

ORANGE COUNTY SHERIFF'S OFFICE



LEGAL BULLETIN

Print Date: February 2005	<input type="checkbox"/> Rescinds <input checked="" type="checkbox"/> Amends	Number: 00-24
SUBJECT: Go-Peds, Motorized Scooters, Pocket Bikes, Motorized Bicycles, Mopeds, All-Terrain Vehicles, Low-Speed Vehicles (Electric Vehicles), Motorized Skateboards, Other Small, Gas-Engine Vehicles, and Electric Personal Assistive Mobility Devices		Re-Evaluation Date:
Distribution: ALL SWORN PERSONNEL	Related CALEA Standards:	

Are go-peds, motorized scooters, motorized bicycles, mopeds, all-terrain vehicles, low-speed vehicles, motorized skateboards, other small, gas-engine vehicles, and electric personal assistive mobility devices considered “motor vehicles” for purposes of Chapters 316 (equipment and safe driving requirements), 320 (vehicle registration), and 322 (driver’s license provisions) of the Florida Statutes? Which provisions of those chapters apply? Unfortunately, particularly because of recent legislative changes, the answers to these questions are complex and uncertain. For example, a vehicle may be included within the definition of “motor vehicle” under one chapter but not another. A recent Florida Attorney General Opinion suggested the legislature pass new law to clarify these issues. As a visual aid, a chart summarizing how the various chapters apply to specific vehicles follows the bulletin.

Go-Peds/Motorized Scooters



In State v. Riley, 698 So.2d 374 (Fla. 2nd DCA 1997), the defendant claimed that the go-ped he was riding was not a motor vehicle under Florida Statute 322.34; therefore, his citation for driving with a suspended driver’s license was invalid because a driver’s license was not required. The court described the “go-ped” as a two-wheeled scooter with a gasoline-powered engine and operated in a standing position. Brake and throttle levers are located on the handlebars. Go-peds have no seat and no pedals. They travel at a maximum speed of 30 miles per hour with the internal combustion engine displacement at approximately 22.5 cubic centimeters. Based on this description, the court ruled that a “go-ped” is a motor vehicle for purposes of Chapter 322, F.S. Therefore, in order to operate a go-ped on a public street, a driver’s license was required.

In House Bill 261, Section 67 (Chapter 2002-20, Laws of Florida, effective July 1, 2002), the Florida Legislature revised the definition of “motor vehicle” in Florida Statute 316.003(21) to specifically exclude “motorized scooters.” The legislators also added subsection (82) to define “motorized scooter” in terms similar to the definition of “go-ped” discussed in *Riley*. Subsection (82) defines “motorized scooter” as follows:

[A]ny vehicle not having a seat or saddle for the use of the rider, designed to travel on not more than three wheels, and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground.

It is reasonable to conclude this definition includes go-peds as defined in *Riley*. Therefore, go-peds/motorized scooters are not subject to the equipment and safe driving requirements in Chapter 316, F.S. See also Attorney General Opinion 2002-47. The definition of “motorized scooter” provided by the legislature does not specify whether a gas or electric engine must power the vehicle. As long as it meets all the other requirements, the vehicle qualifies as a motorized scooter whether a gas or electric engine powers it.

The Attorney General’s Office issued AGO 2003-44 regarding motorized scooters. It notes that “motorized scooter” is excluded from the definition of “motor vehicle” in Chapter 316, F.S., but it is not excluded from the definition of “motor vehicle” in Chapter 320, F.S. Therefore, it appears owners must register motorized scooters under Florida Statute 320.02 before operating them on the roads of the state. However, according to the Florida Department of Highway Safety and Motor Vehicles (“DHSMV”), these vehicles cannot be registered or operated on the roads of the state, because Florida Statute 320.08 does not include a classification for motorized scooters or go-peds.

In addition, go-peds/motorized scooters are still classified as motor vehicles under Florida Statute 322.01(26). Thus, an operator must have a Class E driver’s license before operating them on a public street. According to DHSMV, if an unlicensed person operates a go-ped or motorized scooter on a public street, he or she may be cited for violating Florida Statute 322.03. A person does not need a driver’s license to operate a go-ped or motorized scooter on private property.

AGO 2003-44 also addresses the issue of go-peds/motorized scooters driving on sidewalks. It points out that motorized scooters are not exempt from the definition of “vehicle” in Florida Statute 316.003(75), which defines that term as “[e]very device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.” Florida Statute 316.1995 provides that “[n]o person shall drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway. . .” According to AGO 2003-44, the operative word is “vehicle.” Because Florida Statute 316.1995 prohibits *any vehicle* from being operated on a sidewalk, not just *motor vehicles*, the Attorney General’s Office concluded that go-peds and motorized scooters are prohibited from operating on sidewalks.

Electric or Gas Powered Motorized Scooters with Seats or Pocket Bikes



Electric or gas powered motorized scooters with seats are similar to go-peds, but they have seats. Pocket bikes (a/k/a “pocket rockets”) are miniature motorcycles. They are approximately 23 inches in height. They travel at a maximum speed of 40 miles per hour with internal combustion engine displacement at approximately 49 cubic centimeters.

DHSMV advises that neither motorized scooters with seats nor pocket bikes fit into the exemption for motorized scooters found in the definition of “motor vehicle” in Florida Statute 316.003(21). Similarly, they do not fit the definition of “motorized scooter” in Florida Statute 316.003(82). Therefore, motorized scooters with seats and pocket bikes are motor vehicles under Chapter 316, F.S., and they are subject to the safety requirements in that chapter, the registration requirements in Chapter 320, F.S., and the licensing requirements in Chapter 322, F.S.

Motorized Bicycle



A “motorized bike” as defined in Florida Statute 316.003(2) is propelled by a combination of human power and electric helper motor. It can travel up to 20 miles per hour on level ground. It is important to note the definition does not include gas helper motors. A motorized bike is not a motor vehicle under Chapter 316, F.S., since Florida Statute 316.003(21) excludes bicycles from the definition of “motor vehicle.” However, Florida Statute 316.003(2) provides that no person under the age of 16 may operate or ride upon a motorized bicycle.

Motorized bicycles are also excluded from the definition of “motor vehicle” in Florida Statute 322.01(26) and the definition of “vehicle” in Florida Statute 322.01(42). Therefore, a driver’s license is not required. They are also excluded from the definition of “motor vehicle” in Florida Statute 320.01(1)(a) and need not be registered. In conclusion, a motorized bicycle operated with an electric helper motor can be operated on the public roads without a driver’s license and registration, but the operator must be at least 16 years of age.

Mopeds



Mopeds are excluded from the definition of “motor vehicle” in Florida Statute 316.003(21). Instead, they are defined in Florida Statute 316.003(77) as a vehicle designed to travel on no more than three wheels. It has pedals and a seat or saddle for the rider. Its motor

may not rate above 2 brake horsepower, and its maximum speed is 30 miles per hour. A moped is different from the motorized bicycle discussed above. A motorized bike cannot exceed 20 miles per hour, whereas a moped has a maximum speed of 30 miles per hour.

Although mopeds are excluded from the definition of “motor vehicle” in Chapter 316, F.S., certain provisions of that chapter still apply to them. Per Florida Statute 316.208(4), when powered by a motor, mopeds may not be driven on bike paths and sidewalks. When operated solely by human power, they may be utilized on bike paths and sidewalks. The moped operator has all the rights and duties applicable to a pedestrian, except that he or she must yield to pedestrians and give an audible signal when overtaking or passing a pedestrian. Per Florida Statute 316.211(4), a person under 16 years of age must wear protective headgear when operating or riding on a moped.

With regard to driver’s licensing, Soto v. State, 711 So.2d 1275 (Fla. 4th DCA 1998); Jones v. State, 721 So.2d 320 (Fla. 2nd DCA 1998); and Wood v. State, 717 So.2d 617 (Fla. 1st DCA 1998), hold that a moped is a motor vehicle under Chapter 322, F.S. Therefore, a person must have a driver’s license to operate a moped on public roads. Additionally, pursuant to Larason v. State, 729 So.2d 494 (Fla. 2nd DCA 1999), a license is required even if the highway is private. A minor may operate a moped on private property without a license, but all persons under 16 years of age must wear protective headgear when operating or riding on a moped, regardless of whether they are on the roads or streets or on private property. See Florida Statute 316.211(4). Florida Statute 320.08(1)(b) contains a classification for moped registration. Therefore, mopeds may be registered under that statute and under Florida Statute 320.0803. Licensed drivers may operate them on public streets, since they can be registered.

All-Terrain Vehicles



Florida Statute 316.2074 defines “all-terrain vehicles” as follows:

[A]ny motorized off-highway vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger.

Per Florida Statute 316.2074(5), an ATV may not be operated on public streets. However, Florida Statute 316.2074(7) authorizes law enforcement officers to operate all-terrain vehicles with four wheels on public roads within public lands while in the course and scope of their duties. AGO 86-98 determined that a four-wheeled ATV is a motor vehicle for purposes of Chapter 316, F.S. As a motor vehicle, an ATV would be subject to the safety requirements

imposed by Chapter 316, F.S. With Florida Statute 316.2074 restricting ATVs from highway operation, the windshield requirement contained in Florida Statute 316.2952 may not be applicable, because this requirement applies to motor vehicles “operated on public highways, roads, and streets.”

On the other hand, because a four-wheeled ATV is a motor vehicle and *not* a motorcycle for Chapter 316, F.S., purposes, ATV riders or drivers are not required to adhere to the safety equipment requirements imposed on motorcyclists (e.g., protective headgear). However, an ATV operator who is under 16 must wear protective headgear and eye protection pursuant to Florida Statute 316.2074(3).

In Hinson v. State, 710 SO.2d 678 (Fla. 1st DCA 1998), the First District Court of Appeal determined that an ATV is also a motor vehicle under Chapter 322, F.S., so a person operating an ATV on a public street must have a driver’s license. However, as mentioned previously, a person may not operate an ATV on a public street. Therefore, if a person operates an ATV on a public street without a driver’s license, he or she may be cited with violating both Florida Statute 316.2074(5) and 322.03.

Regarding licensing of the ATV, Section 56 of Chapter 2002-295, Laws of Florida, requires that all off-highway vehicles purchased after July 1, 2002, and all off-highway vehicles operated on public lands, must be titled and issued a certificate of title. “Off-highway vehicles” includes all-terrain vehicles and off-highway motorcycles. The new law does not include registration requirements for ATVs.

Low-Speed Vehicles (Electric Vehicles)

Florida Statute 320.01(42) defines “low-speed vehicle” as “any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122.” Pursuant to Florida Statute 316.2122, a low-speed vehicle may be operated only on streets where the posted speed limit is 35 miles per hour or less. Low-speed vehicles must be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers. Also, low-speed vehicles must be registered and insured in accordance with Florida Statute 320.02. Any person operating a low-speed vehicle must have in his or her possession a valid driver’s license. Based on the above, operators of low-speed vehicles may drive their vehicles on public roads, as long as the vehicle is registered and the driver is licensed.

Electric Personal Assistive Mobility Device



Electric personal assistive mobility devices are excluded from the definition of “motor vehicle” in Florida Statute 316.003(21). House Bill 261, Section 67, added paragraph (83) to Florida Statute 316.003 to provide the following definition of “electric personal assistive mobility devices:”

Any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. Electric personal assistive mobility devices are not vehicles as defined in this section.

Florida Statute 316.2068 relates to electric personal assistive mobility devices and provides that such devices may be operated on roads where the posted speed is 25 miles per hour or less, on marked bicycle paths, on any street or road where bicycles are permitted, and on sidewalks. However, the person operating the device must yield the right-of-way to pedestrians and give an audible signal before overtaking and passing a pedestrian. A valid driver's license is not a prerequisite to operating an electric personal assistive mobility device. Electric personal assistive mobility devices need not be registered and insured in accordance with Florida Statute 320.02. A person under the age of 16 may not operate or ride on an electric personal assistive mobility device unless the person wears a bicycle helmet. Electric personal assistive devices are not motor vehicles under Chapters 316, 320, and 322.

Motorized Skateboards, Go-Carts, and Other Small, Gas-Engine Vehicles

DHSMV considers motorized skateboards, go-carts, and other small, gas-engine vehicles to be motor vehicles for purposes of Chapters 316, 320, and 322, F.S. It is a violation of Florida Statute 316.1995 to operate one of these vehicles on a sidewalk or bike path. These vehicles do not meet the registration requirements in Chapter 320, F.S., so they are restricted to private property. If an unlicensed person operates one of these vehicles on a public street, he or she may be cited for violating Florida Statute 322.03.

Conclusion

In short, go-peds/motorized scooters are motor vehicles under Chapters 320 and 322, F.S. Go-peds/motorized scooters are restricted to private property, as they cannot be registered under Chapter 320, F.S. Motorized scooters that have seats and pocket bikes are motor vehicles for purposes of Chapter 316, F.S., and they are subject to the safety requirements in that chapter, the registration requirements in Chapter 320, F.S., and the licensing requirements in Chapter 322, F.S.

Motorized bicycles are not motor vehicles under Chapters 316, 320, or 322. A motorized bike can be operated on a public road without driver's license and registration. Although mopeds are not motor vehicles under Chapter 316, certain provisions of that chapter still apply to them. Mopeds may be registered and operated on public streets. A person under 16 years of age who is operating a moped must wear protective headgear. However, a person of any age operating a go-ped or motorized scooter does not have to wear protective headgear. If a

person without a driver's license operates a go-ped, motorized scooter, or moped on a public street, he or she may be cited with violating Florida Statute 322.03.

ATVs are motor vehicles under Chapters 316 and 322, F.S. ATVs and off-highway motorcycles purchased after July 1, 2002, and operated on public lands, must be titled and issued a certificate of title. ATVs may not be operated on public streets, except by law enforcement officers in the circumstances described in the "All-Terrain Vehicles" section of this bulletin. A person under 16 years of age who is operating an ATV must wear protective headgear.

Operators of low-speed vehicles must comply with safety standards in Florida Statute 316.2122. Low-speed vehicles may be operated on streets where the posted speed limit is 35 miles per hour or less. Operators of low-speed vehicles driving on these streets must be licensed and have the vehicle registered. Electric personal assistive mobility devices are not motor vehicles under Chapter 316. These vehicles may be operated on a public road where the speed limit is 25 miles per hour or less. Operators do not need a valid driver's license, and the vehicles do not need to be registered.

Motorized skateboards, go-carts, and other small, gas-engine vehicles are motor vehicles for purposes of Chapters 316, 320, and 322, F.S. They are restricted to private property. If a person who does not have a driver's license operates one of these vehicles on a public street, he or she may be cited for violating Florida Statute 322.03. It is a violation of Florida Statute 316.1995 to drive one of these vehicles on a bike path or sidewalk. A person operating a motorized wheelchair, motorized bicycle, or regular bicycle does not need a driver's license.

Unsupervised juveniles without drivers' licenses often operate motorized scooters, go-carts, motorized skateboards, etc., on public streets. In dealing with a young child, a law enforcement officer may wish to cite the child's parents for a violation of Florida Statute 322.35, "Permitting an Unauthorized Minor to Drive," which is an arrestable misdemeanor. However, please note the parent *must know* that the child is operating the motor vehicle on the street.

Orange County deputies with questions about this bulletin may contact the Legal Services Section for assistance. Persons who are not employed by the Orange County Sheriff's Office should consult their own legal advisors before taking action on this subject matter.

(This bulletin was prepared by Wili Hirschey, Paralegal, with assistance from the Florida Department of Highway Safety and Motor Vehicles, and Mary Ann Klein, Training Coordinator for the 18th Circuit State Attorney's Office, reviewed by Bernie Rice, General Counsel, and approved by Chief Deputy Phil Williams.)

SUMMARY CHART

	F.S. Chapter 316 Is Item "Motor Vehicle"?	F.S. Chapter 322 Is Driver's License Required?	F.S. Chapter 320 Is Vehicle Registration Required?	Is There an Age Restriction for Operation?	Is a Helmet Required?	Can the Vehicle be Operated on Public Roads?	Can the Vehicle be Operated on Bicycle Paths or Sidewalks?
Go-Peds/ Motorized Scooters without seats	No	Yes	Yes, but no mechanism is in place to register them	No	No	No, may be operated only on private property	No
Go-Peds/ Motorized Scooters with seats /Pocket Bikes	Yes	Yes	Yes	No	No	No, may be operated only on private property	No
Motorized Bicycle	No, but must comply with 316.2065	No	No	Yes, operator must be 16 or older	No	Yes	Only if operated solely by human power
Mopeds	No, but they must comply with 316.208, 316.211, and 316.2085	Yes	Yes	No	Yes, operator under 16 must wear protective headgear	Yes	Only if operated solely by human power
ATVs	Yes, ATVs must comply with 316.2074	Yes, but statute now prohibits operating them on public streets	Yes, statute now requires that ATVs purchased after 7/1/02 be titled	No	Yes, operator under 16 must wear protective headgear and eye protection	No, may be operated only on private property	No
Low-Speed Vehicle	No, but must comply with 316.2122	Yes	Yes	No	No	Yes, but only on streets where speed limit is 35 MPH or less	No
Electric Personal Assistive Mobility Device	No, but must comply with 316.2068	No	No	No	Yes, operator under 16 must wear a bicycle helmet.	Yes, but only on streets where speed limit is 25 MPH or less	Yes, if person yields right-of-way to pedestrians and gives audible signal before overtaking and passing pedestrians
Motorized Skateboards; Go-Carts; & Other Small, Gas-Engine Vehicles	Yes	Yes	Yes	No	No	No, may only be operated on private property	No