See Smith v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987). The test to determine whether legislation meets the single subject provision is based upon a common sense application. Id. at 1087.

Historically, courts have accorded great deference to the legislature in the single subject area, recognizing that the rule affords the legislature wide latitude in its enactment of laws. State v. Lee, 356 So. 2d 276 (Fla. 1978); State v. Leavins, 599 So. 2d 1326, 1334 (Fla. 1st DCA 1992). Examples abound where this Court has held that acts covering a broad range of issues do not violate the single subject provision. The single subject provision is not violated when an act provides for the decriminalization of traffic infractions and also creates a criminal penalty for willful refusal to sign a traffic citation. State v. McDonald, 357 So. 2d 405 (Fla. 1978). This provision was also not held to have been violated where an act covered both automobile insurance and tort law, Lee, nor was it violated where an act dealt with a broad range of topics dealing with medical

malpractice and insurance since tort litigation and insurance reform have a natural or logical connection. Chenoweth v. Kemp; Smith v. Department of Insurance. Similarly, an act establishing a tax on services which included an allocation scheme for use of tax revenues was deemed not to have violated the single subject provision. In re Advisory Opinion to the Governor, 509 So. 2d 292 (Fla. 1987). Finally, this Court has found that an act dealing with comprehensive criminal regulations, money laundering, and safe neighborhoods was valid since each of the areas addressed bore a logical relationship to the single subject of controlling crime. Burch v. State, 558 So. 2d 1 (Fla. 1990).

The provisions of Chapter 95-184, the Crime Control Act of 1995, contain provisions, in sections two through twenty-seven, dealing with discussion of those crimes to which the act applies, definitions, offense severity levels, the guidelines worksheet and attendant computations, recommended and departure sentences, and amendments to certain criminal statutes. Sections twenty-eight through thirty-three amend statutes dealing with assistance to victims of crime, Chapter 960, Florida Statutes: section 960.293 (determination of damages and losses), section 960.29 (legislative findings and intent dealing with restitution to victims including civil liens), section 960.291 (definitions), section 960.292 (enforcement of civil restitution liens), section 960.294 (effect of civil restitution liens), and section 960.295 (civil restitution lien supplemental to other forms of restitution). Sections thirty-four through thirty-eight amend

section 960.296 (construction and severability), section 960.297 (authorization for governmental right of restitution for costs of incarceration), add a new subsection to section 741.31 awarding damages to persons sustaining injuries as a result of violation of a domestic violence injunction, create section 768.35 recognizing a new crime for continuing domestic violence, and adding additional subsections to section 784.046 relating to cases for injunctions involving repeated violence. It is readily apparent that all of these provisions have a logical relationship to the control, prevention, and punishment of crime or to reducing the damage caused by crime.

It is the last three sections, thirty-six through thirty-eight, relating to domestic violence, which Petitioner asserts are violative of the single subject rule because, he asserts, they combine civil and criminal penalties. (IB 31-32). The State submits that combining civil and criminal penalties is a common sense remedy for dealing with criminal and anti-social behavior and does not violate the single subject provision of the constitution.

Nevertheless, the State addresses each of these sections in detail. Section thirty-six, an amendment of section 741.31, Florida Statutes adds section (2) to the preexisting statute. The preexisting version of section 741.31 recognizes as a criminal misdemeanor conduct whereby a person wilfully violates an injunction for protection against domestic violence providing for punishment in accordance with sections 775.082 or 775.083.

Subsection (2), which is at issue, grants an individual who is the victim of a violation of an injunction against domestic violence recovery for injuries or loss resulting from the violator's conduct, in addition to costs and attorney's fees occasioned thereby. Subsection (2) is clearly a standard provision of restitution to be recovered by a victim as the result of another's criminal conduct. There is an obvious nexus between the punishment of crime and the award of monetary compensation to victims of crimes.

Section thirty-seven creates section 768.35, Florida Statutes, which permits recovery for victims of continuing domestic violence, references section 741.28 which defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, stalking, aggravated stalking, or criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit. Thus, the conduct defined as domestic violence contemplates the commission of a crime. The statute can therefore only properly be viewed as encompassing both criminal penalties and civil remedies. A cognizable nexus, a natural and logical connection, therefore exists between this provision and the Act. This is particularly apparent in view of the fact that civil liens are available to protect awards of

restitution in criminal cases.<sup>3</sup> The availability of civil remedies for victims of crimes is indistinguishable.

Section thirty-eight amends existing subsections to section 784.046. Chapter 784, of course, sets forth the crimes of assault, battery, and culpable negligence. Section 784.046, Florida Statutes, authorizes a victim of repeat violence in the form of assault, battery, sexual battery, or stalking to obtain an injunction against repeat violence and sets forth the procedural means by which it is obtained. The subsections added by this section of the Act clarify procedures to be followed, including service of injunction by law enforcement personnel. This section therefore addresses civil law procedures to be used in obtaining relief via an injunction for conduct prohibited by criminal law. The section, which encompasses both civil and criminal elements, therefore cannot be said to be violative of the single subject rule.

Because Petitioner inaccurately characterizes Chapter 95-184 as improperly combining provisions dealing with unrelated criminal and civil penalties, (IB 28-32), the Petitioner contends that this case is comparable to that of Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), rev. granted, 717 So. 2d 538 (Fla. 1998), in which Thompson challenged a violent career criminal sentence on the grounds that Chapter 95-182 violated the single

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<sup>3</sup> Of particular note, is the fact that the defendant does not challenge the authority of the legislature or the constitutionality of the sections authorizing imposition of civil liens in the prior sections of the act.

subject rule. (IB 11-13). There, the Second District reversed the sentence finding that Chapter 95-182 improperly encompassed multiple subjects in that sections one through seven dealt with violent career criminal sentencing and penalties, while sections eight through ten<sup>4</sup> dealt with civil aspects of domestic violence.

The Thompson court recited a brief legislative history of the Gort Act noting that sections eight through ten had begun as three bills which died in committee. When the three house bills were engrafted on to the original Senate bill creating violent career criminal sentencing, the three house bills became law. The court stated “[i]t is in circumstances such as these that problems with the single subject rule are most likely to occur.” The court further reasoned that the two parts had no natural or logical connection because the Act encompassed both criminal and civil provisions, analogizing it to State v. Johnson, 616 So. 2d 1 (Fla. 1993) and Bunnell v. State, 453 So. 2d 808 (Fla. 1984). Finally, the Court also expressed concern over the fact that nothing in sections two through seven addressed domestic violence and nothing in sections eight through ten addressed career criminals.

The Petitioner’s reliance upon Thompson ignores Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997), where the Third District rejected the contention that the Gort Act violated the

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<sup>4</sup> As discussed in greater depth hereafter, sections eight through ten of the Gort Act, 95-182, mirror the same provisions challenged by the Petitioner in 95-184. The argument is therefore the same.

single subject rule and affirmed Higgs' sentence. The Higgs court held that there is a reasonable and rational relationship among each of the sections of the Gort Act. Similarly, in Holloway v. State, 712 So. 2d 439 (Fla. 3d DCA), rev. granted, 727 So. 2d 906 (Fla. 1998), the Third District reaffirmed its position in Higgs and certified conflict with Thompson. Briefing in that case was completed in August of 1998 with oral argument before this Court in November 1998.

1. Civil and Criminal Matters

The Thompson court held that the two parts of 95-182 have no natural or logical connection because the Gort Act embraces both criminal and civil provisions finding that sections one through seven of the chapter create and define violent career criminal sentencing whereas sections eight through ten deal with civil remedies for domestic violence. The court concluded that the first part of the Act is criminal in nature and the second is civil and there was therefore no natural or logical connection between criminal and civil matters. This erroneous conclusion is the same one urged upon this Court by the Petitioner. The characterization of these sections by the Petitioner here and by the Thompson court is inaccurate, however, since the second part of both Acts is both civil and criminal in that it deals with civil remedies for repeated criminal behavior.

Domestic violence, defined in section 741.28(1), Florida Statutes (1997), is:

...any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking,

aggravated stalking, kidnaping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single family dwelling unit.

It is clear from this definition of domestic violence that the conduct described therein is a crime. The legislature has expressly declared its intention that "domestic violence be treated as a **criminal** act." § 741.2901(2), Florida Statutes (1997). (emphasis added). Thus, it is incorrect to suggest that the measures dealing with domestic violence are purely civil in nature. Both section eight and nine are more properly viewed as restitutional in nature and restitution is deemed to be criminal. Strickland v. State, 681 So. 2d 929 (Fla. 3d DCA 1996)(holding that a trial court's imposition of additional restitution after sentencing was an increased sentence and therefore, violated double jeopardy); Lee v. State, 23 Fla. L. Weekly D1419 (Fla. 1st DCA June 9, 1998)(holding that imposition of restitution for the first time on remand constituted prohibited enhancement). As expressly noted by this Court in Glaubius v. State, 688 So. 2d 913, 915 (Fla. 1997), the purpose of restitution is to compensate the victim and to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.

The Crime Control Act of 1995 utilizes the identical language that is set forth in the Gort Act as part of the means by which restitution may be obtained. The legislature thus clearly viewed these sections as restitution methods which are part and parcel of the criminal sentencing scheme.

## 2. Legislative History

Petitioner's characterization of the legislative history behind the mirror sections of the Crime Control Act and Gort Act is overly simplified. (IB 30-31). While the three original House Bills that comprised these sections died in committee, the substance of one of them was not engrafted onto Senate Bill 168. Only minor portions of the original House bill actually became part of the final Acts. HB 1251, which became section thirty-eight of the Crime Control Act and section ten of the Gort Act, originally provided that a trial court must consider requiring a perpetrator to participate in a certified program for individuals who battered significant others, provided for a statement of legislative intent that every victim of domestic violence shall have access to shelter and counseling and expanded the conduct that constituted a violation of an injunction. None of these measures were engrafted onto the final versions of the Crime Control and Gort Acts. Only those measures relating to the duties of the clerk of the court and law enforcement officers, the most minor portions of the original House bill, were engrafted onto the final versions of the Acts. While significant portions of the other two house bills were engrafted onto the final versions of the Crime Control and Gort Acts, this engrafting, as discussed below, was both natural and logical.

The process described above does not constitute evidence of logrolling; rather, it merely illustrates the normal legislative process. Bills that die in one form are frequently resurrected

in part or whole in another act under which they then become law. The legislative process is not the assembling of products in a sterile laboratory, it is messy, at best, and the average act is a product of compromise. L.H. LaRue, Statutory Interpretation: Lord Coke Revisited, Special Issue on Legislation: Statutory and Constitutional Interpretation, 48 U. Pitt. L. Rev. 733 (1987).

Petitioner contends that sections two through thirty-five of the Crime Control Act solely address sentencing concerns, whereas sections thirty-six through thirty-eight address only domestic violence. His argument is identical to the Thompson court's expressed concern that nothing in sections two through seven of the Gort Act addressed domestic violence and nothing in sections eight through ten addressed career criminals. Petitioner is incorrect in his assessment of the Act. Section five of 95-184 deals with all of the forms of conduct which constitute domestic violence ranking them in an appropriate offense severity level. Section eight, which amends the burglary statute, addresses two forms of domestic violence, assault and battery, which may occur during the commission of the crime. Section twelve, which addresses the collection and dissemination of criminal justice information, was amended to include minors who commit assault and battery, two forms of domestic violence. Finally, section nineteen, section 775.087, added aggravated stalking, with other forms of domestic violence, to enumerated acts qualifying for enhancement or imposition of a minimum mandatory sentence for possession of a firearm. Similarly, section two of the Gort Act

added a form of domestic violence, aggravated stalking, to the list of qualified offenses for habitual violent felony offenders and to the newly created list of qualifying offenses for violent career criminals.

The logical connection between the Crime Control Act sections is the fact that all forms of domestic violence are criminal offenses in the sentencing scheme. Aggravated stalking is a major connection between the sections of both Acts. It was added to the level six offense severity level via Senate Bill 172, having previously been an unranked criminal offense. With regard to the Gort Act, both houses of the legislature contemplated the addition of the crime of aggravated stalking to the enumerated qualifying offenses for habitual violent offender sentencing. HB 1789 and SB 118 added aggravated stalking to the definition of offenses constituting domestic violence. The linking of the two portions of the Gort Act is apparent since, contrary to the Thompson court's conclusion, sections two through seven do, in fact, address domestic violence in its most virulent form. Thompson also ignored the fact that several of the crimes constituting domestic violence are forcible felonies included in the enumerated offenses for the career criminal classification, including aggravated assault, aggravated battery, sexual battery, and kidnaping.

Finally, another connection between all of the sections of both Acts is their concern for the control and punishment of first time and recidivist offenders. The first portions of both

Acts deal with sentencing for prohibited conduct and the challenged portions of the Acts provide additional remedies for violations. Thus, all of the sections have a cogent relationship.

### 3. Logrolling

Petitioner in this case asserts what was implied in Thompson, i.e., that logrolling of sections has occurred. Logrolling is the joining of separate issues into a single proposal to achieve the passage of an unpopular measure by pairing it with another which is widely supported. Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission, 705 So. 2d 1351, 1353 (Fla. 1988). The problem with this argument is that those portions of the Act complained of in the instant case were passed twice, once in the Crime Control Act and again in the Gort Act. Both Acts use the same language. Measures which passed the legislature twice can hardly be viewed as unpopular riders. Moreover, the Crime Control Act of 1995 is a prototypical crime control measure, an ordinary routine enactment which did little more than amend existing laws. Nothing in this Act makes it either widely popular or designed to arouse passions. The portions at issue could not have been passed strictly upon the popularity of the remaining portions of the Act. This is true even if one views the Gort Act as widely popular due to the incident which provoked it and the lengthy mandatory sentencing attendant to it since it does not explain passage of the same language in the Crime Control Act.

Because the legislature voted twice for the same exact statutory amendments, logrolling is not a viable concern. The harm sought to be prevented by the single subject provision did not occur in light of the fact that the portions of the Act complained of also passed the legislature in another separate Act.

#### 4. Johnson and Bunnell Distinguished

Reliance upon State v. Johnson, 616 So. 2d 1 (Fla. 1993) and Bunnell v. State, 453 So. 2d 808 (Fla. 1984) either here or in Thompson is misplaced. In Johnson, this Court held that a chapter law violated the single subject provision because it addressed two subjects, "the first being the habitual offender statute, and the second being the licensing of private investigators and their authority to repossess personal property." Johnson, 616 So. 2d at 4. The Court found that the two matters had absolutely no cogent connection because sentencing for repeat offenders and the licensing of private investigators had no common core. Similarly, in Bunnell, this Court held that a session law violated the single subject provision because the law created the criminal offense of obstruction of justice by false information and amended provisions concerning membership of the Florida Council on Criminal Justice, an item entirely unrelated to obstruction of justice by false information. The Thompson court characterized these amendments as noncriminal and dealing with an executive branch function.

By contrast to Johnson, the instant amendments do have a common core, they concern sentencing and remedies to victims of crime. In contrast to Bunnell, which dealt with amendments involving both legislative and executive branch functions, these amendments concern matters which are traditionally legislative, since both criminal sentencing and the compensation of victims of crime are within the legislature's purview. Additionally, all of the sections of the Act have significant criminal aspects.

5. Burch

In Burch v. State, 558 So. 2d 1 (Fla. 1990), this Court held that the Crime Prevention and Control Act did not violate the single subject provision of the Florida Constitution. That Act addressed comprehensive criminal regulations, money laundering, drug abuse education, forfeiture of conveyances, crime prevention studies, and safe neighborhoods. The Burch Court held that there was a logical and natural connection among these subjects because all of the parts were related to its overall objective of controlling crime. The Court noted the sections were intended to control crime, whether by providing for imprisonment or through taking away the profits of crime in the forfeiture section of the Act. Forfeiture is a civil proceeding independent of any criminal action; these actions are heard by a circuit court judge of the civil division and are governed by the rules of civil procedure. Kern v. State, 706 So. 2d 1366 (Fla. 5th DCA 1998); § 932.704(2), Fla. Stat. (1997). Thus, the legislature may combine

criminal sentencing and civil remedies without violating the single subject rule, as it did in this case.

6. Severability

The State does not address the Petitioner's argument regarding severability (IB 32-35) because it takes the position that severability is not applicable to legislative acts which violate the single subject rule.

7. Summary

Because the Act addresses sentencing for crimes, including those involving domestic violence, and also provides alternative or additional remedies for victims of these crimes, there is a natural and logical connection among its sections. The Crime Control Act therefore does not violate the single subject provision of the Florida Constitution. For all of these reasons, this Court should uphold the constitutionality of the Act as the district court did below.

V. Constitutionality of Chapter 96-388<sup>5</sup>

Petitioner may argue that Chapter 96-388 also violates the single subject provision of Article III, Section 6, as argued to this Court in Fox v. State, Case No. 96,573. The State will briefly address this argument.

All the sections of Chapter 96-388 deal with criminal matters and means of enhancing public safety pertaining to those criminal matters. There are seventy-four sections of Chapter 96-388, all

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<sup>5</sup>This argument is that same as presented to this Court in Robinson v. State, Case No. 96,481.

of which are "fairly and naturally germane to the subject of the act." Smith v. Department of Insurance, 507 So.2d 1080, 1087 (Fla. 1987). The title itself encompasses all sections of the act: "An act relating to public safety." All portions of the act deal with criminal matters and methods in which to increase public safety across the State. All portions of the statute share a common goal, a common purpose: The enhancement of "public safety" pertaining to criminal matters.

There are seventy-four sections in Chapter 96-388. All sections of the Act concern methods in which to increase public safety from criminal activity. Section one establishes an eight-year revision cycle for the criminal code. This section is clearly criminal in nature. Section two amends the "State Comprehensive Plan" for the criminal justice system. The goals enumerated in this plan include: a) the protection of the public by preventing, discouraging, and punishing criminal behavior; b) lowering the recidivism rate; c) maintenance of safe and secure prisons; d) combating organized crime; etc.

Sections three through sixteen are all related to the information systems for public safety agencies. These sections concern the "Career criminal and Juvenile Justice Information Systems Council". The purpose of this council is to facilitate the identification, standardization, sharing and coordination of criminal and juvenile justice data. These sections promote the goal of protection of the public. These sections facilitate the sharing of information amongst various criminal and juvenile

justice agencies. These sections are obviously related to the subject of protecting the public from criminal activity.

Sections seventeen through twenty-one relate to the maintenance of juvenile criminal records. These sections have amended the statutes which govern the procedures relating to fingerprinting and photographing a child who has committed an offense, the circumstances under which a juvenile's criminal history information may be obtained from the Department of Law Enforcement, the sharing of information on a juvenile who has been arrested, the merging of records for a minor who has been adjudicated as an adult for a forcible felony. These sections promote the protection of the public because they encourage the sharing and dissemination of information concerning minors who have committed crimes. Such information will help to control and prevent recidivism amongst juvenile offenders.

Section twenty-two revised the language relating to sentence guidelines scoresheets. Sections fifty through fifty-three also include revisions to the sentencing guidelines regarding the scoring of offenses for victim injury, severity of offenses, etc. These sections relate to the common theme of the act, which is public safety from criminal activity, by providing guidance for the preparation of sentencing guideline scoresheets.

Sections twenty-three repeals some of the duties of the Juvenile Justice Advisory Board. Section twenty-four concerns the Justice Administrative Commission reporting its functions to the legislature. Section twenty-five allows the insurance

commissioner to contract with the Justice Administrative Commission for the criminal prosecution of Worker's Compensation fraud. Such action relates to the protection of the public from criminal activity.

Sections twenty-six through twenty-eight repeals certain statutes. Statutes which were repealed included: (1) the Council on Organized Crime; (2) the "Crime Prevention Information" and the "Risk Assessment Coordinating Council" and the (3) Bail Bond Advisory Council. Section twenty-nine amends a statute to delete references to the Bail Bond Advisory Council. Section thirty repeals various statutes dealing with the drug punishment program and STOP offenders. Section thirty-one repeals a statute dealing with the negligent treatment of children.

Section thirty-two relates to the Department of Law Enforcement. Law enforcement is synonymous with protecting the public from criminal activity. Sections thirty-three through forty-three relate to the Street Gang Prevention Act. These sections are geared toward "public safety" to protect the public from organized, street gangs. In fact, the purpose of this section is to ensure that every person be "secure and protected from fear, intimidation, and physical harm caused by he activities of street gangs and their members." Facilitated by Sections three through twenty-one, these provisions also include considerations of a street gang member's prior record and criminal history, and therefore the recidivism of those who have committed crimes in the past.

Sections forty-four through forty-six redefine the violent career criminal, habitual offender and habitual felony offender. These provisions relate to the protection of the public as it concerns recidivism of violent criminals. Sections forty-seven through forty-nine expand the definitions of burglary, trespass and theft, to the definition of burglary, trespass and theft and therefore, relate to public safety for criminal activity. Section fifty-four amends the trafficking statute. Again, this section falls within the umbrella of protection of the public from criminal activity including illegal drugs.

Sections fifty-five and fifty-seven make certain convicted felons ineligible for early release. Here, the legislature sought to protect citizens from certain types of criminals, thereby, abolishing these criminals' ability to obtain early release from prison. Section fifty-six relates to the unlawful taking of a police officer's weapon. Section fifty-eight makes grammatical corrections to the restitution statute. Restitution directly relates to protection of the public, as victims of crimes have the right to obtain compensation for their injuries and losses. Section fifty-nine amends the gain time statute. This statute relates to the ability of prisoners to receive gain time, and therefore an earlier release. As such, the section relates to the protection of the public, as it concerns a prisoner's ability to obtain release back into society.

Sections sixty through sixty-seven concerns the Jimmy Ryce Act, which relates to sexual predators, etc. This act concerns

protection of the public as it relates to protecting the public from sexual predators, etc. Section sixty-eight relates to the security and arrest surrounding injured apprehendees. Sections sixty-nine through seventy-one concern prosecution for computer pornography. These sections of the act obviously falls within the umbrella of protection of the public from criminal activity.

Section seventy-two concerns the loss of privileges for persons incarcerated who loses civil actions arising from the commission of a forcible felony. Section seventy-three concerns the effective date of a bill relating to security alarms which are critical in protecting households and businesses from burglaries, robberies, and other crimes. Finally, Section seventy-four contains the effective date of the act.

All the sections of this act concern one subject: the protection of the public from crime. Therefore, there is a natural and logical connection among the sections of this act and it does not violate the single subject provision. It is clear that all are germane to one theme or subject: public safety in criminal matters. The various sections of the act all have a natural and logical connection.

Chapter 96-388 was originally Senate Bill 156. The legislative history of the bill explains that the majority of the sections of the final bill were originally other bills. House Final Bill Analysis p.5 (August 9, 1996). The House Final Bill Analysis identifies the source of each section of Senate Bill 156 by its original source and explains the effect of the section.

The summary of the bill, the effects of proposed changes and the section by section analysis all highlight the single subject of protecting the public from criminal activity.

The only remotely "civil" aspect of the bill is section seventy-three, which deals with security alarms. However, that section only establishes an effective date of a bill that had already passed. The substance of bill was already enacted. Thus, this section is an innocuous, technical amendment to legislation that already independently passed and cannot, by definition, present any logrolling problems. This is housecleaning, not logrolling.

Reliance upon State v. Johnson, 616 So. 2d 1 (Fla. 1993) and Bunnell v. State, 453 So. 2d 808 (Fla. 1984), to attack chapter 96-388 would be misplaced. In Johnson, this Court held that a chapter law violated the single subject provision because it addressed two subjects: "the first being the habitual offender statute, and the second being the licensing of private investigators and their authority to repossess personal property." Johnson, 616 So. 2d at 4. The court stated that the two matters had no cogent connection. Nothing like that is present here. Similarly, in Bunnell, this Court held that a session law violated the single subject provision when it created the criminal offense of obstruction of justice by false information and made amendments concerning membership of the Florida Council on Criminal Justice. The Thompson court

characterized these amendments as noncriminal and dealing with an executive branch function.

In contrast to the act at issue in Johnson, the sections of Chapter 96-388 do have a common core. They concern repeated criminal offenders, street gang prevention, sharing of criminal history information for both adult and juvenile criminals, and other public safety measures. Moreover, in contrast to Bunnell, which dealt with amendments that involved both legislative and executive functions, these amendments concern traditionally legislative matters. Setting punishment for recidivist offenders and compensating victims are both legislative branch matters. Additionally, as shown, all sections of Chapter 96-388 address means of enhancing public safety where criminal matters are concerned. Thus, the legislative enactment at issue in this case is significantly different from the acts at issue in Johnson and Bunnell. The act here, as shown above, deals only with legislation designed to promote public safety. It is not controlled by Johnson or Bunnell, it is controlled by Burch.

In Burch, this Court held that the Crime Prevention and Control Act did not violate the single subject provision of the Florida Constitution. The Act dealt with (1) comprehensive criminal regulations, (2) money laundering, (3) drug abuse education, (4) forfeiture of conveyances, (5) crime prevention studies, and (6) safe neighborhoods. Id. This Court held that there was a logical and natural connection among these subjects because all of the parts were related to its overall objective of

crime control. Burch noted that the sections were intended to control crime, whether by providing for imprisonment or through taking away the profits of crime. The taking away profits language is a reference to the forfeiture section of the Act. A forfeiture proceeding is civil and independent of any criminal action. Kern v. State, 706 So.2d 1366 (Fla. 5th DCA 1998). All civil forfeiture cases are heard before a circuit judge of the civil division and the rules of civil procedure govern. § 932.704(2), Fla. Stat. (1997). Thus, as argued above, the legislature may combine criminal sentencing and civil remedies for crimes without violating the single subject provision.

Here, as in Burch, the legislature has provided for protection of the public through sharing of criminal record information, recidivism control, notice to the public of sexual predators living in their neighborhoods, sentencing guidelines amendments, and other public safety measures. In Burch, the legislature sought to control crime in different ways. Here, the legislature also sought to protect the public by utilizing several methods, working together. The legislature set forth a comprehensive plan to protect the public and to provide for public safety. The legislature may properly set forth a goal of protecting the public. When the legislature does so, the sections have a natural and logical connection and do not violate the single subject provision.

VI. Summary

In summary, Petitioner lacks standing to challenge Chapter 95-184, because his offense was committed after Chapter 96-388, effective October 1, 1996, reenacted the guidelines minus the disputed sections. Further, for reasons set forth above and in Trapp, chapter 95-184 does not violate the single subject rule because all sections deal with measures to protect the public against repeat offenders. Finally, chapter 96-388 does not violate the single subject requirement. Accordingly, Petitioner's judgment and sentence should be affirmed, the certified question answered in the negative, and the decision of the district court below approved.

CONCLUSION

Based on the foregoing, the State respectfully submits the certified question should be answered in the negative, the decision of the District Court of Appeal should be approved, and the sentence entered in the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF ON THE MERITS has been furnished by U.S. Mail to the Attorney for the Petitioner, David A. Hallman, Post Office Box 1159, Chiefland, Florida 32344, this 29 day of November, 1999.

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