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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 601 (PCB CPCS 02-01)

RELATING TO: Exclusionary Rule

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative Needelman

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 5 NAYS 2
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I. SUMMARY:

HB 601 creates a statutory exception to the exclusionary rule within chapter 90, Florida Statutes (the Florida Evidence Code) for situations 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. With regard to such cases, the bill provides that evidence shall not be suppressed on the grounds that an arrest is subsequently determined to be unlawful due to erroneous information obtained from the Division of Motor Vehicles or the Division of Driver Licenses.

The bill also makes specific Legislative findings with respect to the Department of Highway Safety and Motor Vehicles, the Division of Driver Licenses, the Division of Motor Vehicles and the exclusionary rule.

The bill also provides that records created and maintained by the divisions pursuant to chapter 320 or chapter 322 shall not be regarded as law enforcement functions of agency record keeping.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes ☐ | No ☐ | N/A ☒ |
| 2. <u>Lower Taxes</u> | Yes ☐ | No ☐ | N/A ☒ |
| 3. <u>Individual Freedom</u> | Yes ☐ | No ☐ | N/A ☒ |
| 4. <u>Personal Responsibility</u> | Yes ☐ | No ☐ | N/A ☒ |
| 5. <u>Family Empowerment</u> | Yes ☐ | No ☐ | N/A ☒ |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Article I, Section 12 of the State Constitution is Florida's provision protecting persons from unreasonable searches and seizures. This section provides in part:

. . . This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

This provision requires that decisions of the Florida Supreme Court regarding unreasonable searches and seizures comply with the decisions of the United States Supreme Court.

When evidence in a criminal case is suppressed as a result of an improper search, it is by operation of the "exclusionary rule." The exclusionary rule is a judicially created remedy designed to safeguard against future violations of 4th Amendment rights by its general deterrent effect on law enforcement agency or officer misconduct. This rule was not designed as a personal constitutional right of the party aggrieved. United States v. Leon, 487 U.S. 897 (1984); United States v. Calandra, 414 U.S. 338 (1974).

In United States v. Leon, 487 U.S. 897 (1984), the United States Supreme Court recognized a good-faith exception to the exclusionary rule. In Leon an officer conducted a search based on a search warrant issued by a state-court judge and found large quantities of drugs and other evidence. The items found were suppressed by the trial court based on a finding that there was insufficient probable cause to issue the warrant. The Court of Appeals affirmed the suppression of evidence. On review, the United State Supreme Court reversed the Court of Appeals and held that the exclusionary rule should not apply where evidence is seized in reasonable good-faith reliance on a search warrant which was later found to be invalid. In reaching its ruling, the Court developed a framework within which to analyze whether the application of the exclusionary rule was appropriate under the circumstances of the case before it.

Leon's analytical framework (discussed later) has been reapplied by the Court in other situations to determine the appropriateness of applying the exclusionary rule in other circumstances. For

example in Illinois v. Krull, 480 U.S. 340 (1987), the Court upheld a search based on an officer's good-faith reliance on a statute authorizing warrantless administrative searches in which the statute was subsequently found to violate the 4th Amendment. Also, in Arizona v. Evans, 514 U.S. 1 (1995) the Court ruled that the exclusionary rule does not require the suppression of evidence seized in violation of the 4th Amendment where the erroneous information resulted from clerical errors of court employees. In Evans, *supra*, the Court reaffirmed the use of the Leon analytical framework for determining the applicability of the exclusionary rule to various situations.

Shadler v. State

On January 6, 2000, in Shadler v. State, 761 So. 2d 279 (Fla. 2000), the Florida Supreme Court reversed a decision of the Fifth District Court of Appeal, and in a 4-3 decision, held that the exclusionary rule applies to errors committed by employees of the Division of Drivers Licenses of the Florida Department of Highway Safety and Motor Vehicles.¹

The facts of the Shadler, case were as follows: A sheriff's deputy learned from a fellow officer that the defendant's driver's license was suspended. This information was subsequently verified through the sheriff's dispatcher. Approximately two hours later, the deputy stopped Shadler on the basis the information previously received. At the stop, the deputy ran a computer check through the Department of Highway Safety and Motor Vehicles ("DHSMV"), Division of Driver Licenses, which confirmed that Shadler's license was suspended. The deputy arrested Shadler for driving with a suspended license and searched him incident to that arrest. During the search, the deputy found cocaine inside Shadler's wallet. Shadler was then charged with possession of cocaine. After his arrest, Shadler learned from the DHSMV that the record showing a suspension of his license was mistaken due to a computer error, and that his license was in fact not suspended.²

The Florida Supreme Court relied upon their previous opinion in State v. White, 660 So.2d 664 (Fla. 1995) where they ruled that if an error causing an [illegal] arrest is attributable to law enforcement personnel, then the seized evidence must be suppressed under the exclusionary rule.

The Court in Shadler declared that the Department of Highway Safety and Motor Vehicles, including the Division of Driver Licenses (Division), is "essentially a law enforcement agency" and therefore, under White, the exclusionary rule applies to their errors. *Id.* at 13. As a result, evidence found during a search conducted incident to an arrest which is predicated on erroneous information obtained from the Division will be suppressed, even though the law enforcement officer was acting in good-faith reliance on that information.

In a strongly worded dissenting opinion, Justice Wells (with Justices Harding and Quince concurring) stated that it is "patently erroneous to stretch the reach of the exclusionary rule or of White's application of the exclusionary rule to the Division of Driver Licenses." Justice Wells further stated:

. . . the majority avoids the requirement that our search and seizure applications comply with the decisions of the United States Supreme Court. Reflective of this avoidance of the requirement is the majority's reliance on only the concurring opinions in Evans and on a 1974 opinion concerning the exclusionary rule in United States v. Calandra, 414 U.S. 338 (1974), and the majority's total omission of any reference to or quotation from Chief Justice Rehnquist's majority opinion in

¹ The Justices for the majority were Anstead, Shaw, Pariente, and Lewis. The dissenters were Justices Wells, Harding and Quince.

² Shadler had been notified on April 24, 1997 that his license would be suspended if he did not complete an alcohol treatment course by May 14, 1997. Shadler completed the course and his license was returned to him on May 13, 1997. The stop took place on June 18, 1997.

Evans and any reference whatsoever to the 1984 seminal opinion concerning the exclusionary rule in Leon, 468 U.S. 897 (1984). It is Leon which is discussed extensively in the majority opinion in Evans. *Id.* at 17. (Emphasis added).

Under the Leon framework, the determination of whether there is sound reason to apply the exclusionary rule is based on **three factors**.

The **first** factor is whether the exclusion of evidence will serve the purpose of the exclusionary rule to deter police misconduct. See, Krull supra, (analyzing Leon) at 348. The Division of Driver Licenses is one of four divisions within the DHSMV.³ Each division within the DHSMV is supervised by a separate director and has its own organizational structure. Within the DHSMV, only the Florida Highway Patrol has been granted statutory law enforcement powers, under the direction and supervision of the Department. [Section 321.05.] The Division is responsible for administrative functions regarding the issuance of driver licenses, and maintenance of driving records. With regard to the "misconduct" component of Leon's first factor, no misconduct on the part of the officer or employee of the Division was alleged by the defendant nor supported by the record.⁴ Further, Justice Anstead, writing for the four member majority, did not address any issue of misconduct with regard to employees of the Division or the arresting officer. No majority opinion of the United States Supreme Court has expanded the application of the exclusionary rule to purely clerical errors in administrative agency record keeping.

The **second** factor of the Leon framework requires a showing that the person or entity making the error is inclined to ignore or subvert the 4th Amendment, or that lawlessness among these actors justifies the extreme sanction of exclusion. See, Krull supra, (analyzing Leon) at 348. In Shadler, supra, there was no mention of any basis to assume that any employee of the Division or the arresting officer was "inclined to ignore or subvert the 4th Amendment" or that there is "lawlessness" within the employees of the Division or the law enforcement agency.

Third, there must be a basis for believing that the exclusion of evidence would have a significant deterrent effect on the person or entity responsible for the error. See, Krull supra, (analyzing Leon) at 348. In Shadler, supra, after noting that the Division "is supervised by a separate director and has its own organizational structure," Justice Anstead wrote:

We reject the invitation of the State to focus solely on the work of the Division of Driver Licenses. We cannot focus solely on the internal subdivisions of the Department of Highway Safety any more than we can focus solely on the internal subdivisions of any large law enforcement agency in assessing its accountability and protecting our citizens from unlawful arrests due to agency mistakes.
Id. at 13.

The court later continued:

. . . we conclude that at the very least the employees of the Division of Driver Licenses are "adjuncts to the law enforcement team" in the Department of Highway Safety [and Motor Vehicles].

The following excerpt from the majority opinion in Arizona v. Evans, supra, relates to the same topic:

³ The other divisions within the DHSMV are: the Florida Highway Patrol, the Division of Motor Vehicles, and the Division of Administrative Services.

⁴ This information is according to the Attorney General's Motion for Rehearing page 4.

Finally, and most important, 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, see Johnson v. United States, 333 U.S. 10, 14 (1948), they have no stake in the outcome of particular criminal prosecutions. Cf. Leon, at 917; Krull, *supra*, at 352. . . . Evans at 14.

In fiscal year 1998-99 the Division processed nearly 13 million driver records, including over 1.2 million license revocations and suspensions.⁵ The information which appears on a person's driving record comes from a wide variety of sources.⁶ In addition, the Division employees of the DHSMV do not have exclusive control over the information that is entered into their computer system.⁷ The DHSMV cannot independently verify the accuracy of every entry from every source.

C. EFFECT OF PROPOSED CHANGES:

The bill essentially reverses the Florida Supreme Court's ruling in Shadler, *supra*. The bill makes the following findings of the Legislature:

1. The Division of Driver Licenses and the Division of Motor Vehicles of the Department of Highway Safety and Motor Vehicles is not a law enforcement agency.
2. The divisions are not an adjunct of any law enforcement agency.
3. Records maintained by the divisions are not within the collective knowledge of any law enforcement agency.
4. The missions of the Division of Driver License, 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.
5. That the purpose of the exclusionary rule is to deter misconduct on the part of law enforcement officers and law enforcement agencies.
6. The application of the exclusionary rule to cases where a law enforcement officer effects an arrest based objectively reasonable reliance on information obtained from the Division is repugnant to the purposes of the exclusionary rule and contrary to the decisions of the United States Supreme Court in Arizona v. Evans, *supra* and United States v. Leon, *supra*.

The bill creates a statutory exception to the exclusionary rule within chapter 90 (the Florida Evidence Code) for situations where a law enforcement officer effects an arrest based on objectively reasonable reliance on information obtained from the divisions. With regard to such cases, the bill provides that evidence shall not be suppressed on the grounds that an arrest is subsequently determined to be unlawful due to erroneous information obtained from the divisions.

⁵ According to the Department of Highway Safety and Motor Vehicles website http://www.hsmv.state.fl.us/reports/facts_dl.html, on February 6, 2001.

⁶ Other sources include: clerk of courts from Florida and other states, driver license offices of other states, tax collectors, insurance agencies, driving schools, the Department of Revenue, Probation and Parole, drivers themselves, and others.

⁷ Other sources which can input information directly into the DHSMV computer include: judges, clerks of courts, and tax collectors.

The bill adds a subsection to s. 322.20 to provide that records created and maintained by the Division of Driver Licenses pursuant to chapter 322 shall not be regarded as law enforcement functions of agency record keeping and adds a subsection to s. 320.05 to provide that records created and maintained by the Division of Motor Vehicles pursuant to chapter 320 shall not be regarded as law enforcement functions of agency record keeping.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 90.959, F.S. relating to the admission of evidence obtained from the Division of Driver Licenses and the Division of Motor Vehicles.

Section 2: Amends s. 322.20, F.S. relating to records of the Division of Driver Licenses.

Section 3: Amends s. 320.02, F.S. relating to records of the Division of Motor Vehicles.

Section 4: Provides effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

To the extent that this bill will allow prosecutions to proceed that would have been prohibited under the Florida Supreme Court's ruling in Shadler v. State, the bill may have an insignificant impact on the courts. The bill should not have any prison bed impact on the Department of Corrections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The Shadler, majority's conclusion that errors of the Division should lead to exclusion of evidence is based on furthering the following principle which was embraced by the Florida Supreme Court in White, supra:

It is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness. As automation increasingly invades modern life, the potential for Orwellian mischief grows. Under such circumstances the exclusionary rule is a "cost" we cannot afford to be without. (Citation omitted). Shadler at 7, and partially quoted at 12.

This principle, however, is an excerpted rationale taken from the Arizona Supreme Court's decision in Evans, supra, which was the same opinion that was reversed by the United States Supreme Court. In reversing the Arizona Supreme Court in Evans, the United States Supreme Court solidified its commitment to applying the exclusionary rule in a manner designed to accomplish its purpose of deterring police misconduct. As the United States Supreme Court explained in Evans:

If it were indeed a court clerk who was responsible for the erroneous entry on the police computer, application of the exclusionary rule also could not be expected to alter the behavior of the arresting officer. As the trial court in this case stated: "I think the police officer [was] bound to arrest. I think he would [have been] derelict in his duty if he failed to arrest." App. 51. Cf. Leon, supra, at 920 ("Excluding the evidence can in no way affect [the officer's] future conduct unless it is to make him less willing to do his duty." quoting Stone, 428 U.S., at 540 (White, J., dissenting)). Evans, supra at 14.

The following passages are also instructive:

As with any remedial device, the rule's application has been restricted to those instances where its remedial objectives are thought most efficaciously served. Leon, supra, at 908; Calandra, supra, at 348. Where "the exclusionary rule does not result in appreciable deterrence, then, clearly, its use . . . is unwarranted." United States v. Janis, 428 U.S. 433, 454 (1976). Evans, supra, at 8.

....

Particularly when law enforcement officers have acted in good objective faith, or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends the basics of the criminal justice system. (Citation omitted) Leon, *supra*, at 908.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

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