CJA LESSON PLAN COVER SHEET

LESSON PLAN TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Legal Update 2016-2017	I0338	Revised 8/2/16

TRAINING UNIT:	TIME ALLOCATION:
Legals Unit	1 Hour

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	SUBMITTED BY:
Kayin R. Darby		Kayin R. Darby

ORIGINAL DATE OF LESSON PLAN:	JOB TASK ANALYSIS YEAR:
July 2016	

LESSON PLAN PURPOSE:

The purpose of this lesson is to update the student about changes in laws and procedures that relate to law enforcement.

EVALUATION PROCEDURES:

None

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

Legal Update Handout

PERFORMANCE OBJECTIVES

LESSON PLAN TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Legal Update 2016-2017	I0338	Revised 8/2/16

PERFORMANCE OBJECTIVES:

1. Ethics - Understand the rules and regulations governing withdrawal of certification of law enforcement officers.

2. Case law - Discuss the legal implications of State v. Moore, appellate case no. 2013-002309, Opinion No. 27602 (2016)

3. Case law - Discuss the legal implications of the Estate of Armstrong v. Village of Pinehurst et. Al, 810 f.3d 892 (4th Cir. 2016)

4. Case law - Discuss the legal implications of State v. Robinson, appellate case no. 2014-001545, Opinion No. 27617

5. Case law - Discuss the legal implications of Utah v. Strieff, No. 14–1373. Argued February 22, 2016—Decided June 20, 2016

6. Back-to-Basics – Discuss case law pertaining to the authority of an officer to order a driver and passengers out of the car during a traffic stop.

7. Legislative Update – Discuss legislative updates to South Carolina Code of Laws.

LESSON PLAN EXPANDED OUTLINE

LESSON PLAN TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Legal Update 2016-2017	I0338	Revised 8/2/16

I. INTRODUCTION

This unit of instruction is designed to update the student about changes in law and procedure that relate to law enforcement.

II. BODY

A. ETHICS - UNDERSTAND THE RULES AND REGULATIONS GOVERNING WITHDRAWL OF CERTIFICATION OF LAW ENFORCEMENT OFFICERS.

Withdrawal of Certification of Law Enforcement Officers

1. Among other causes, Regulation 37-026 provides that law enforcement certification can be withdrawn based on evidence satisfactory to the Council that an officer has engaged in misconduct. One type of behavior specifically listed in this regulation as misconduct is "Physical or Psychological abuses of members of the public and/or prisoners".

2. Video: Physical Abuse of A Prisoner Scenario

3. Law enforcement officers are expected to have "thicker skin" than the average citizen. There is no excuse for physical or psychological abuses of prisoners or members of the public. The foundation of our law enforcement authority is the public's trust and confidence in us. Without the trust of the community, our authority is undermined. Law enforcement officers are held to the highest standard of conduct in both their personal and professional lives, certainly not a lower standard than we would hold citizens accountable when they engage in criminal behavior. Officers should be aware their behavior will be judged accordingly.

B. CASE LAW - DISCUSS THE LEGAL IMPLICATIONS OF STATE V. MOORE, APPELLATE CASE NO. 2013-002309, OPINION NO. 27602 (2016)

1. Facts

On June 30, 2010, Deputy Dale Owens of the Spartanburg County Sheriff's Office was patrolling I-85. At around 1:10 a.m. Deputy Owens observed Moore driving northbound on the interstate and determined Moore was driving ten miles an hour over the speed limit. Deputy Owens initiated a traffic stop. Moore turned on his left turn signal and appeared to move to the left; however, he then turned on his right turn signal and slowly pulled over.

Deputy Owens approached the passenger side of Moore's vehicle, observed Moore talking on the phone, and requested that Moore end the call. Deputy Owens immediately smelled an odor of alcohol coming from the vehicle, and Moore readily admitted to having a couple of drinks. Deputy Owens then asked Moore for his driver's license and registration. Moore produced his driver's license and a rental agreement for the vehicle. The vehicle had been rented by a third party in Morganton, North Carolina, the previous afternoon.

At the direction of Deputy Owens, Moore exited the vehicle, left the door open and had to return to shut it. Moore lit a cigarette and consented to a pat down, which yielded a "wad" of approximately $600 in cash in Moore's pocket. Moore stated he was

unemployed. Deputy Owens administered a series of field sobriety tests, Moore passed two of the three tests. Moore declined to consent to a search of his vehicle. At that point, approximately fifteen to sixteen minutes into the traffic stop, a canine was requested to respond to the scene. When Moore learned a canine was en route, he smoked another cigarette. The canine alerted to the presence of drugs in Moore's rental vehicle. A search of the vehicle yielded two containers filled with a large quantity of crack cocaine, a loaded semiautomatic handgun and $4,000.

Moore moved to suppress the evidence seized from his vehicle, arguing the officers did not have reasonable suspicion to continue to detain him after the decision was made not to arrest him for driving while impaired. The trial court denied Moore's motion to suppress, he was subsequently convicted of trafficking in cocaine base and possession of a firearm during the commission of a violent crime. The Court of Appeals reversed the trial court's determination on this issue, which the South Carolina Supreme Court now takes up.

2. Issue

Whether there is any evidence to support the trial court's finding there was reasonable suspicion to detain Moore after the decision was made not to arrest him for driving while impaired.

3. Discussion

a. Reasonable Suspicion

The court discussed reasonable suspicion, outlining that it is not readily or even usefully reduced to a neat set of legal rules. The test is whether reasonable suspicion exists is an objective assessment of the circumstances; the officer's subjective motivations are irrelevant. Courts must give due weight to common sense judgments reached by officers in light of their experience and training. At bottom, in evaluating whether an officer possesses reasonable suspicion, this Court must consider the "totality of the circumstances- the whole picture".

The court reviewed the facts that Deputy Owens relied upon to establish reasonable suspicion:

(1) There was a large sum of money found on an unemployed person.

(2) Moore had an unusual itinerary (the vehicle was rented by a third party, the path of travel did not make sense).

(3) The itinerary was revealed prior to Deputy Owens' issuing Moore a warning ticket.

(4) Moore exhibited nervousness.

(5) Deputy Owens had been a law enforcement officer for almost twenty years, seventeen with the South Carolina Highway Patrol, he had received over one thousand hours of instruction on criminal interdiction and served as an instructor for the South Carolina Criminal Justice Academy in criminal interdiction and criminal patrol techniques.

Ultimately the court found that while each of these factors considered, standing alone, would be insufficient to support a finding of reasonable suspicion, the totality of factors in this case is sufficient to support the trial court's finding in light of the standard of review. Moore's convictions and sentence were reinstated.

b. Nervousness

The court used this case to add a word of caution to law enforcement regarding nervousness and reasonable suspicion. The court specifically commented that general nervousness will almost invariably be present in a traffic stop. While it is important to articulate details regarding specific facts, the court specifically mentioned that it was "weary of the law enforcement attempt to parlay the single element of nervousness into a myriad of factors supporting reasonable suspicion".

C. CASE LAW - DISCUSS THE LEGAL IMPLICATIONS OF THE ESTATE OF ARMSTRONG V. VILLAGE OF PINEHURST ET. AL, 810 F.3d 892 (4th Cir. 2016)

1. Facts

On April 23, 2011, Ronald Armstrong, a patient suffering from bipolar disorder and paranoid schizophrenia, was seeking treatment at a hospital in Pinehurst North Carolina when he became frightened and left the emergency room. The examining doctor judged him to be a danger to *himself* and issued involuntary commitment papers to compel his return. (Emphasis added).

Pinehurst police were called and three members of the department responded. Armstrong was located near an intersection near the Hospital's main entrance. The commitment order had not yet been "finalized" when the officers arrived. The officers engaged Armstrong in conversation, Armstrong was calm and cooperative, though acting strangely (wandering in a roadway, eating grass and dandelions, chewing on gauze, extinguishing cigarettes on his tongue).

Once the officers learned commitment papers were complete, the officers surrounded and advanced toward Armstrong, who wrapped himself around a four-by-four post that was supporting a stop sign. The officers tried to pry Armstrong's arms and legs off the post, but he was wrapped too tightly and would not budge. The officers were joined by two hospital security guards and Armstrong's sister.

After approximately thirty seconds of this stalemate, an officer informed Armstrong that if he did not let go of the post he would be tased. Armstrong did not respond, the officer applied five drive stuns over the course of approximately two minutes. Armstrong became nonresponsive and subsequently died.

2. Issue

Whether the officers used excessive force in seizing Armstrong.

3. Conclusion

In determining the application of the taser amounted to excessive force in this situation, the court outlined several rules governing taser use:

a. Tasers are proportional force only when deployed in response to a situation in which a reasonable officer would perceive some immediate danger that could be mitigated by using the taser. (Emphasis in original)

b. Taser use is unreasonable force in response to resistance that does not raise a risk of immediate danger.

c. A police officer may only use serious injurious force, like a taser, when an objectively reasonable officer would conclude that the circumstances present a risk of immediate danger that could be mitigated by the use of force. At bottom, "physical resistance" is not synonymous with "risk of immediate danger". (Emphasis in original)

d. When a seizure is intended solely to prevent a mentally ill individual from harming himself, the officer effecting the seizure has a lessened interest in deploying potentially harmful force.

e. Where, during the course of seizing an out-numbered mentally ill individual who is a danger only to himself, police officers choose to deploy a taser in the face of stationary and non-violent resistance to being handcuffed, those officers use unreasonably excessive force. While qualified immunity shields the officers in this case from liability, law enforcement officers should now be on notice that such taser use violates the Fourth Amendment.

D. CASE LAW - DISCUSS THE LEGAL IMPLICATIONS OF STATE V. ROBINSON, APPELLATE CASE NO. 2014-001545, OPINION NO. 27617

1. Facts

a. In August 2008, a confidential informant told the Sergeant of the local law enforcement agency's narcotics and vice section she could purchase drugs from Robinson's residence. The Sergeant and a federal law enforcement agent met with the informant on August 15 to set up the first buy. The informant told the officers that to make the purchase, "she would go meet the other person that was going to supply them with the cocaine." The "other person" was Christopher Oliver.

b. The Sergeant testified he "debriefed" the informant after the buy. Describing what the informant told him, the Sergeant testified, "When [the informant] got there, Mr. Oliver told her to drop him off away from the residence because the occupants of the house did not want any undue suspicion on their house. So, [the informant] was told to park down the road[,] and [Oliver] would walk to the residence."

c. The Sergeant also testified that on August 22 and September 12, he "met with the confidential informant to search—wired, I gave her $600 of police buy money. She went and picked Mr. Oliver up[,] and they went again to [Robinson's residence]." While Oliver was inside Robinson's residence, the informant "sat in the car the whole time" and listened to music.

d. On September 17, the Sergeant prepared an affidavit in which he swore the informant—not Oliver—purchased cocaine from Robinson's residence. The Sergeant stated,

e. A confidential and reliable informant working for the local law enforcement agency purchased a quantity of off white powder substance represented as being cocaine and field-testing positive for cocaine attributes from the occupants of the house identified as 1251 Stoneybrook Dr. in Conway, SC. That the informant has been able to make recent continuous purchases of illegal drugs from this residence leads to the affiant's belief that there is the possibility there may be more illegal drugs located at this residence. The Sergeant presented the affidavit to a circuit court judge because "this case had the possibility of going federal," and on September 17 the judge signed a warrant authorizing the search of Robinson's residence.

f. When officers executed the warrant on September 25, they discovered a large plastic bag containing 109.35 grams of cocaine, seven small bags of cocaine, marijuana, ecstasy pills, a scale, video surveillance equipment, and various items connecting Robinson to the residence, such as his mail and photographs of him.

g. The Court of Appeals reversed Robinson's conviction holding that the search-warrant affidavit did not include any information to establish the reliability of the informant.

2. Issue(s)

a. Whether the Court of Appeals erred in finding the search warrant invalid because the search-warrant affidavit contained no information establishing informant reliability?

b. Whether the Court of Appeals erred in concluding there was intentionally false information in the search-warrant affidavit?

c. Whether the Court of Appeals erred in holding that the search-warrant affidavit could support probable cause even with the false information omitted?

d. Whether the Court of Appeals erred in concluding that Leon's good-faith exception to suppression did not apply?

3. Discussion

a. Informant Reliability

The State argued the Court of Appeals erred in finding there was no evidence to support the Trial Court's finding that the search-warrant affidavit contained information establishing informant reliability. Specifically, the State argues the information contained in the affidavit about the confidential informant's work with law enforcement and successful purchases of illegal drugs from the home, was sufficient to support the Trial Court's determination. The Supreme Court agrees.

The pertinent parts of this search-warrant affidavit include:

Reason For Affiant's Belief That The Property Sought Is On The Subject Premises . . . A confidential and reliable informant working for the Horry County Police Department purchased a quantity of off white powder substance represented as being cocaine and field-testing positive for cocaine attributes from the occupants of the house identified as [the Home]. That the informant has been able to make recent continuous purchases of illegal drugs from this residence leads to the affiant's belief that there is the possibility there may be more illegal drugs located at this residence.

The contents of the affidavit were sufficient to provide the Circuit Court a substantial basis to believe that the: (1) local law enforcement agency; (2) had a confidential informant; (3) who bought a substance that tested positive for cocaine; (4) from the Home; and (5) the informant had made other recent purchases of illegal drugs from the Home. However, as explained below excepting that the confidential informant worked for the local law enforcement agency, none of these assertions were true. Looking at the four corners of the affidavit, there is information from which the Circuit Court could conclude the confidential informant was reliable. *See Dupree*, 354 S.C. at 685, 583 S.E.2d at 442. The Supreme Court agreed with the State that the Court of Appeals erred in finding the affidavit, on its face, lacked sufficient information to establish the reliability of the confidential informant. Nevertheless, the Supreme Court affirmed the result of the Court of Appeals as explained below.

b. False Statements in the Affidavit

According to officer's testimony, three purchases were made prior to the execution of the search-warrant affidavit. All three purchases happened in substantially the same way. The confidential informant picked up a third party, Oliver, and drove to a location close to the home. Oliver was then dropped off a short distance away from the home in order to avoid suspicion. The confidential informant stayed in the car and watched as Oliver walked into the home. Oliver then returned to the car with drugs. The drugs were later tested and confirmed to be cocaine. The confidential informant was debriefed after the buys during which she informed officer of what Oliver told her. When seeking the search warrant, officer relied solely on his affidavit; he did not orally supplement the affidavit before the Circuit Court.

When officer wrote the affidavit, he was aware that the confidential informant had not personally made the alleged drug purchases. After each of the three alleged transactions, officer was informed that Oliver was the actual purchaser. Officer acknowledged, at the Franks hearing, he knew of Oliver's role, but offered no explanation why he did not include this information in the affidavit.

c. Probable Cause Absent False Statements

With the false statements excised from this search-warrant affidavit, there no longer exists a substantial basis for a finding of probable cause. Contrary to the holding of the Court of Appeals and the argument of the State, the search-warrant affidavit supports probable cause only if Oliver, not the confidential informant, were telling the truth. Since the confidential informant stayed in the car, down the road from the home, her knowledge hinges on the reliability of Oliver, whose credibility has not been established. Moreover, as Oliver was never searched prior to entering the home, nothing in the record establishes that he did not possess the drugs prior to the alleged transactions. With the false information removed, nothing remains in the search-warrant affidavit to establish a substantial basis for a finding of probable cause.

d. Good Faith Exception to Suppression

The United States Supreme Court held that evidence should not be suppressed which resulted from a search where law enforcement reasonably relied on a search warrant, which was ultimately found to be invalid. See 468 U.S. 807, 920 (1978). The Court, however, held suppression remains the appropriate remedy when a reviewing judge is intentionally misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. Leon, 468 U.S. at 923.

The State argues that the Court of Appeals erred when it held that the good-faith exception to suppression does not apply because the affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." Robinson, 408 S.C. at 277, 758 S.E.2d at 730. The Supreme Court agrees with the Court of Appeals that Leon does not apply. The Supreme Court holds that the good faith exception is not available, where, as here, the warrant issued is based on a search-warrant affidavit of the officer which contained representations known to be false. See Leon, 468 U.S. at 923.

4. Conclusion

The Supreme Court holds that because the search-warrant affidavit, on its face, supports a finding of probable cause, an objective law enforcement officer's belief in it could be reasonable. Thus, the Court of Appeals erred in holding otherwise. However, because the information in the search-warrant affidavit concerning the informant/purported purchaser's reliability was intentionally false, see subsections B and C, supra, the credibility of the entire affidavit is compromised. State v. Robinson, Appellate Case No. 2014-001545, Opinion No. 27617

E. CASE LAW - DISCUSS THE LEGAL IMPLICATIONS OF UTAH V. STRIEFF, NO. 14–1373. ARGUED FEBRUARY 22, 2016—DECIDED JUNE 20, 2016

1. Facts

In December 2006, an anonymous caller left a message on a police drug tip line reporting "narcotics activity" at a South Salt Lake City residence. Police officer Douglas Fackrell subsequently conducted intermittent surveillance of the residence for approximately three hours over the course of about one week. During that time, the officer observed "short term traffic" at the home. The traffic was not "terribly frequent," but was frequent enough that it raised Officer Fackrell's suspicion. In Officer Fackrell's view, the traffic was more than one would observe at a typical house, with visitors often arriving and then leaving within a couple of minutes. Thus, the officer concluded that traffic at the residence was consistent with drug sales activity.

During his surveillance of the residence, Officer Fackrell saw Edward Strieff leave the house—though he did not see him enter—and walk down the street toward a convenience store. As Strieff approached the convenience store, Officer Fackrell ordered Strieff to stop in the parking lot. Strieff complied. Officer Fackrell testified that he detained Strieff because "[Strieff] was coming out of the house that [he] had been watching and [he] decided that [he'd] like to ask somebody if [he] could find out what was going on [in] the house." Officer Fackrell identified himself as a police officer, explained to Strieff that he had been watching the house because he believed there was drug activity there, and asked Strieff what he was doing there.

Officer Fackrell also requested Strieff's identification, which Strieff provided. Officer Fackrell then called dispatch and asked them to run Strieff's ID and check for outstanding warrants. Dispatch responded that Strieff had "a small traffic warrant." Officer Fackrell then arrested Strieff on the outstanding warrant and searched him incident to the arrest. During the search, the officer found a baggie of methamphetamine and drug paraphernalia in Strieff's pockets.

Strieff was charged with unlawful possession of methamphetamine and unlawful possession of drug paraphernalia. He moved to suppress the evidence seized in the search incident to his arrest, arguing that it was fruit of an unlawful investigatory stop.

2. Issue

In this case we are asked to determine the applicability of the "attenuation" exception to the exclusionary rule to a fact pattern addressed in a broad range of lower-court opinions but not by the United States Supreme Court. The essential fact pattern involves an unlawful detention leading to the discovery of an arrest warrant followed by a search incident to arrest. The attenuation inquiry is essentially a proximate cause analysis. It asks whether the fruit of the search is tainted by the initial, unlawful detention, or whether the taint is dissipated by an intervening circumstance. As applied to the outstanding warrant scenario, the question presented is whether and how to apply the attenuation doctrine in this circumstance.

3. Analysis

Three factors articulated in *Brown* v. *Illinois*, 422 U. S. 590, lead to this conclusion. The first, "Temporal Proximity" between the initially unlawful stop and the search, *id.,* at 603, favors suppressing the evidence. Officer Fackrell discovered drug contraband on Strieff only minutes after the illegal stop. In contrast, the second factor, "The Presence Of Intervening Circumstances", *id.*, at 603–604, strongly favors the State. The existence of a valid warrant, predating the investigation and entirely unconnected with the stop, favors finding sufficient attenuation between the unlawful conduct and the discovery of evidence. That warrant authorized Officer Fackrell to arrest Strieff, and once the arrest was authorized, his search of Strieff incident to that arrest was undisputedly lawful. The third factor, "The Purpose And Flagrancy Of The Official Misconduct," *id.*, at 604, also strongly favors the State. Officer Fackrell was at most negligent, but his errors in judgment hardly rise to a purposeful or flagrant violation of Strieff's Fourth Amendment rights. After the unlawful stop, his conduct was lawful, and there is no indication that the stop was part of any systemic or recurrent police misconduct.

4. Conclusion

When there was no flagrant police misconduct and a police officer discovered a valid, pre-existing, and untainted warrant for an individual's arrest, evidence seized pursuant to that arrest is admissible even when the police officer's stop of the individual was unconstitutional, because the discovery of the warrant attenuated the connection between the stop and the evidence.

F. BACK-TO-BASICS – DISCUSS CASE LAW PERTAINING TO THE AUTHORITY OF AN OFFICER TO ORDER A DRIVER AND PASSENGERS OUT OF THE CAR DURING A TRAFFIC STOP.

The Fourth Amendment to the United States Constitution guarantees freedom from unreasonable searches and seizures. Generally, this rule is enforced by requiring police officers to obtain warrants in order to search or seize people. However, the Supreme Court of the United States has added many exceptions to the warrant requirement. Additionally, it has expanded the bounds of "reasonableness" in several areas where it has decided that a person's right to privacy must be balanced with the fact that police officers have an inherently unsafe occupation.

In the seminal case Terry v. Ohio, 392 US 1 (1968) the Court carved out an exception to the warrant requirement which allows officers to briefly detain people for investigative purposes when there is an reasonable articulable suspicion of criminal activity. These stops are known as "Terry Stops." During these stops, if the officer has some reasonable articulable suspicion that the person may be armed and dangerous, the officer may perform a brief, over-the-clothes pat down of the person. This pat down is known as a "frisk."

In Arizona v. Johnson, 129 S. Ct. 781, 784 (2009), the court stated that once a law enforcement officer has conducted a valid traffic stop, the officer is justified in conducting a frisk of the person for weapons if the officer reasonably suspects that the person stopped is armed and dangerous. Id. Commonwealth v. Smith, 281 Va. 582, 589 (2011).

> "In a traffic-stop setting, the first Terry condition — a lawful investigatory stop–is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a patdown of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." Id.

In Arizona v. Johnson, the Court summarized the expanded rule from Terry as it applies to traffic stops:

> "Three decisions cumulatively portray Terry's application in a traffic-stop setting: Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam); Maryland v. Wilson, 519 U.S. 408 (1997); and Brendlin v. California, 551 U.S. 249 (2007).
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> In Mimms, the Court held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." 434 U.S., at 111, n. 6.
>
> Wilson held that the Mimms rule applied to passengers as well as to drivers. Specifically, the Court instructed that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." 519 U.S. at 415.
>
> It is true, the Court acknowledged, that in a lawful traffic stop, "[t]here is probable cause to believe that the driver has committed a minor vehicular offense," but "there is no such reason to stop or detain the passengers." Id. On the other hand, the Court emphasized, the risk of a violent encounter in a traffic-stop setting "stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop." Id., at 414. "[T]he motivation of a passenger to employ violence to prevent apprehension of such a crime," the Court stated, "is every bit as great as that of the driver." Ibid. Moreover, the Court noted, "as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle," id., at 413-414, so "the additional intrusion on the passenger is minimal," id., at 415.
>
> Completing the picture, Brendlin held that a passenger is seized, just as the driver is, "from the moment [a car stopped by the police comes] to a halt on the side of the road." 551 U.S., at 263. A passenger therefore has standing to challenge a stop's constitutionality. Id., at 256-259.
>
> After Wilson, but before Brendlin, the Court had stated, in dictum, that officers who conduct "routine traffic stop[s]" may "perform a 'patdown' of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous." Knowles v. Iowa, 525 U.S. 113, 117-118 (1998). That forecast, we now confirm, accurately captures the combined thrust of the Court's decisions in Mimms, Wilson, and Brendlin."

The answer is clear that an officer can order all occupants of a vehicle out of the car pending the completion of the stop if the initial stop was lawful. The reasoning behind these rules is almost always the same: officer safety. Officers are limited in their right to frisk the occupants of the vehicle. They are also limited in how much and what kind of investigations they can complete during the course of the stop. Finally, even if an officer can arrest an individual, there are limits on how much force the officer can use in the process of the arrest.

G. LEGISLATIVE UPDATE – DISCUSS LEGISLATIVE UPDATES TO SOUTH CAROLINA CODE OF LAWS.

The South Carolina Legislative session ended for the year on Thursday, June 2nd at 5:00 p.m., with several bills passing at the last minute. Included in the Appendix are a list of bills that may change the way officers conduct their law enforcement duties. (See Appendix I – Legislative Update).

III. SUMMARY

This handout addresses issues across a wide spectrum of legal issues. The cases are summarized to offer the officer a shorter, if not easier version for study.

APPENDIX I – LEGISLATIVE UPDATE

A. LAW ENFORCEMENT OFFICER TRANSFERS

Law Enforcement Assistance and Support Act

Section 23-20-10 This chapter may be cited as the 'Law Enforcement Assistance and Support Act'.

Section 23-20-20 As used in this chapter:

(a) 'Law enforcement agency' means any state, county, municipal, or local law enforcement authority that enters into an agreement for the procurement of law enforcement support services.

(b) 'Law enforcement provider' means any in state or out of state law enforcement authority that provides law enforcement services to a law enforcement agency pursuant to this chapter.

(c) 'Law enforcement services' means any law enforcement assistance or service performed by a certified law enforcement officer.

(d) 'Mutual aid agreement' means any agreement entered into on behalf of a law enforcement agency in this State for the purpose of providing the proper and prudent exercise of public safety functions across jurisdictional lines, including, but not limited to, multijurisdictional task forces, criminal investigations, patrol services, crowd control, traffic control and safety, and other emergency service situations. Such agreements must not be permitted for the sole purpose of speed enforcement.

Section 23-20-30

(A) Any county, incorporated municipality, or other political subdivision of this State may enter into mutual aid agreements as may be necessary for the proper and prudent exercise of public safety functions. All agreements must adhere to the requirements contained in Section 23 20 40.

(B) Nothing in this chapter may be construed to alter, amend, or affect any rights, duties, or responsibilities of law enforcement authorities established by South Carolina's constitutional or statutory laws or established by the ordinances of South Carolina's political subdivisions, except as expressly provided for in this chapter.

Section 23-20-40

(A) All mutual aid agreements for law enforcement services must be in writing and include, but may not be limited to, the following:

(a) a statement of the specific services to be provided;

(b) specific language dealing with financial agreements between the parties;

(c) specification of the records to be maintained concerning the performance of services to be provided to the agency;

(d) language dealing with the duration, modification, and termination of the agreement;

(e) specific language dealing with the legal contingencies for any lawsuits or the payment of damages that arise from the provided services;

(f) a stipulation as to which law enforcement authority maintains control over the law enforcement provider's personnel;

(g) specific arrangements for the use of equipment and facilities; and

(h) specific language dealing with the processing of requests for information pursuant to the Freedom of Information Act for public safety functions performed or arising under these agreements.

(B) Except as provided in subsection (C), a mutual aid agreement entered into on behalf of a law enforcement authority must be approved by the appropriate governing bodies of each concerned county, incorporated municipality, or other political subdivision of this State. Agreements entered into are executed between governing bodies, and, therefore, may last until the agreement is terminated by a participating party of the agreement.

(C) An elected official whose office was created by the Constitution or by general law of this State is not required to seek approval from the elected official's governing body in order to participate in mutual aid agreements.

(D) Provided the conditions and terms of the mutual aid agreements are followed, the chief executive officers of the law enforcement agencies in the concerned counties, incorporated municipalities, or other political subdivisions have the authority to send and receive such resources, including personnel, as may be needed to maintain the public peace and welfare.

(E) The officers of the law enforcement provider have the same legal rights, powers, and duties to enforce the laws of this State as the law enforcement agency requesting the services.

Section 23-20-60 The Governor, upon the request of a law enforcement authority or in his discretion, may by executive order, waive the requirement for a written agreement for law enforcement services required by this chapter during a natural disaster or other emergency affecting public safety."

Repeal - Section 2. Sections 23-1-210, 23-1-215, and 23-20-50 of the 1976 Code are repealed.

B. QUOTAS ON CITATIONS ISSUED BY LAW ENFORCEMENT

Section 1. Chapter 1, Title 23 of the 1976 Code is amended by adding:

Section 23-1-245

(A) A law enforcement agency, department, or division may not require a law enforcement officer employed by the agency, department, or division to issue a specific amount or meet a quota for the number of citations he issues during a designated period of time.

(B) Nothing in this section shall prohibit a law enforcement agency, department, or division from evaluating an officer's performance based on the officer's points of contact.

(C) An employee of a law enforcement agency, department, or division who files a report with an appropriate authority alleging a violation of the provisions contained in this section is protected by the provisions contained in Chapter 27, Title 8.

(D) As contained in this section:

(1) 'law enforcement agency, department, or division' includes, but is not limited to, municipal police departments, sheriff departments, the Highway Patrol, SLED, and other agencies that enforce state and local laws;

(2) 'quota' means a fixed or predetermined amount;

(3) 'points of contact' means a law enforcement officer's interaction with citizens and businesses within their jurisdictions and the law enforcement officer's involvement in community-oriented initiatives.

C. CONFIDENTIAL COMMUNICATION

Confidential Communications

Section 1. Article 1, Chapter 3, Title 23 of the 1976 Code is amended by adding:

Section 23-3-85

(A) As used in this section:

(1) 'Client' means a public safety employee or a public safety employee's immediate family.

(2) 'Immediate family' means the spouse, child, stepchild, parent, or stepparent.

(3) 'Peer support team' means any critical incident support service provider who has received training to provide emotional and moral support to a client involved in a critical incident, including, but not limited to, chaplains, mental health professionals, and public safety peers.

(B) Notwithstanding any other provision of law, except as provided in subsection (C), communications between a client and any member of a peer support team, including other clients involved in the same peer support process, shall be confidential and privileged as provided by Section 19-11-95(B).

(C) The confidentiality and privilege created by subsection (B) shall not apply when:

(1) the disclosure is authorized by the client making the disclosure, or, if the client is deceased, the disclosure is authorized by the client's executor, administrator, or in the case of unadministrated estates, the client's next of kin. This provision only applies to statements made by the client;

(2) the peer support team member was an initial responding officer, witness, or party to the critical incident;

(3) the communication was made when the member of the peer support team was not performing official duties in the peer support process; or

(4) the disclosure evidences a present threat to the client or to any other individual, or the disclosure constitutes an admission of a violation of state or federal law.

(D) Notwithstanding any other provision of law, this section does not require the disclosure of any otherwise privileged communications and does not relieve any mandatory reporting requirements.

D. ELECTRONIC TICKETS AND CITATIONS

Uniform Traffic Ticket

Section 1. Section 56-7-20 of the 1976 Code, as last amended by Act 1 of 2009, is further amended to read:

Each ticket shall have a unique identifying number. Each printed copy must be labeled at the bottom with the purpose of the copy. A handwritten traffic ticket must consist of four copies, one of which must be blue and must be given to the vehicle operator who is the alleged traffic violator; one of which must be yellow and must be dispatched to the Department of Motor Vehicles for its records and for audit purposes; one of which must be white and must be dispatched to the police agency of which the arresting officer is a part; and one of which must be green and must be retained by the trial officer for his records. An electronic traffic ticket must consist of at least one printed copy that must be given to the vehicle operator who is the alleged traffic violator and as many as three additional printed copies if needed to communicate with the Department of Motor Vehicles, the police agency, and the trial officer. Tickets may be collected electronically, but must be transmitted to the Department of Motor Vehicles electronically. Data transmissions to the Department of Motor Vehicles must be made pursuant to the Department of Motor Vehicles' electronic specifications."

Section 2. Section 56-7-30 of the 1976 Code, as last amended by Act 68 of 2005, is further amended to read:

(A) The Department of Public Safety shall have the traffic tickets printed. Law enforcement agencies shall order tickets from the Department of Public Safety and shall record the identifying numbers of the tickets received by them. The cost of the tickets must be paid by the law enforcement agency. The court's copy must be forwarded by the law enforcement agency to the appropriate court and electronically to the Department of Motor Vehicles within three business days of issuance to the offender. After final trial court action or nolle prosequi, disposition information must be forwarded electronically to the Department of Motor Vehicles by the appropriate court within five business days of the trial date.

(B) A law enforcement agency that issues uniform traffic tickets in an electronic format as provided in Section 56-7-10 may generate a printed copy of this ticket by using an in car data terminal or hand held device. A copy of the ticket must be given to the offender. The court's copy must be forwarded by the law enforcement agency to the appropriate court, in a format as prescribed by the South Carolina Judicial Department, and electronically to the Department of Motor Vehicles within three business days of issuance to the offender. Data transmissions to the Department of Motor Vehicles must be made pursuant to the Department of Motor Vehicles' and the South Carolina Judicial Department's electronic systems specifications."

Penalty

Section 3. Section 56-7-40 of the 1976 Code is amended to read:

Any person intentionally violating the provisions of Section 56 7 10 or 56 7 30 shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars nor more than fifteen hundred dollars or imprisoned for not more than six months, or both, for each ticket unaccounted for, or each use of a nonuniform ticket, or each failure to timely electronically forward the Department of Motor Vehicles a copy of the ticket. If the failure to account for a ticket, or the use of a nonuniform ticket, or the failure to timely forward

the Department of Motor Vehicles a copy of the ticket is inadvertent or unintentional, such misuse shall be triable in magistrate's court and, upon conviction, shall be punishable by a fine of not more than one hundred dollars."

Revocation Or Suspension Of A Driver's License

Section 4. Section 56-1-365 of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

(A) A person who forfeits bail posted for, is convicted of, or pleads guilty or nolo contendere in general sessions, municipal, or magistrate's court to an offense which requires that his driver's license be revoked or suspended shall surrender immediately or cause to be surrendered his driver's license to the clerk of court or magistrate upon the verdict or plea. The defendant must be notified at the time of arrest of his obligation to bring, and surrender his license, if convicted, to the court or magistrate at the time of his trial, and if he fails to produce his license after conviction, he may be fined in an amount not to exceed two hundred dollars. If the defendant fails subsequently to surrender his license to the clerk or magistrate immediately after conviction, he must be fined not less than fifty dollars nor more than two hundred dollars.

(B) The Department of Motor Vehicles shall electronically receive disposition and license surrender information from the clerk of court or magistrate immediately after receipt. Along with the driver's license, the clerks and magistrates must give the department's agents tickets, arrest warrants, and other documents or copies of them, including any reinstatement fee paid at the time of the verdict, guilty plea, or plea of nolo contendere, as necessary for the department to process the revocation or suspension of the licenses. If the department does not collect the license surrender information and disposition immediately, the magistrate or clerk must forward the license surrender information, disposition, and other documentation to the department within five business days after receipt. A clerk or magistrate who wilfully fails or neglects to forward the driver's license and disposition as required in this section is liable to indictment and, upon conviction, must be fined not exceeding five hundred dollars.

(C) The department shall notify the defendant of the suspension or revocation. Except as provided in Section 56-5-2990, if the defendant surrendered his license to the magistrate or clerk immediately after conviction, the effective date of the revocation or suspension is the date of surrender. If the magistrate or clerk wilfully fails to electronically forward the disposition and license surrender information to the department within five business days, the suspension or revocation does not begin until the department receives and processes the license and ticket, provided that the end date of the term of suspension or revocation shall be calculated from the date of surrender and not the date the department receives and processes the ticket.

(D) If the defendant is already under suspension for a previous offense at the time of his conviction or plea, the court shall use its judicial discretion in determining if the period of suspension for the subsequent offense runs consecutively and commences upon the expiration of the suspension or revocation for the prior offense, or if the period of suspension for the subsequent offense runs concurrently with the suspension or revocation of the prior offense.

(E) If the defendant fails to surrender his license, the suspension or revocation operates as otherwise provided by law.

(F) If the defendant surrenders his license, upon conviction, and subsequently files a notice of appeal, the appeal acts as a supersedeas as provided in Section 56-1-430. Upon payment of a ten dollar fee and presentment by the defendant of a certified or clocked in copy of the notice of appeal, the department shall issue him a certificate which entitles him to operate a motor vehicle for a period of six months after the verdict or plea. The certificate must be kept in the defendant's possession while operating a motor vehicle during the six month period, and failure to have it in his possession is punishable in the same manner as failure to have a driver's license in possession while operating a motor vehicle.

Administrative Review

Section 5. Section 56-1-370 of the 1976 Code, as last amended by Act 381 of 2006, is further amended to read:

The licensee may, within ten days after notice of suspension, cancellation, or revocation, except in cases where the suspension, cancellation, or revocation is made mandatory upon the Department of Motor Vehicles, request in

writing an administrative hearing with the Division of Motor Vehicle Hearings in accordance with the rules of procedure of the Administrative Law Court and the State Administrative Procedures Act, in the judicial circuit where the licensee was arrested unless the Division of Motor Vehicle Hearings and the licensee agree that the hearing may be held in another jurisdiction. The hearing must be heard by a hearing officer of the Division of Motor Vehicle Hearings. Upon the review, the hearing officer shall either rescind the department's order of suspension, cancellation, or revocation or, good cause appearing therefor, may continue, modify, or extend the suspension, cancellation, or revocation of the license. If the administrative hearing results in the continued suspension, cancellation, or revocation of the license, the term of the suspension, cancellation, or revocation of the license is deemed to commence upon the date of the administrative hearing, as long as information is transmitted electronically to the Department of Motor Vehicles on the date of the hearing, and not on the date of the notice provided by the Department of Motor Vehicles.

Repeal

Section 6. Section 56-3-1972 of the 1976 Code is repealed.

Savings Clause

Section 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time Effective

Section 8. This act takes effect January 1, 2017.

E. AMENDMENT OF THE "OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT OF 2010"

Arson, Elements Restructured

Section 1. Section 16-11-110 of the 1976 Code is amended to read:

(A) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a building, structure, or any property specified in subsections (B) and (C), whether the property of the person or another, which results, either directly or indirectly, in death or serious bodily injury to a person is guilty of the felony of arson in the first degree and, upon conviction, must be imprisoned not less than thirty years.

(B) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, church or place of worship, public or private school facility, manufacturing plant or warehouse, building where business is conducted, institutional facility, or any structure designed for human occupancy including local and municipal buildings, whether the property of the person or another, is guilty of the felony of arson in the second degree and, upon conviction, must be imprisoned not less than three nor more than twenty five years.

(C) A person commits a violation of the provisions of this subsection who wilfully and maliciously:

(1) causes an explosion, sets fire to, burns, or causes a burning which results in damage to a building or structure other than those specified in subsections (A) and (B), a railway car, a ship, boat, or other watercraft, an aircraft, an automobile or other motor vehicle, or personal property; or

(2) aids, counsels, or procures a burning that results in damage to a building or structure other than those specified in subsections (A) and (B), a railway car, a ship, boat, or other watercraft, an aircraft, an automobile or other motor vehicle, or personal property with intent to destroy or damage by explosion or fire, whether the property of the person or another.

A person who violates the provisions of this subsection is guilty of the felony of arson in the third degree and, upon conviction, must be imprisoned not more than fifteen years.

(D) For purposes of this section, 'damage' means an application of fire or explosive that results in burning, charring, blistering, scorching, smoking, singeing, discoloring, or changing the fiber or composition of a building, structure, or any property specified in this section."

Firearms, Return Of A Firearm To Innocent Owner

Section 2. Section 16-23-500 of the 1976 Code is amended to read:

(A) It is unlawful for a person who has been convicted of a violent crime, as defined by Section 16-1-60, that is classified as a felony offense, to possess a firearm or ammunition within this State.

(B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(C) (1) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy it. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the firearm or ammunition, the division may keep the firearm or ammunition for use by its forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies under the provisions of this section.

(2) A law enforcement agency that receives a firearm or ammunition pursuant to this section shall administratively release the firearm or ammunition to an innocent owner. The firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally determined. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this section which resulted in the confiscation of the firearm or ammunition. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this section.

(D) The judge that hears the case involving the violent offense, as defined by Section 16-1-60, that is classified as a felony offense, shall make a specific finding on the record that the offense is a violent offense, as defined by Section 16-1-60, and is classified as a felony offense. A judge's failure to make a specific finding on the record does not bar or otherwise affect prosecution pursuant to this subsection and does not constitute a defense to prosecution pursuant to this subsection.

Breach Of Peace

Section 3. Section 22-3-560 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

Magistrates may punish breaches of the peace by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding thirty days, or both.

Youthful Offenders, Burglary In The Second Degree Three-Year Minimum Sentence

Section 4. Section 24-19-10 (d) of the 1976 Code, as last amended by Act 255 of 2012, is further amended to read:

(d) 'Youthful offender' means an offender who is:

(i) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210, for allegedly committing an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D,

Class E, or Class F felony, as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(ii) seventeen but less than twenty five years of age at the time of conviction for an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(iii) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210, for allegedly committing burglary in the second degree (Section 16-11-312). If the offender committed burglary in the second degree pursuant to Section 16-11-312 (B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three year minimum sentence;

(iv) seventeen but less than twenty one years of age at the time of conviction for burglary in the second degree (Section 16-11-312). If the offender committed burglary in the second degree pursuant to Section 16-11-312 (B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three year minimum sentence;

(v) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210 for allegedly committing criminal sexual conduct with a minor in the third degree, pursuant to Section 16-3-655 (C), and the alleged offense involved consensual sexual conduct with a person who was at least fourteen years of age at the time of the act; or

(vi) seventeen but less than twenty five years of age at the time of conviction for committing criminal sexual conduct with a minor in the third degree, pursuant to Section 16-3-655 (C), and the conviction resulted from consensual sexual conduct, provided the offender was eighteen years of age or less at the time of the act and the other person involved was at least fourteen years of age at the time of the act.

Probation, Parole And Pardon Services, Administrative Monitoring Procedures, Notice

Section 5. Section 24-21-5 (1) of the 1976 Code, as added by Act 273 of 2010, is amended to read:

(1) 'Administrative monitoring' means a form of monitoring by the department beyond the end of the term of supervision in which the only remaining condition of supervision not completed is the payment of financial obligations. Under administrative monitoring, the only condition of the monitoring shall be the requirement that reasonable progress be made toward the payment of financial obligations. The payment of monitoring mandated fees shall continue. When an offender is placed on administrative monitoring, the offender shall register with the department's representative in the offender's county, notify the department of the offender's current address each quarter, and make payments on financial obligations owed, until the financial obligations are paid in full or a consent order of judgment is filed. Written notice of petitions for civil contempt as set forth in Section 24-21-100, scheduled hearings or proceedings, or any other event or modification associated with administrative monitoring must be given by the department by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or the director's designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of petitions for civil contempt as set forth in Section 24-21-100, scheduled hearings or proceedings, or any other event or modification associated with administrative monitoring have been met even if the notice has not been received by the offender. If an offender fails to appear for the civil contempt proceeding, the court may issue a bench warrant for the offender's arrest for failure to appear, or the court may proceed in the offender's absence and issue a bench warrant along with an order imposing a term of confinement as set forth in Section 24-21-100.

Probation, Parole And Pardon Services, Administrative Monitoring Procedures, Notice

Section 6. Section 24-21-100 (A) of the 1976 Code, as added by Act 273 of 2010, is amended to read:

(A) Notwithstanding the provisions of Section 24-19-120, 24-21-440, 24-21-560 (B), or 24-21-670, when an individual has not fulfilled the individual's obligations for payment of financial obligations by the end of the individual's term of supervision, then the individual shall be placed under quarterly administrative monitoring, as defined in Section 24-21-5, by the department until such time as those financial obligations are paid in full or a consent order of judgment is filed. If the individual under administrative monitoring fails to make reasonable progress toward the payment of such financial obligations, as determined by the department, the department may petition the court to hold an individual in civil contempt for failure to pay the financial obligations. The department shall provide written notice of the petition and any scheduled contempt hearing by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or the director's designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of petition and any scheduled contempt hearing have been met even if the notice has not been received by the offender. If the court finds the individual has the ability to pay but has not made reasonable progress toward payment, the court may hold the individual in civil contempt of court and may impose a term of confinement in the local detention center until payment of the financial obligations, but in no case to exceed ninety days of confinement. Following any term of confinement, the individual shall be returned to quarterly administrative monitoring by the department. If the individual under administrative monitoring does not have the ability to pay the financial obligations and has no reasonable likelihood of being able to pay in the future, the department may submit a consent order of judgment to the court, which shall relieve the individual of any further administrative monitoring.

Probation, Parole And Pardon Services, Compliance Credits

Section 7. Section 24-21-280 (D) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

(D) A probation agent, in consultation with the probation agent's supervisor, shall identify each individual under the department's supervision, with a term of supervision of more than one year, and shall calculate and award compliance credits as provided in this section. Credits may be earned from the first day of supervision on a thirty day basis, but must not be applied until after each thirty day period of supervision has been completed. Compliance credits may be denied for noncompliance on a thirty day basis as determined by the department. The denial of nonearned compliance credits is a final decision of the department and is not subject to appeal. An individual may earn up to twenty days of compliance credits for each thirty day period in which the department determines that the individual has substantially fulfilled all of the conditions of the individual's supervision.

Controlled Substance Offenses, Removal Of Certain Prior History Consideration

Section 8. Section 44-53-370 (b) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

(b) A person who violates subsection (a) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than fifteen years or fined not more than twenty five thousand dollars, or both. For a second offense, the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, the offender must be imprisoned not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may

have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(2) any other controlled substance classified in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not less than five years nor more than twenty years, or fined not more than twenty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(3) a substance classified in Schedule IV except for flunitrazepam is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than three years or fined not more than three thousand dollars, or both. In the case of second or subsequent offenses, the person is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than six thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(4) a substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than one year or fined not more than one thousand dollars, or both. In the case of second or subsequent offenses, the sentence must be twice the first offense. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

Controlled Substance Offenses, Removal Of Certain Prior History Consideration

Section 9. Section 44-53-375 (B) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty five thousand dollars, or both;

(2) for a second offense, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

Controlled Substance Offenses, Convictions For Trafficking Offenses To Be Considered In Prior History

Section 10. Section 44-53-470 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

(A) An offense is considered a second or subsequent offense if:

(1) for an offense involving marijuana pursuant to the provisions of this article, the offender has been convicted within the previous five years of a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana possession;

(2) for an offense involving marijuana pursuant to the provisions of this article, the offender has at any time been convicted of a first, second, or subsequent violation of a marijuana offense provision of this article or of another state or federal statute relating to marijuana offenses, except a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana offenses;

(3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs; and

(4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

(B) In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article.

(C) If a person is sentenced to confinement as the result of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction, whichever is later. For purposes of this section, confinement includes incarceration and supervised release, including, but not limited to, probation, parole, house arrest, community supervision, work release, and supervised furlough.

Driver's License Suspension Amnesty Period, Certain Driving Offenses Excluded

Section 11. Section 56-1-396 (F) of the 1976 Code, as added by Act 273 of 2010, is amended to read:

(F) Qualifying suspensions include, and are limited to, suspensions pursuant to Sections 34-11-70, 56-1-120, 56-1-170, 56-1-185, 56-1-240, 56-1-270, 56-1-290, 56-1-460 (A) (1), 56-2-2740, 56-9-351, 56-9-354, 56-9-357, 56-9-430, 56-9-490, 56-9-610, 56-9-620, 56-10-225, 56-10-240, 56-10-270, 56-10-520, 56-10-530, and 56-25-20. Qualifying suspensions do not include suspensions pursuant to Section 56-5-2990 or 56-5-2945, and do not include suspensions pursuant to Section 56-1-460, if the person drives a motor vehicle when the person's license has been suspended or revoked pursuant to Section 56-5-2990 or 56-5-2945.

Savings Clause

Section 12. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

F. CONCEALED WEAPONS PERMIT

Section 1. Section 23-31-215 (N) of the 1976 Code, as last amended by Act 349 of 2008, is further amended to read:

(N)(1) Valid out of state permits to carry concealable weapons held by a resident of a reciprocal state must be honored by this State, provided, that the reciprocal state requires an applicant to successfully pass a criminal background check and a course in firearm training and safety. A resident of a reciprocal state carrying a concealable weapon in South Carolina is subject to and must abide by the laws of South Carolina regarding concealable weapons. SLED shall maintain and publish a list of those states as the states with which South Carolina has reciprocity.

(2) Notwithstanding the reciprocity requirements of subitem (1), South Carolina shall automatically recognize concealed weapon permits issued by Georgia and North Carolina.

(3) The reciprocity provisions of this section shall not be construed to authorize the holder of any out of state permit or license to carry, in this State, any firearm or weapon other than a handgun."

G. BEGINNER'S PERMIT

Section 1. Section 56-1-50 (B) (2) and (C) of the 1976 Code is amended to read:

"(2) motorcycles or mopeds after six o'clock a.m. and not later than six o' clock p.m. However, beginning on the day that daylight saving time goes into effect through the day that daylight saving time ends, the permittee may operate motorcycles or mopeds after six o'clock a.m. and not later than eight o'clock p.m. A permittee may not operate a motorcycle at any other time unless accompanied by a licensed motorcycle operator twenty-one years of age or older who has at least one year of driving experience. A permittee may not operate a moped at any other time unless accompanied by a licensed driver twenty-one years of age or older who has at least one year of driving experience.

H. GOLF CART OPERATION

Section 1. Section 56-2-105 of the 1976 Code, as last amended by Act 86 of 2015, is further amended to read:

"(A) For the purposes of this section, 'gated community' means any homeowners' community with at least one access controlled ingress and egress which includes the presence of a guard house, a mechanical barrier, or another method of controlled conveyance.

(B) An individual or business owner of a vehicle commonly known as a golf cart may obtain a permit decal and registration from the Department of Motor Vehicles upon presenting proof of ownership and liability insurance for the golf cart and upon payment of a five dollar fee.

(C) During daylight hours only:

(1) a permitted golf cart may be operated within four miles of the address on the registration certificate and only on a secondary highway or street for which the posted speed limit is thirty-five miles an hour or less.

(2) a permitted golf cart may be operated within four miles of a point of ingress and egress to a gated community and only on a secondary highway or street for which the posted speed limit is thirty-five miles an hour or less.

(3) within four miles of the registration holder's address, and while traveling along a secondary highway or street for which the posted speed limit is thirty-five miles an hour or less, a permitted golf cart may cross a highway or street at an intersection where the highway has a posted speed limit of more than thirty-five miles an hour.

(4) a permitted golf cart may be operated along a secondary highway or street for which the posted speed limit is thirty-five miles an hour or less on an island not accessible by a bridge designed for use by automobiles.

(D) A person operating a permitted golf cart must be at least sixteen years of age and hold a valid driver's license. The operator of a permitted golf cart being operated on a highway or street must have in his possession:

(1) the registration certificate issued by the department;

(2) proof of liability insurance for the golf cart; and

(3) his driver's license.

(E) A golf cart permit must be replaced with a new permit every five years, or at the time the permit holder changes his address.

(F) (1) A political subdivision may, on designated streets or roads within the political subdivision's jurisdiction, reduce the area in which a permitted golf cart may operate from four miles to no less than two miles.

(2) A political subdivision may, on primary highways, secondary highways, streets, or roads within the political subdivision's jurisdiction, create separate golf cart paths on the shoulder of its primary highways, secondary highways, streets and roads for the purpose of golf cart transportation, if:

(a) the political subdivision obtains the necessary approvals, if any, to create the golf cart paths; and

(b) the golf cart path is:

(i) separated from the traffic lanes by a hard concrete curb;

(ii) separated from the traffic lanes by parking spaces; or

(iii) separated from the traffic lanes by a distance of four feet or more.

(3) In a county with a population of no less than one hundred fifty thousand and no more than two hundred fifty thousand persons:

(a) if a municipality has jurisdiction over a barrier island, the municipality may enact an ordinance allowing for the operation of a golf cart at night on designated portions of the barrier island within the municipality, provided the golf cart is equipped with working headlights and rear lights; or

(b) if a barrier island is not within the jurisdiction of a municipality, the county in which the barrier island is located may enact an ordinance allowing for the operation of a golf cart at night on designated portions of the county, provided the golf cart is equipped with working headlights and rear lights.

If a municipality or county enacts an ordinance allowing golf carts to operate at night on a barrier island, the requirements of subsection (C), other than operation in daylight hours only, shall still apply to all permitted golf carts.

(4) A political subdivision may not reduce or otherwise amend the other restrictions placed on the operation of a permitted golf cart contained in this section.

(G) The provisions of this section that restrict the use of a golf cart to certain streets, certain hours, and certain distances shall not apply to a golf cart used by a public safety agency in connection with the performance of its duties."

Sunset Provision

Section 2. Any municipal or county ordinance enacted pursuant to Section 56-2-105 (F) (3) shall expire on January 1, 2021.

Time Effective

Section 3. This act takes effect upon approval by the Governor.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

LESSON PLAN TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Legal Update 2016-2017	I0338	Revised 8/2/16

1. Select case law from the South Carolina Supreme Court.
2. Select case law from the United States Supreme Court.
3. Select case law from the South Carolina Court of Appeals.
4. Select South Carolina Statutes and Regulations.