



# POLICE / PROSECUTOR UPDATE

Issue No. 77

April 1998

Last month the Court of Appeals decided a case from CLARK COUNTY dealing with the search of a vehicle during a investigatory stop.

Facts: Two policemen were patrolling a neighborhood well known for drug trafficking and shootings. They pulled a car over for speeding and driving left of center. Three people were in the car, and the defendant was the driver. When one officer asked the defendant if he would consent to a search, he began fidgeting with his hand between the console and the driver's seat. The officer ordered him to put his hands up where they could be seen. The defendant complied only after the officer made repeated demands and had drawn his gun. The officer testified that the defendant's actions frightened him. The officer then removed him from the car and patted him down. On the floorboard of the car, the officer discovered a handgun.

The law: Once a vehicle has been stopped for investigative purposes, an officer may conduct a search of the vehicle's interior for weapons without first obtaining a search warrant *if* the officer reasonably believes that he or others may be in danger. The test for determining the reasonableness of this limited search for weapons is whether the facts available to the officer at the moment of the seizure or the search would warrant a person of reasonable caution in believing that the action taken was appropriate. The police officer need not be absolutely certain that the individual is armed. The issue is whether a reasonably prudent person in the same circumstances would be warranted in the belief that his safety or that of another was in danger.

The court's decision: The facts "unerringly" pointed to the conclusion that the defendant's actions gave rise to a reasonable belief that a

limited search of the interior of the car for weapons was necessary to ensure the officer's safety. State v. Joe, (Ind. App. 03/24/98) (Clark County); Gann v. State, 521 N.E.2d 330 (Ind. 1988)

We will next look at some of the very few pieces of legislation affecting law enforcement which passed in the 1998 legislature.

**I.C. 35-44-3-3** was amended (effective July 1, 1998) to increase the penalty for using a vehicle to flee a law enforcement officer from a Class A misdemeanor to a Class D felony.

**I.C. 9-24-11-3** was amended (effective January 1, 1999) to provide that a person who is less than 18 years of age holds a probationary driver's license and is subject to certain driving restrictions. The person generally may not operate a motor vehicle during curfew hours. For 90 days after being issued a probationary license, the person may not operate a motor vehicle in which there are passengers unless there is a licensed driver at least 21 in the front seat. The person and all passengers must wear seat belts.

Amended **I.C. 35-46-3-5 and 35-46-3-12**, Cruelty to an Animal, (effective July 1, 1998) to make it a Class A misdemeanor for a person to knowingly or intentionally torture, beat, or mutilate a vertebrate animal (Class D felony if the person has a prior, unrelated conviction for cruelty to an animal). A person who engages in a reasonable and recognized act of training, handling, or disciplining does not commit the crime. Cruelty to an animal does not include the destruction of an animal defined under law as a pest.

**I.C. 35-45-15** was added, effective July 1, 1998, to create the crime of money laundering, a Class D felony (Class C felony if the value of the proceeds or funds is at least \$50,000). Includes money laundering in the definition of racketeering activity under **35-45-6-1**.

Amended **I.C. 14-16-1-3 and 14-16-1-21** to provide that an off-road vehicle may not be driven at night unless the vehicle has lights. Provides that a golf cart is not an off-road vehicle.