SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 196

SPONSOR: Senator Villalobos

SUBJECT: Division of Driver Licenses/Exclusionary Rule

DATE: December 5, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/1 amendment
2.	Johnson	Johnson	JU	Favorable
3.				
4.				
5.				
6.				

I. Summary:

The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effects. The Florida Supreme Court held in, *Shadler v. State*, 761 So.2d 279 (Fla. 2000), cert.den., 121 S.Ct.298 (2000), "that the exclusionary rule applies to an error committed by the Florida Department of Highway Safety and Motor Vehicles through its Division of Driver Licenses."

This bill amends the evidence code to provide legislative findings and prohibit the application of the exclusionary rule in any case where a law enforcement officer effects an arrest based on objectively reasonable reliance on information obtained from the Division of Driver Licenses or the Division of Motor Vehicles. The bill provides that "[E]vidence found pursuant to such an arrest shall not be suppressed by application of the exclusionary rule on the grounds that the arrest is subsequently determined to be unlawful due to erroneous information obtained from the divisions."

This bill's effective date is July 1, 2002.

This bill substantially amends and creates the following sections of the Florida Statutes: 90.959, 322.20 and 320.05.

II. Present Situation:

FOURTH AMENDMENT - EXCLUSIONARY RULE

The Fourth Amendment of the United States Constitution protects citizens against "unreasonable searches and seizures." However, the Fourth Amendment contains no express statement

prohibiting the use of evidence obtained as a result of an unreasonable search or seizure. The United States Supreme Court has held that the wrong condemned by the Fourth Amendment is "fully accomplished" by the unlawful search or seizure itself and the use of the fruits of a past unlawful search or seizure "works no new Fourth Amendment wrong." *United States v. Leon*, 468 U.S. 897, 906 (1984). In *Arizona v. Evans*, 514 U.S. 1 (1995), the Court explained:

> The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effects. As with any remedial device, the rule's application has been restricted to those instances where its remedial objectives are thought most efficaciously served. Where "the exclusionary rule does not result in appreciable deterrence, then clearly its use...is unwarranted."

Id. at 10. (citations omitted).

"Good faith" exception:

Historically, the exclusionary rule has been limited to deterrence of police misconduct. However, even within the realm of deterring police misconduct, the exclusionary rule has been limited by the "good faith" exception enunciated in *United States v. Leon*, 468 U.S. 897, 906 (1984). In *Leon*, the Court held that the exclusionary rule does not ban evidence obtained by officers acting in reasonable reliance on a search warrant issued by a neutral magistrate but later found to be invalid for lack of probable cause.

Arizona v. Evans:

In *Arizona v. Evans*, 514 U.S. 1 (1995), the defendant was stopped for a routine traffic violation when a computer check of his driver's license revealed that it had been suspended and there was an outstanding misdemeanor warrant for his arrest. When the officer searched the defendant and his car he found contraband. As it turned out, the clerk of the court had failed to notify the sheriff's office that the warrant for the defendant's arrest had been quashed. In its review of the Arizona Supreme Court's decision which agreed that the evidence was properly excluded, the United States Supreme Court reversed. It held that the exclusionary rule does not apply to errors committed by court personnel. The Court's reasoning was three-pronged:

- First, the exclusionary rule was historically designed as a means of deterring police misconduct, not mistakes by court employees.

- Second, the defendant offered no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion.

- Third, there is no basis for believing that application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed. Because court clerks are not adjuncts to the law

> enforcement team engaged in the often competitive enterprise of ferreting out crime, they have no stake in the outcome of particular criminal prosecutions.

Id. at 14-15., *citing, United States v. Leon*, 468 U.S. 897 (1984).

SEARCH AND SEIZURE IN FLORIDA COURTS

The Florida Evidence code is found in ch. 90, F.S. It contains no provisions relating to the applicability of the Fourth Amendment's exclusionary rule. The exclusionary rule has been discussed extensively in Florida case law. The Florida Constitution requires that search and seizure rights "shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court." Art. I, s. 12, Fla. Const.

In *State v. White*, 660 So. 2d 664 (Fla. 1995), the Florida Supreme Court acknowledged the holding in *Arizona v. Evans*, but said that it did not answer the question of whether the exclusionary rule bars the use of evidence obtained as the result of an illegal arrest resulting from police computer error. In *White*, the error was committed by personnel working within the sheriff's office. The Court, after considering *Leon* and *Evans*, held that the good faith exception is inapplicable where it is within the collective knowledge of a law enforcement agency that a warrant is void. *Id*. at 668. "In essence, the arresting officers are charged with knowledge that they had no authority to arrest the defendant." *Id.*

***Shadler v. State*, Facts:**

The Florida Supreme Court held in, *Shadler v. State*, 761 So.2d 279 (Fla. 2000), U.S. cert.den. 121 S.Ct. 298 (2000), that " the exclusionary rule applies to an error committed by the Florida Department of Highway Safety and Motor Vehicles through its Division of Driver Licenses." Shadler was arrested for driving with a suspended license after he was stopped by an officer who performed a computerized check through the Department of Highway Safety and Motor Vehicles, Division of Driver Licenses, confirming that Shadler's license was suspended. When the officer searched Shadler incident to that arrest, he "found contraband in a plastic bag inside Shadler's wallet." Shadler later learned that his license was not in fact suspended and that "the mistaken information was due to a computer error."

In Shadler's subsequent prosecution for possession of the contraband, he filed a motion to suppress the fruits of the search, arguing that the arrest and the search incident to the arrest were unlawful because they were based on the erroneous belief that his license had been suspended. The trial court granted the motion. On appeal, the Fifth District Court of Appeal reversed the trial court. In a 4-3 opinion, the Florida Supreme Court quashed the district court's decision, finding that the trial court correctly excluded the evidence obtained during the search.

***Shadler v. State*, Holding:**

After noting that the case was controlled by the rule of law enunciated in *Arizona v. Evans* and *White*, the Court engaged in an analysis focused on the functions of the Department of Highway Safety. The Court stated that the exclusionary rule applies to a computer error committed by the Department of Highway Safety through its Division of Driver licenses because the Department,

including its Division, is essentially a law enforcement agency. At the very least, employees of the Division of Driver Licenses are "adjuncts to the law enforcement team" in the Department of Highway Safety.

The Court noted that the Department is organized into four divisions. "Two of these divisions, the Highway Patrol and the Division of Driver Licenses, account for nearly three-quarters of the Department's staff." While acknowledging that each division is supervised by a separate director and has its own organizational structure, the Court found that the department as a whole is subject to s. 20.05(1), F.S., which states that each department head executes the powers, duties, and functions vested in the department or vested in a division, bureau, or section of the department. The Court also found it relevant that s. 321.05, F.S., "gives broad law enforcement powers to '[t]he (highway) patrol officer under the direction and supervision of the Department of Highway Safety and Motor Vehicles,'" and thus concluded that the department is charged with law enforcement "both in fact and by law."

According to the Court, exclusion of evidence discovered as a result of erroneous driver's license information will serve to encourage accurate record keeping of driver's license information. The Court concluded:

> Because the Department of Highway Safety is an executive branch agency and is an integral part of law enforcement in the State of Florida, and because operation of the exclusionary rule in this case should have significant effect upon the Department's record-keeping efforts, we find that the error made here is a "law enforcement" error under *White.*

***Shadler v. State,* Dissent:**

Writing for the three dissenting members of the Court, Justice Wells chastised the majority for failing to properly apply the controlling precedents from the United States Supreme Court. Justice Wells quoted extensively from the majority opinion in *Arizona v. Evans*, and noted that the *Shadler* majority had failed to refer or quote to *Evans* or make any mention "whatsoever to the 1984 seminal opinion concerning the exclusionary rule in *Leon*." Justice Wells noted that the exclusionary rule excludes evidence which stems from police or law enforcement employees and concluded that the "Division of Driver Licenses is quite unmistakably an administrative agency."

CHAPTER 322 - DRIVERS' LICENSES

Chapter 322, F.S., contains provisions relating to Drivers' Licenses. Section 322.02(1), F.S., provides that the "Department of Highway Safety and Motor Vehicles is charged with the administration and function of enforcement of the provisions of this chapter." Section 322.02(2), F.S., provides that the department "shall employ a director charged with the duty of serving as the executive officer of the Division of Driver Licenses of the department insofar as the administration of this chapter is concerned." Section 322.20, F.S., contains provisions directed at the Department of Highway Safety's duties and responsibilities for driver licenses records.

CHAPTER 320 – MOTOR VEHICLE LICENSES

Chapter 320, F.S., contains provisions relating to Motor Vehicle Registration. Section 320.011, F.S., provides that the department "shall administer and enforce the provisions of this chapter." Section 320.05, F.S., contains provisions directed at the Department of Highway Safety's duties and responsibilities for motor vehicle registration records.

III. Effect of Proposed Changes:

This bill amends the evidence code to provide legislative findings and to limit the application of the exclusionary rule. The legislative findings are contained in subsections (1) - (3) of the newly created s. 90.959, F.S., as follows:

- the Division of Driver Licenses and the Division of Motor Vehicles within the Department of Highway Safety and Motor Vehicles are not law enforcement agencies;
- the divisions are not adjunct of any law enforcement agency in that employees have no stake in particular prosecutions;
- errors in records maintained by the divisions are not within the collective knowledge of any law enforcement agency;
- the missions of the Division of Driver Licenses, the Division of Motor Vehicles and the Department of Highway Safety and Motor Vehicles provide sufficient incentive to maintain records in a current and correct fashion;
- the purpose of the exclusionary rule is to deter misconduct on the part of law enforcement officers and law enforcement agencies; and
- the application of the exclusionary rule to cases where a law enforcement officer effects an arrest based on objectively reasonable reliance on information obtained from the divisions is repugnant to the purposes of the exclusionary rule and contrary to the decisions of the United State Supreme Court in *Arizona v. Evans*, and *United States v. Leon*.

Subsection (4) of s. 90.959, F.S., prohibits the application of the exclusionary rule in any case where a law enforcement officer effects an arrest based on objectively reasonable reliance on information obtained from the Division of Driver Licenses or the Division of Motor Vehicles. "[E]vidence found pursuant to such an arrest shall not be suppressed by application of the exclusionary rule on the grounds that the arrest is subsequently determined to be unlawful due to erroneous information obtained from the divisions."

Section 2 of the bill amends s. 322.20, F.S., by adding a new subsection (15), to specify that the creation and maintenance of records by the department and the Division of Driver Licenses pursuant to ch. 322, F.S., shall not be regarded as law enforcement functions of agency record keeping.

Finally, section 3 of the bill amends s. 320.05, F.S., in the same manner as section 2 to provide that the creation and maintenance of records by the Division of Motor Vehicles pursuant to ch. 320, F.S., is not to be regarded as a law enforcement function of agency record keeping.

These provisions are likely to prompt Florida courts, and ultimately the Florida Supreme Court, to revisit the issue decided in *Shadler v. State*, 761 So.2d 279 (Fla. 2000), cert.den. 121 S.Ct. 298 (2000).

This bill's effective date is July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In *Shadler v. State*, 761 So.2d 279 (Fla. 2000), cert.den. 121 S.Ct. 298 (2000), the court applied the exclusionary rule based on its reasoning that the Department of Highway Safety, including the Division of Driver Licenses, is a law enforcement agency. In its reasoning, the court expressly, "rejected the invitation of the State to focus solely on the work of the Division of Driver Licenses." This bill contains legislative findings aimed almost exclusively at the Division of Driver Licenses, but it does not change any of its functions or its relationship to the Department of Highway Safety.

This bill amends the evidence code to specify that the exclusionary rule shall not apply in any case where a law enforcement officer effects an arrest based on objectively reasonable reliance on information obtained from the Division of Driver Licenses or the Division of Motor Vehicles. "The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect." *Arizona v. Evans*, 514 U.S. at 10. If the legislative findings contained in this bill persuade one of the four Justices in the *Shadler* majority to reconsider, the bill's exclusionary rule provision (s. 90.959(4), F.S.), will serve to codify the new rule of law. Otherwise, this provision will either be disregarded or found to encroach on the court's power to safeguard against future violations of Fourth Amendment rights through the judicially created remedy of the exclusionary rule.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:
The title amendment deletes redundant languange from the title, on page 1, line 23.