

IN THE SUPREME COURT OF FLORIDA

CASE NO. 96,899

EUSEBIO LAZARO MEDINA,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

SUPPLEMENTAL BRIEF OF PETITIONER ON THE MERITS

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1320 Northwest 14th Street
Miami, Florida 33125
(305) 545-1960

LISA WALSH
Assistant Public Defender
Florida Bar No. 0964610

Counsel for Petitioner

TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4

CHAPTER 95-184, LAWS OF FLORIDA (1995), WHICH CREATED THE 1995 SENTENCING GUIDELINES VIOLATES ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION AND THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT’S SENTENCE REMANDED FOR RESENTENCING. THE WINDOW PERIOD GOVERNING WHETHER A DEFENDANT MAY CHALLENGE HIS OR HER SENTENCE UNDER THE 1995 SENTENCING GUIDELINES IS OCTOBER 1, 1995 TO MAY 24, 1997.

A. Chapter 96-388, Laws of Florida did not reenact the guidelines law.	7
A1. Plain language of the chapter law indicates that it is amending not reenacting.	8
A2. Chapter 96-388 does not reenact the guidelines where it is missing large portions of the guidelines.	9

A3. The reason subsections of the guidelines are republished in 96-388 is to avoid amendment by reference.	10
A4. Where the Florida Constitution expressly provides for the manner of doing a thing, it impliedly forbids it being done in a substantially different manner.	11
A5. The Division of Statutory Revision has expressly designated the “curing period” as governed by biennial reenactment in the Florida Statutes.	12
A6. Even if the amendment is designated by this Court to be a reenactment, there exist a class of defendants still governed by the longer window period.	14
B. Chapter 96-388 Also Violates Article III, Section 6	15
CONCLUSION	28
CERTIFICATE OF SERVICE	29
CERTIFICATE OF FONT	30

TABLE OF AUTHORITIES

CASES	PAGES
<i>B.H. v. State</i> 645 So. 2d 987 (Fla. 1994)	12
<i>Bortel v. State</i> 743 So. 2d 595 (Fla. 4 th DCA 1999)	5, 6, 8
<i>Boyer v. Black</i> 18 So. 2d 886 (Fla. 1944)	25
<i>Bunnell v. State</i> 453 So. 2d 808 (Fla. 1984)	20, 22, 27
<i>Burch v. State</i> 558 So. 2d 1 (Fla. 1990)	26
<i>Brister v. State</i> 622 So. 2d 552 (Fla. 3d DCA 1993)	12
<i>City of Ocoee v. Bowness</i> 65 So. 2d 7 (Fla. 1953)	24
<i>Colley v. State</i> 744 So. 2d 1172 (Fla. 2d DCA 1999)	23
<i>County of Hillsborough v. Price</i> 149 So. 2d 912 (Fla. 2d DCA 1963)	24
<i>Diaz v. State</i> No. 3D99-1217 (Fla. 3d DCA March 1, 2000)	5
<i>Heggs v. State</i> 718 So. 2d 263 (Fla. 2d DCA 1998)	5
<i>Heggs v. State</i>	

25 Fla. L. Weekly S137 (Fla. Feb. 17, 2000)	4, 20, 23, 24, 27
<i>In Re Forfeiture of 1969 Piper Navajo</i> 592 So. 2d 233 (Fla. 1992)	25
<i>Salters v. State</i> 731 So. 2d 826 (Fla. 4 th DCA 1999), <i>review granted</i> , No. 95,663 (Fla. Dec. 3, 1999)	5, 6
<i>Santos v. State</i> 380 So. 2d 1284 (Fla. 1980)	7
<i>State ex rel. Flink v. Canova</i> 94 So. 2d 181 (Fla. 1957)	19, 24
<i>State v. Johnson</i> 616 So. 2d 1 (Fla. 1993)	7, 20, 22, 27
<i>State v. Thompson</i> 25 Fla. L. Weekly S1 (Fla. December 22, 1999)	19, 20, 23, 24, 27
<i>Weinberger v. Board of Public Instruction</i> 112 So. 253 (Fla. 1927)	11

OTHER AUTHORITIES

FLORIDA STATUTES

§ 11.2421	7, 12
§ 394.193	18
§ 775.21	21
§ 776.085	21
§ 921.0012(3)	9
§ 921.0013	10
§ 921.0014(2)	10
§ 921.0014(3)	10
§ 921.0014(4)	10

§ 921.0014(5)	10
§ 921.0014(6)	10
§ 921.0014(7)	10
§ 921.0016	10

FLORIDA CONSTITUTION

Article III, Section 6	4, 7, 10, 11, 12, 15, 19, 26, 27
------------------------------	----------------------------------

LAWS OF FLORIDA

95-182	5, 6, 19
95-184	4, 6, 7, 10, 14, 20, 27
96-388	4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 20, 22, 23, 25, 26, 27
97-97	4, 7
98-64	18

INTRODUCTION

This is a supplemental brief on the merits of petitioner/defendant Eusebio Medina on conflict jurisdiction from the Third District Court of Appeal.

Citations to the record are abbreviated as follows:

(R.) - Clerk's Record on Appeal

(TR.) - Transcript of Proceedings

(A.) - Appendix with Third District's decision

STATEMENT OF THE CASE AND FACTS

This Court held in *Heggs v. State*, 25 Fla. L. Weekly S137 (Fla. Feb. 17, 2000), that the act which created the 1995 sentencing guidelines, Chapter 95-184, Laws of Florida (1995), is unconstitutional. Unresolved is the issue of whether the window period for challenging Chapter 95-184 is October 1, 1995 to May 24, 1997 or whether the enactment of Chapter 96-388, Laws of Florida closes the window period on October 1, 1996. This Court is currently reviewing the Fourth District Court of Appeal's resolution of an analogous issue in *Salters v. State*, 731 So. 2d 826 (Fla. 4th DCA 1999), *review granted*, No. 95,663 (Fla. Dec. 3, 1999). Accordingly, the Petitioner is supplementing the initial brief to include argument that the window period should be governed by biennial reenactment of the Florida Statutes, or the period ending on May 24, 1997.

SUMMARY OF ARGUMENT

The window period in which challenges to sentences under the 1995 sentencing guidelines may be brought should be governed by the biennial reenactment of the general laws which occurred on May 24, 1997. The Fourth District Court of Appeal incorrectly concluded that the passage of a 1996 chapter law effectively reenacted the 1995 sentencing guidelines. Because Chapter 96-388, sections 51-53, Laws of Florida, **did not** reenact the 1995 guidelines, but amended sections of the Act, the single-subject violation was not cured by Chapter 96-388. Amendment of portions of the original law is not a reenactment. It is only reenactment in the Florida Statutes which cures constitutional infirmities because only chapter laws or acts of the legislature violate the constitution; republishing of the laws in the Florida Statutes does not. Moreover, regardless of whether it reenacted the 1995 guidelines, chapter 96-388 itself violates the single subject provision of the Florida Constitution and therefore, the window period governed by the biennial reenactment of the general laws in the Florida Statutes applies.

ARGUMENT

CHAPTER 95-184, LAWS OF FLORIDA (1995), WHICH CREATED THE 1995 SENTENCING GUIDELINES VIOLATES ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION AND THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S SENTENCE REMANDED FOR RESENTENCING. THE WINDOW PERIOD GOVERNING WHETHER A DEFENDANT MAY CHALLENGE HIS OR HER SENTENCE UNDER THE 1995 SENTENCING GUIDELINES IS OCTOBER 1, 1995 TO MAY 24, 1997.

The underlying offense in this case was committed on December 14, 1996. (R. 1)

The sentence was therefore governed by the 1995 guidelines, which were enacted by the legislature in chapter 95-184, Laws of Florida (1995) and applied to all crimes committed after October 1, 1995. This Court held in *Heggs v. State*, 25 Fla. L. Weekly S137 (Fla. Feb. 17, 2000) that the chapter law which enacted the 1995 sentencing guidelines, Chapter 95-184, sections 2-7, at 1331-1344, Laws of Florida, was unconstitutional because it violated the single-subject provision in Article III, Section 6 of the Florida Constitution.

The only question left unanswered by the Court's opinion in *Heggs* is whether the biennial reenactment of the general laws, Chapter 97-97, Laws of Florida, sets the window period in which challenges to 1995 guidelines sentences may be brought, or whether Chapter 96-388, Laws of Florida, an act pertaining to "Public Safety" establishes

the end of the window period. The biennial reenactment of the general laws for publication in the Florida Statutes took place on May 24, 1997, and Chapter 96-388 took effect on October 1, 1996.

The lower court in *Heggs v. State*, 718 So. 2d 263 (Fla. 2d DCA 1998), concluded that the constitutional infirmity in the guidelines act was cured by the biennial reenactment of the Florida Statutes which occurred on May 24, 1997. Therefore, the window period in which to challenge a sentence, according to the Second District Court of Appeal, falls between October 1, 1995 and May 24, 1997. The Third District Court of Appeal recently agreed with the Second District that challenges to a 1995 guidelines sentence may be brought between October 1, 1995 and May 24, 1997. *Diaz v. State*, No. 3D99-1217 (Fla. 3d DCA March 1, 2000).

The Fourth District Court of Appeal in *Bortel v. State*, 743 So. 2d 595 (Fla. 4th DCA 1999) identified a different window period and concluded that chapter 96-388, Laws of Florida, reenacted the sentencing guidelines law, with an effective date of October 1, 1996, thereby curing the constitutional defect.

This Court has granted review in *Salters v. State*, 731 So. 2d 826 (Fla. 4th DCA 1999), *review granted*, No. 95,663 (Fla. Dec. 3, 1999). While *Salters* deals with the constitutionality of the Gort Act, Chapter 95-182, Laws of Florida, the same issue in *Salters* is presented in the instant case, whether biennial reenactment of the general laws

in the Florida Statutes or the subsequent partial publication of a law in a chapter law governs the window period in which sentencing challenges may be brought. Chapter 95-182 was enacted at the same time as Chapter 95-184, and both laws were amended in Chapter 96-388. Therefore, the window period for both challenges should be identical.

The Fourth District Court of Appeal's conclusion in *Salters* and *Bortel* was incorrect. Biennial reenactment of the general laws for publication in the Florida Statutes governs the window period in the instant case. Because Chapter 96-388, Laws of Florida, did **not** reenact the guidelines law, but amended some sections of the Act, the single-subject violation was not cured by Chapter 96-388. Republishing portions of the original law in a subsequent chapter law for purposes of amendment is not a reenactment.

Moreover, regardless of whether chapter 96-388 reenacted the guidelines law, chapter 96-388 itself violates the single subject provision of the Florida Constitution and therefore, the window period governed by the biennial reenactment of the general laws in the Florida Statutes applies.

A. Chapter 96-388, Laws of Florida did not reenact the guidelines law.

This Court explained in *State v. Johnson*, 616 So. 2d 1 (Fla. 1993), that the biennial adoption of the Florida Statutes

has the effect of adopting as the official statutory law of the state those portions of statutes that are carried forward from the preceding adopted statutes. Once reenacted as a portion of the Florida Statutes, a chapter law is no longer subject to challenge on the grounds that it violates the single subject requirement of article III, section 6, of the Florida Constitution. See *Loxahatchee River Env'tl. Control Dist. v. School Bd.*, 515 So. 2d 217 (Fla. 1987); *State v. Combs*, 388 So. 2d 1029 (Fla. 1980) (the single subject requirement of article III, section 6, only applies to “chapter laws,” and sections of the Florida Statutes need not conform to the requirement).

This Court in *Santos v. State*, 380 So. 2d 1284 (Fla. 1980) also explained that Article III, section 6 pertains only to “laws” or acts of the legislature. “When laws passed by the legislature are being codified for publication in the Florida Statutes,” the single-subject restriction does not apply. Once the law is re-codified for publication in the Florida Statutes, it is no longer subject to constitutional attack. Therefore, the constitutional infirmity which exists in Chapter 95-184, Laws of Florida, was cured on May 24, 1997, when the adoption act, Chapter 97-97, Laws of Florida, re-codified the general laws for publication in the Florida Statutes. See § 11.2421, Fla. Stat. (1997).

The Fourth District Court of Appeal’s conclusion in *Bortel* that chapter 96-388,

Laws of Florida reenacted the guidelines law is wrong for several reasons.

A1. Plain language of the chapter law indicates that it is amending not reenacting.

First, the plain language in Chapter 96-388 indicates that the Act purports to amend the guidelines, not reenact them. Section 51 reads as follows:

Section 51. Effective October 1, 1996, subsections (1) and (2) and paragraphs (b), (c), (d), (e), (f), (g), (h) and (i) of subsection (3) of section 921.0012, Florida Statutes, are **amended** to read:

Section 52 reads as follows:

Effective October 1, 1996, section 921.0013, Florida Statutes, is **amended** to read:

Section 53 reads as follows:

Effective October 1, 1996, subsection (1) of section 921.0014, Florida Statutes, is **amended** to read:

(Emphasis added). Thus, specific sections of the guidelines statutes were amended, not reenacted in sections 51, 52 and 53. The legislature is presumed to mean what it says. If the legislature determines that sections are amended, then a full reenactment of the guidelines cannot be presumed. Moreover, it is the republication within the Florida Statutes which cures the single-subject problem, not a partial republishing within a subsequent chapter law amending a statute.

Chapter 96-388, sections 51-53 made the following amendments to the 1995

sentencing guidelines:

Section 51 alters section 921.0012(2), Florida Statutes (1995) to provide that the numerical statutory references in the left hand column of the offense severity chart control which felony offenses are being ranked.

Section 51 ranks an additional grand theft charge within level 2 of the offense severity chart.

Section 52 makes a minor change in the language of section 921.0013, Florida Statutes (1995) concerning ranking unlisted felony offenses.

Section 53 amends the assessment of community sanction points.

Section 53 amends the assessment of prior serious felony points.

Section 53 provides for a multiplier for an offender who is a member of a criminal street gang.

Thus, the guidelines were not “reenacted;” subsections of the guidelines were amended.

A2. Chapter 96-388 does not reenact the guidelines where it is missing large portions of the guidelines

Second, Chapter 96-388, is not a reenactment of the 1995 guidelines where 96-388 is missing large chunks of the guidelines statutes. In Chapter 96-388, section 921.0012(3), Florida Statutes (1995) is missing levels 1 and 3-10 of the offense severity ranking chart. Sections 921.0014(2), 921.0014(3), 921.0014(4), 921.0014(5), 921.0014(6), 921.0014(7), and 921.0016, Florida Statutes (1995) are missing from

Chapter 96-388. Additionally, section 921.0013, Florida Statutes, was left untouched in Chapter 95-184 but was amended in Chapter 96-388, section 52. Thus, if Chapter 96-388 was intended to be a reenactment, it silently deleted numerous sections of the guidelines, including the bulk of the offense severity ranking chart. Chapter 96-388 clearly did not eradicate these sections as they are republished in the Florida Statutes after the biennial reenactment of 1997.

A3. The reason subsections of the guidelines are republished in 96-388 is to avoid amendment by reference.

Third, republishing of the amended subsections of the guidelines simply is not “reenactment.” Subsections of the amended law are republished in sections 51-53 of Chapter 96-388 because there is a constitutional requirement that statutes may not be amended by reference and amended subsections must be set out in full. *See* Art. III, § 6, Fla. Const. This constitutional provision states that “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 paragraph of a subsection.” If the legislature failed to republish the subsections of the law being amended, Chapter 96-388 would fall afoul of this constitutional requirement.

A4. Where the Florida Constitution expressly provides for the manner of doing a thing, it impliedly forbids it being done in a substantially different manner.

Fourth, if republishing the pertinent subsections being amended constituted “reenactment,” then the language in Article III, section 6 of the Florida Constitution as well as within the chapter laws about “amendment” or “revision” would be superfluous; every change to a Florida law would be a reenactment. It is a well accepted 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). The legislature may, therefore, amend, revise or reenact. The clear delineation in Chapter 96-388, sections 51-53, Laws of Florida that it was amending the guidelines should be honored by this Court.

As further support for the proposition that when the legislature amends, it does not reenact, it has long been a principle of law that when an amendment to a statute is declared unconstitutional, the prior version of the statute being amended remains in

effect. *Brister v. State*, 622 So. 2d 552, 553 (Fla. 3d DCA 1993); *B.H. v. State*, 645 So. 2d 987, 995 (Fla. 1994). If a legislative act called an “amendment” were deemed an “enactment,” then when the amendment is declared unconstitutional, the entire statute would be rendered invalid.

This Court should also consider that if amending a statute constituted a reenactment, then the legislature could at whim violate the single subject provision in Article III, section 6 of the Florida Constitution and merely amend the new law in a subsequent piece of legislation the next day of session, thus “curing” the infirmity. Surely such an important constitutional provision as prohibiting legislative logrolling cannot be so easily undermined.

A5. The Division of Statutory Revision has expressly designated the “curing period” as governed by biennial reenactment in the Florida Statutes.

Fifth, a division of the legislature has expressly designated that the “curing period” shall remain two years until the republishing on odd years of the Florida Statutes. Since 1941, the Florida Statutes have been reenacted biennially. *See* § 11.2421, Fla. Stat. (1997). Florida’s Division of Statutory Revision, part of the Office of Legislative Services, in its preface to the Florida Statutes, explains the nature of the continuous revision system:

In its continuous revision system, Florida has an efficient method for keeping general statutory law up to date and

readily available. Beginning with the 1999 regular session of the Legislature, the *Florida Statutes* will be published in its entirety annually. Previously, the statutes were published following each odd-year regular session, and a supplement was published following each even-year regular session.

* * *

Adoption of the Florida Statutes. - The enactment of the adoption act, which provides for adoption of the official statutory law of the state, is a vital part of the continuous revision system. The act amends ss. 11.2421, 11.2422, 11.2424, and 11.2425. With the change to annual publication of the *Florida Statutes*, the adoption act will be submitted to the Legislature to be enacted every year instead of biennially, **while the “curing period” will remain 2 years.**

* * *

The adoption of the *Florida Statutes* cures title defects that existed in an act as originally passed. *See State ex rel. Badgett v. Lee*, 156 Fla. 291, 22 So. 2d 804 (1945). Thus, general legislation may be attacked on this ground only during the period between its original enactment and its subsequent adoption as the official law of the state 2 years later. An act with a title defect is considered valid only from adoption and not from the date of original enactment. *See Thompson v. Intercounty Tel. & Tel. Co.*, 62 So. 2d 16 (Fla. 1952).

Analogously, **once reenacted as a portion of the *Florida Statutes*, a statute is no longer subject to challenge on the ground that it violates the single subject requirement of s. 6, Art. III of the State Constitution.** *See State v. Combs*, 388 So. 2d 1029 (Fla. 1980); *Loxahatchee River Environmental Control District v. School Board of Palm Beach County*, 515 So. 2d 217 (Fla. 1987); *State v. Johnson*, 616 So. 2d 1 (Fla. 1993).

Vol. 6, Fla. Stat. at vi (1999) (emphasis added). In other words, a division of the legislature has determined that the period for the purpose of curing title defects or constitutional infirmity **will remain 2 years when the law is republished as the official state law in the Florida Statutes**, despite a decision in 1999 to publish the statutes annually. Certainly, then, republishing a portion of a challenged statute within a subsequent chapter law and **not within** the Florida Statutes will not cure a constitutional defect.

A6. Even if the amendment is designated by this Court to be a reenactment, there exist a class of defendants still governed by the longer window period.

Even if this Court determines that Chapter 96-388 effects a reenactment of the 1995 guidelines, there will still exist a class of defendants who must be adjudicated under the longer window period. Because Chapter 96-388 omits the entire offense severity ranking chart, except for amending level 2, Chapter 96-388 cannot be said to reenact the entire ranking chart. Chapter 95-184 made many changes to the ranking chart, namely ranking offenses which were previously unranked. Therefore, defendants whose 1995 guidelines scoresheets reflect a higher sentencing guidelines score because of offenses newly ranked in levels 3-10 should be governed by the longer window period because levels 3-10 of the ranking chart are omitted from Chapter 96-388.

In sum, republishing a portion of the 1995 guidelines in chapter 96-388 does not

constitute reenactment, and it is not until the biennial reenactment of the general laws in the Florida Statutes that a constitutional infirmity will be cured.

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

Regardless of whether Chapter 96-388 reenacted the guidelines, the longer window period still applies because Chapter 96-388 also violates the single-subject provisions of Article III, Section 6.

Chapter 96-388 begins by asserting it is "[a]n act relating to 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 children¹.

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 of the Florida Constitution 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

¹ The "Jimmy Ryce Act" of 1996 is not to be confused with the "Jimmy Ryce Involuntary Civil Commitment for Sexual Violent Predators' Treatment and Care Act," Chapter 98-64, Laws of Florida. See Section 394.193, Fla. Stat. (1999).

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).

In *State v. Thompson*, 25 Fla. L. Weekly S1 (Fla. December 22, 1999), this Court struck down Chapter 95-182, which created the Gort Act on the ground that it violated the single subject provision because the Act addressed two distinct subjects, career criminals and domestic violence. This Court determined that these subjects were distinct from one another because the legislature did not identify some public crisis encompassing both domestic violence and career criminals. This Court likened the violation in *Thompson* to those in *State v. Johnson*, 616 So. 2d 1 (Fla. 1993) (law struck down which embraced career criminal sentencing and repossession of motor vehicles by private investigators) and *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984) (law struck down which created the offense of obstruction of justice by false information, and amended and repealed sections relating to the Florida Council of Criminal Justice).

The identical single subject violation which existed in *Thompson* was found by

this Court in *Heggs v. State*, 25 Fla. L. Weekly S137 (Fla. February 17, 2000). Chapter 95-184, which created the 1995 sentencing guidelines, encompassed both crime control and domestic violence under the general heading “Crimes-Justice System-General Amendments.” Under the same analysis set forth in *Thompson*, this Court struck down Chapter 95-184.

The instant law, chapter 96-388, embraces numerous subjects, each diverse from one another, and the legislature has not identified any overarching crisis which would logically link these subjects.

The Act addresses the general criminal statutes in sections 1, 31, 33-43, 47-48, 49, 54, 70-71. The jurisdiction of the statewide prosecutor is addressed in section 69. The sentencing guidelines and enhanced punishment provisions are addressed in sections 22, 44-46, 50-53. Gain time and early release of prisoners is addressed by sections 55-59.

Juvenile justice, release of juvenile records, and amendments to the “Criminal and Juvenile Justice Information Systems Council” are found in sections 3, 4-16, 17-21, 23.

Section 2 amends the “State Comprehensive Plan”. Amendments to the “Justice Administrative Commission” are found within sections 25 and 26. The law repeals the “Council on Organized Crime” in section 26 and maintains the “Florida Violent Crime Council” in section 32.

The law repealed programs which identify risk factors for probable offenders at sections 27 and 30. Bail bondsmen are addressed in sections 28, 29.

Protocols for law enforcement dealing with injured arrestees and security during hospitalization are addressed by section 68.

Section 776.085, Florida Statutes establishing civil damages actions against perpetrators of forcible felonies was amended in section 72.

The “Jimmy Ryce Act,” section 775.21, Florida Statutes (1996 Supp.) was created in sections 60-67. The Jimmy Ryce Act provides for civil designation of sexual predators and offenders, registration of designated individuals, community and public notification of sexual predators and offenders and records requirements for missing children.

Chapter 96-388, Laws of Florida embodies the term “hodgepodge.” There is simply no logical connection between the many subjects encompassed by the Act nor is there some overarching public crisis identified by the legislature which joins the law’s many subjects.

The amendment of the substantive crimes of burglary and theft has no logical connection with amendment and repeal of laws pertaining to councils on organized crime, juvenile justice, violent crime, justice administration, risk assessment and drug punishment. Joining these provisions created the identical violation found by this Court in *Bunnell*, 453 So. 2d at 809. In *Bunnell*, this Court struck down a chapter law which

joined creation of the crime of obstruction of justice by false information with amendments to laws relating to the Florida Council on Criminal Justice. *Id.*

Chapter 96-388 links career criminal sentencing with provisions pertaining to bail bondsmen, a similar violation to that found in *Johnson*. In *Johnson*, this Court struck down a law which joined amendments to the habitual offender statute and licensing of private investigators to repossess property. 616 So. 2d at 4.

A single subject violation analogous to those found in *Thompson* and *Heggs* exists in chapter 96-388 where career criminal and sentencing provisions are joined with civil compensation for crime victims, civil reporting requirements for sexual predators, and reporting requirements for missing children. The chapter laws in *Thompson* and *Heggs* were struck down for joining punishment provisions with civil domestic violence provisions created for the benefit of victims.

The most striking violation is the joinder of laws pertaining to sexual predators and missing children with amendments to laws on juvenile justice. The legislature has identified no overarching public crisis which encompasses both the protection of children from sexual predators and the punishment of children for commission of law violations nor is there a logical connection between the dissemination of juvenile records and the disseminating of records on sexual predators. Moreover, there is no connection between criminal punishment provisions in the act and civil or remedial provisions pertaining to

sexual predators. *See Colley v. State*, 744 So. 2d 1172, 1174 (Fla. 2d DCA 1999) (“[A] sexual predator designation is not a sentence or punishment, but is a regulatory act done for remedial purposes.”).

Provisions in a chapter law will be considered as covering a single subject if they have a cogent, logical, natural, or intrinsic connection or relation to each other; a tenuous relationship or connection is insufficient. The legislature will be given some latitude to enact a broad law, provided that law is intended to be a comprehensive approach to a complex and difficult problem that is currently troubling the public. As this Court clarified in *Heggs* and *Thompson*, there needs to be a connection, some “broad crisis encompassing” the distinct subjects in order for the law to embrace but a single subject. There was no broad crisis encompassing the numerous and diverse subjects embraced by this single legislative act.

In addition, separate subjects cannot be artificially connected by the use of broad 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 181 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. Basic principles of due process inform us that the legislature has no substantive authority to enact a statute unless it can reasonably be said that that statute, in some way, 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 any set of statutory provisions the legislature has the substantive authority to enact would satisfy the single subject requirement. This, of course, 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.

Further, approving a title like "[a]n act relating to public safety" would also render the title requirement meaningless. If the title requirement is meant 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). 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 bloated version of the laws found invalid in *State v. Johnson, supra*, *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984), *Thompson, supra* and *Heggs, supra*.

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 laws in *Johnson*, *Thompson* and *Heggs*, 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 bondsmen, treatment for drug offenders, the prosecution of criminal street gangs, changes to the burglary and theft statutes, drug trafficking, the civil reporting and registration 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.

Thus, Chapter 96-388 violates the provisions of Article III, Section 6, which in turn means that all challenges to Chapter 95-184 should be governed by the longer window period.

CONCLUSION

Based upon the foregoing, the defendant requests that this Court quash the decision of the Third District and reverse his sentence pursuant to the 1995 sentencing guidelines with directions to remand the case to the lower court for a new sentencing pursuant to the 1994 guidelines.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
of Florida
1320 NW 14 Street
Miami, Florida 33125
(305) 545-1960

By: _____
LISA WALSH #0964610
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to Lara J. Edelstein, Assistant Attorney General, Office of the Attorney General, Criminal Division, 110 SE 6th Street, 9th Floor, Fort Lauderdale, Florida 33301, this 16th day of March, 2000.

By: _____
LISA WALSH
Assistant Public Defender

CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times Roman.

LISA WALSH
Assistant Public Defender