Tenth Circuit

Legal Advisor

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Recent changes at Florida's Department of Health and Rehabilitative Services are rippling through nearly every other branch of state government -- law enforcement and judiciary included.

Of especial interest to law enforcement is the effect of these changes on the juvenile justice system. Deb Oates, SAO Juvenile Division director, explains some of these changes and clears up past ambiguities in the juvenile process in August Legal Advisor.

LEGAL ADVISOR FEATURE

By Deb Oates

EDITORS' NOTE; Deb Oates, Juvenile Division director for SAO, explains new legislation dealing with juvenile cases and answers some of the most often-asked questions concerning handling of juveniles.

CHANGE AT HRS PROMPTS CHANGE IN JUVENILE SYSTEM

There were a number of laws effecting juveniles passed during the last legislative session.

The majority had to do with the restructuring of the Florida Department of Health and Rehabilitative Services (DHRS). The following is a summary of those effecting law enforcement.

F.S. 39.045; having to do with release of otherwise confidential information on a juvenile, states that the name and address of a sixteen-year-old taken into custody for committing a felony, or a sixteen-year-old who has previously committed three misdemeanors can be released for publication.

This provision was amended to add that the name and address of any child who has been adjudicated guilty of a capital, life or first degree felony involving violence against a person can also be released.

F.S. 39.048(6), which required petitions for delinquency to be filed within 45 days of the date the defendant was taken into custody was deleted.

Prior to this deletion, petitions filed over the 45 day limit were dismissed with prejudice.

F.S. 784.075 was created to make battery on an HRS intake worker, detention or commitment

facility staff worker a third degree felony offense.

F.S. 790.115 was amended to extend the law against possessing a firearm or weapon on school grounds to include exhibition on a school bus or at a school bus stop. This offense is a third degree felony.

Secure detention

There have been many complaints by and problems for law enforcement in getting juveniles held in secure detention.

At times, an HRS counselor on call would tell an officer that a juvenile cannot be held and that the officer should not bother to bring him to detention for screening.

HRS by law is required to do a detention assessment on any juvenile brought to detention. There is no way, in the middle of the night, that an HRS worker called at home can check for past record, administrative pick-up orders, current commitment or probation status and other assessment criteria.

There have been times when a juvenile pending a trial or even on committed status, on home detention, or with a valid pick-up order has not been taken to detention.

In those incidents, the State usually will have to do a motion for a pick-up order before the judge.

The best way to handle this situation is to deliver the juvenile to detention and insist on an assessment screening.

A lot of times, those who do not score for secure detention will at least get put on home detention. Home detention has strict rules to be followed and it is better than a straight release to the parents.

Juvenile confessions

A number of officers think that the taping of a juvenile confession

is not allowed.

This is probably a misconception brought about by a judicial administrative order from a chief judge some years ago that prohibited video-taping and limited interviews of juvenile victims and witnesses in sex cases.

There is no legal bar to taking a taped confession of a juvenile offender.

It is very important that you get juvenile confessions on tape whenever possible. This will limit arguments by the juvenile who might deny that he ever confessed.

It will also help in the suppression hearing in showing the voluntariness of a confession.

Offense reports

It is very important in arrest cases, especially those that result in detention, that your full report be turned in to the State Attorney's Office without delay. A good policy is for the report to be filed within four days on all detention cases.

Anyone held in detention is automatically set for arraignment in one week, pre-trial conference in two weeks, and trial in three weeks.

This is because of the 21-day rule that releases any juvenile who does not have a trial within 21 days of his detention.

It is easy to understand why we need your full reports immediately if we are to be expected to successfully try your cases in this short length of time and keep juveniles detained.

We are fortunate to have five experienced attorneys in Juvenile Division.

If you have a question concerning juvenile law, or a problem with HRS or detention, you may call any of us for help.

Juvenile Division 534-4904
Deborah Oates, Director
Wade Warren
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FROM THE COURTS

Edited by Chip Thullbery

Suspect's abandonment of cocaine was made involuntary by police action

The defendant was charged with possession of cocaine and filed a motion to suppress.

The facts on which the motion was based were that several law enforcement officers dressed in SWAT team uniforms and black masks pulled into a parking lot to conduct a drug sweep.

Exiting their vehicle, they approached a group of people including the defendant and one of the officers noticed that the defendant put his hand behind his back and dropped a tissue.

The officer walked over and picked up the tissue which proved to contain six rocks of cocaine.

The trial court granted the defendant's motion to suppress, and on appeal, the Supreme Court affirmed, holding that the abandonment of the cocaine was involuntary because the defendant did not flee but rather submitted to a show of authority by police. Hollinger v. State, 18 FLW S353 (Fla. June 24, 1993).

Abandonment was voluntary where defendant ran

The defendant was charged with carrying a concealed firearm and possession of a firearm by a convicted felon and filed a motion to suppress.

The facts on which the motion was based were that two officers on patrol in an area known for narcotics activity observed the defendant and another male passing an object between them.

(See "Abandonment" next page)

"Abandonment"

Believing that the two might be engaged in a drug transaction, the officers told the defendant to stop.

The defendant fled on foot, and one of the officers chased him. As the defendant ran into an alley, the officer heard a loud metallic noise of something dropping. The officer caught the defendant and recovered a revolver in the alley.

The trial court granted the motion to suppress finding that the officers did not have a reasonable suspicion to support an investigative stop.

On appeal, the Third District reversed, and the Supreme Court approved the Third District's opinion, holding that the recovery of the firearm was not an illegal seizure because the defendant abandoned the gun prior to his being subdued by the police.

Perez v. State, 18 FLW S361 (Fla. June 24, 1993).

Bullets near concealed firearm made it readily accessible

The defendant was charged with carrying a firearm and filed a motion to dismiss.

The facts on which the motion was based were that an officer found a gun under the driver's seat of the vehicle the defendant was driving. The gun was empty but ammunition for the gun and a fully loaded clip were found under the passenger seat.

The trial court found that the gun was not readily accessible for immediate use and dismissed the charge.

On appeal, the Fourth District reversed the trial court's decision and the Supreme Court approved the Fourth District's opinion, holding that the proximity of the ammunition to the firearm made the firearm readily accessible.

Ridley v. State, 18 FLW S395 (Fla. July 1, 1993).

Unexplained 911 call justified warrantless entry into house

The defendant, a juvenile, was charged with being delinquent for resisting an officer without violence, and assault on a law enforcement officer.

At the hearing on the charges, the evidence showed that a 911 call was made from a residence but no one spoke or requested assistance before hanging up.

An officer was dispatched to the address, and when he knocked, the defendant answered. The defendant denied knowing anything about the call and told the officer to get off his property.

The officer noticed that a screen was off a window and that there was trash strewn all over the front room

When the officer tried to enter through the screen door the defendant slammed the main door and locked it.

The officer went to the back of the house where he saw the defendant pick up a stick. The officer entered a sliding glass door and when the defendant came towards him with the stick the officer drew his gun.

However the defendant refused to drop the stick, and there was a standoff until a backup officer arrived, at which time the defendant was arrested.

The defendant was adjudicated delinquent and appealed, claiming that the officer was not lawfully executing a legal duty when he entered the defendant's home without a warrant.

The Fourth District rejected this argument and affirmed, holding that the officer's warrantless entry was appropriate because it is within the duty and obligation of the police to investigate 911 calls. J.B. v. State, 18 FLW D1480 (Fla. 4th DCA June 23, 1993).

Children may not be charged for unsupervised possession of a weapon

The defendant, a juvenile, was charged with being delinquent for violating section 790.22, Florida Statutes, which prohibits the unsupervised use of a weapon by any child under the age of 16 years.

After a hearing, the defendant was found to be delinquent.

On appeal, the Third District reversed, holding that the criminal penalties contained in section 790.22 apply only to adults who permit a child to use a weapon without supervision. J.J. v. State, 18 FLW D1557 (Fla. 3rd DCA July 6, 1993).

Field sobriety tests involving counting or alphabet recitation require miranda

The defendant was charged with dui and filed a motion to suppress the results of roadside sobriety tests.

The facts on which the motion was based were that the defendant was not advised of his Miranda rights before being asked to recite the alphabet from C to W and to count from 1001 to 1030.

The trial court granted the motions to suppress, and the state appealed.

The Supreme Court affirmed the trial court's ruling, holding that alphabet recitation and counting are testimonial in nature and thus that Miranda warnings must be given prior to requiring a defendant to engage in these tests. Allred v. State, 18 FLW S412 (Fla. July 1, 1993).

Police may not make crack cocaine for use in reverse sting operations

The defendant was charged with purchase of cocaine near a school and filed a motion to dismiss asserting that his due process rights had been violated by governmental misconduct.

He based his assertion on the fact that the crack cocaine which police had sold to him in a reverse sting operation had been manufactured by them.

The trial court denied the motion to dismiss, and the defendant was convicted as charged.

On appeal, the Fourth District reversed, and the Supreme Court approved the Fourth District's opinion, holding that the manufacture of crack cocaine by law enforcement is outrageous conduct which violates a defendant's due process rights. State v. Williams, 18 FLW S371 (Fla. July 1, 1993).

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