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Statutory Changes for 2014

Felony Director: Jacob Orr

Once again, this year legislature has passed laws amending or creating criminal laws and procedures. This article will provide you will a brief summery of the changes.

Section 776.012 Use of Force in Defense of Person, has been amended to include threatening to use force; thus, ensuring that this defense is available to anyone charged with Aggravated Assault. Also, a requirement was added that a claim of justifiable use of deadly force can only be made by someone that is not engaged in "criminal activity". This statute has been reorganized into two subsections making it easier understand.

Section 776.013 (3), has been amended in three ways: 1) requires person asserting this defense to have been attacked in their home or car; 2) allows this defense for people that threaten force (assault); and 3) requires that any force used be in accord with Section 776.012 or 776.031. By requiring any claim of justifiable use of force also comply with the Defense of Person or Defense of Others statutes, the legislature has said an individual claiming this defense must have had a reasonable fear of imminent peril. Previously, this statute had no requirement of imminent peril.

Section 794.011 (5), Sexual Battery, has been amended to allow a second degree felony to become a first degree, if the victim is under 18 years of age and the defendant is over 18 years of age, or, if the defendant has a prior enumerated offense (enumerated offenses listed 794.011).



Felony Director:
Jacob Orr

Section 794.011(4), Sexual Battery (Special Conditions), has been amended to allow a first degree felony to become punishable by life, if the victim is under 18 years of age and the defendant is over 18 years of age, or, if the defendant has a prior enumerated offense (listed in 794.011).

Section 794.011 (8)(b), Familial or Custodial Sexual Battery, is now punishable by life.

Section 794.05, Unlawful Sexual Activity with Certain Minors, has been amended to include penetration with an object.

Section 800.04 (4) & (5), Lewd Battery and Lewd Molestation both become first degree felonies when defendant is 18 years of age or older and has a prior enumerated offense (enumerated offenses listed in 800.04).

Section 775.0862 has been created to increase any felony by a degree if the defendant is the teacher of the victim-student.

Section 796.05, Deriving Support from the proceeds of Prostitution, has been amended to increase the possible penalty. A first offense under this statute is now a second degree felony; a second offense is a first degree felony; a third or subsequent offense carries a ten year mandatory sentence.

Section 943.0435, Sexual Offenders Required to Register, has been amended to increase the amount of information the offenders must register.

Section 316.027, Crash Involving Death or Personal Injuries, now includes a provision for a minimum sentence of 4 years incarceration for anyone convicted on leaving the scene of a crash involving death; however, it also provides that the court may depart from that penalty unless the defendant was driving under the influence. The statute now provides for a 3 year driver's license revocation.

Section 316.126, "Move Over" Law, now applies to utility service vehicles and sanitation vehicles.

Section 893.135, Trafficking, has been amended in regard to Hydrocodone and Oxycodone.

Trafficking in Hydrocodone now requires 14 grams for the 3 year minimum mandatory

sentence; 28 grams for the 7 year; 50 grams for a 15 year minimum mandatory; and 200 grams for a 25 year minimum mandatory sentence.

Trafficking in Oxycodone now requires 7 grams for the 3 year minimum mandatory sentence; 14 grams for the 7 year; 25 grams for a 15 year minimum mandatory; and 100 grams for a 25 year minimum mandatory sentence.

Section 817.568, Criminal Use of Personal Identification Information, has been amended to enhance the third degree felony to a second degree felony if the victim is over 60 years of age, disabled, a veteran, or a state or federal employee.



Section 825.103, Elder Exploitation, has been amended in various ways to assist the prosecution; including decreasing the threshold value per degree of felony.

Section 843.22 has been created to enhance the penalties for certain burglaries. Under this statute, if the defendant travels from his county of residence to another county to commit burglary, the degree of the burglary is increased by one degree if the purpose of the travel was to thwart law enforcement attempts to track the items stolen in the burglary.

Should you have questions regarding any of the above, or if you would like a copy of any of the new laws, please contact Jake Orr at 534-4824.



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FROM THE COURTS...

TRANSPORTING A SICK CAT TO AN EMERGENCY VET CLINIC IS NOT A VALID NECESSITY DEFENSE TO DUI.

A deputy stopped the defendant after he was observed driving eighty-five miles per hour in a fifty-five mile per hour zone. The defendant was also observed veering across three lanes of traffic to an exit ramp. In his trial for his third DUI within ten years, the defendant requested a jury instruction on necessity because he was transporting a very ill cat belonging to his friend and passenger in his vehicle. The defendant was convicted as charged and appealed. On appeal, the Second District affirmed the trial court, holding that while a necessity defense could be asserted in certain circumstances in a DUI case, attempting to get an animal treated is not one of them. The court cited an 18th Circuit case and cases from other jurisdictions where the necessity defense in a DUI case was permitted. Additionally, the court set forth a five step analysis to determine when such a defense is permitted. The defendant's conviction was affirmed. Unfortunately, as the Second DCA noted, the cat died during or shortly after the vehicle stop. *Brooks v. State*, 38 FLW D1980a (Fla. 2nd DCA September 18, 2013).

SEARCH AND SEIZURE -- STOP.

Law enforcement officers went to a high crime area to arrest a probationer on a probable cause pick up order. Prior to the marked unit arriving, deputies conducted undercover surveillance of the area. While doing so, they observed the probationer and the defendant approach a vehicle and exchange objects in a hand to hand transaction. When the marked sheriff's van entered the area, the deputies exited with vests with the word "Sheriff" on them. They also yelled "Sheriff's Office!" The defendant immediately ran from the area. The defendant kept running as fast as he could. The defendant was found with cocaine on him and also had thrown some cocaine on the ground as he fled the deputies. The trial court granted a motion to suppress, determining that law enforcement did not have a valid basis for stopping the defendant. On appeal, the Second District reversed the order granting the motion to suppress, holding that the deputies were justified in stopping the defendant "because of his unprovoked, headlong flight in a high-crime area." Additionally, his continued flight provided the deputies with probable cause to arrest for resisting officer without violence. *State v. Garcia*, 38 FLW D2326b (Fla. 2nd DCA November 8, 2013).

