Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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A series of new laws relating to juveniles and how they will affect law enforcement procedures are explained by SAO Juvenile Division director Deb Oates in July Legal Advisor.

1995 Juvenile Law update

By Deb Oates

New law addresses juvenile sex offenders

A new Juvenile Sexual Offender law was passed in 1995 in response to the numbers of juveniles involved in sexual offenses. The following is a summary of the highlights of this new law as it relates to law enforcement.

-- When a juvenile sexual offender is released from detention or transferred to home detention, the detention center staff shall immediately notify the appropriate law enforcement agency and school personnel. F.S. 39.044(11)(b).

-- Certain findings are required for all juvenile sexual offender evaluations. If an evaluation recommends out-patient treatment, the judge may order supervision for up to three years and require quarterly progress reports from the treatment provider.

-- If a juvenile is committed to a juvenile sexual offender program, the judge can retain jurisdiction until the defendant is 21 years of age (usual jurisdiction is only until 19). The Department of Juvenile Justice is now required to provide sex offender placements for juveniles. These commitment programs also must notify law enforcement and the school system when any offender is returned to the community.

-- The Department of Health and Rehabilitative Services is required to take reports of child-on-child abuse, respond to the case, and make a report of findings within 7 days. Many of you know that prior to this change, no findings or HRS response was made to such reports.

If anyone in law enforcement has any questions about the new law, arrests of juvenile sexual offenders, appropriate charges, or needs any other help with regard to this type of case, feel free to call on the Juvenile Division for advice.

We also are willing to give opinions on questionable cases if the report of such case is submitted as an "opinion case".

Detention of committed juveniles

As of July 1, 1995, any juvenile committed to a level 4 or 6 placement who does not go into his committed program in the time allowed can be placed on home detention for an unlimited time with electronic monitoring.

Our district plans to have these monitors available by August 1995.

Any juvenile committed to a level 6 placement can also be held in an assignment center until placement.

Assignment centers are not to be confused with assessment centers.

Assessment centers are for juveniles in custody for law violations prior to detention.

Assignment centers are for holding and placement of committed juveniles.

Essentially, any juvenile committed to a residential program can be held or electronically monitored until his term of commitment is completed.

Direct file of juveniles to adult court

Last January the direct file powers of the State Attorney's Office were expanded.

Now, certain 14 and 15 year olds may be sent to adult court, and some 14-16 year-olds being charged with a second violent crime must be sent to adult court.

Because of these changes, you will be preparing more of your cases for adult filing.

In fact, any juvenile of 14 years or older who is charged with a violent felony should be considered a good possibility for adult prosecution and your reports should be prepared as you would for any other adult case.

This office has a policy to call the officers who file the affidavits to inform them of our decision to send the case for adult prosecution.

This will allow you to prepare your report for adult court more quickly.

All of these cases involving an arrest must be filed in the adult division within 21 days or the juvenile charged will be released from detention.

If you arrest a juvenile, you need to be aware that arrest reports are expected to be sent to this office within three working days.

Time is definately important in these cases and we appreciate your following through promptly with obtaining all necessary information for the filing of an information.

We do not want any of these defendants released because of time limits.

Setting bond in domestic violence cases

By Mike Cusick

The bond on cases involving domestic violence is initially set at the jail at $5,000 cash or surety for each count.

It is important for you to identify on the arrest affidavit that the charge arises out of domestic violence so that the appropriate bond is set.

While we normally think of charges such as aggravated battery, aggravated assault, battery or assault as being eligible for the higher bond, there are additional charges which are eligible.

Burglary, stalking, aggravated stalking, violation of an injunction for protection, and trespass are

other charges that come to mind that might arise out of an incident of domestic violence.

Under a given set of facts, there may be other charges you might identify.

Please make sure that you note "domestic violence" after the charge so that the correct bond is set by the jail.

Tenth Circuit
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FROM THE COURTS

Edited by Chip Thullbery

What officers saw justified detention

The defendant was charged with a drug offense and filed a motion to suppress.

The facts on which the motion was based were that officers were conducting surveillance on a house in an area noted for drug activity.

The house had been under surveillance at various times for a month.

During that time, officers had observed vehicles drive up to the residence, people come out of the residence, and items handed back and forth.

The officers testified that they had made three or four arrests after observing these activities, and the people arrested were found in possession of cocaine.

On the night in question, the defendant got out of the passenger side of a vehicle in front of the house and walked to where he was met by a man.

They engaged in conversation, and the man cupped his hand and held it out to the defendant.

The defendant looked down into the hand and began to reach into his front right pocket.

At that point, both walked further towards the house and behind another car.

After a few seconds the defendant returned to his car which quickly drove away.

Shortly thereafter police stopped the car and seized the evidence which the defendant wished to have suppressed.

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

(See "detention" next page)

"detention"

On appeal, the Second District affirmed, holding that the officers' observations gave them a founded suspicion that the defendant was involved in criminal activity.

Saadi v. State, 20 FLW D1230 (Fla. 2d DCA May 19, 1995).

Anticipatory search warrants for residences are invalid

The defendant was charged with possession of cocaine and filed a motion to suppress evidence seized during the execution of a search warrant.

The facts on which the motion was based were that officers submitted an affidavit to a judge in order to obtain a search warrant for the defendant's residence.

The affidavit stated that information from a confidential source indicated that cocaine would be delivered to and be present at the defendant's residence the next day.

Based on this affidavit, the court issued a search warrant.

The trial court denied the motion to suppress and because of the good faith exception to the exclusionary rule, the Fourth District affirmed. However, the court went on to hold that anticipatory warrants for the search of a residence are invalid.

Pazos v. State, 20 FLW D1144 (Fla. 4th DCA May 10, 1995).

Defendant did not go far enough for attempted sexual battery

The defendant was charged with, among other things, attempted sexual battery.

At his trial, the evidence showed that he and the victim

(See "attempted" next page)

"attempted"

were passengers in a car.

At one point he displayed a gun and ordered the victim to take her clothes off.

When she did not, he asked the driver to make her take her clothes off.

The driver refused, and the defendant then squeezed the victim's left breast but stopped when she asked him to.

He made no further attempts to touch her and subsequently she escaped the vehicle.

The defendant was convicted as charged, but on appeal, the Supreme Court reversed, holding that there was not sufficient evidence to sustain a conviction because the defendant's actions did not rise to the level of an overt act toward the commission of a sexual battery.

Rogers v. State, 20 FLW S233 (Fla. May 11, 1995).

Facts known to officer justified request for blood

The defendant was charged with DUI with serious bodily injury and filed a motion to suppress the results of a blood test.

The facts on which the motion was based were that the defendant was involved in an automobile accident.

After the accident, it came to the attention of the investigating officer that the defendant's vehicle was approximately six feet over across the center line at the time of impact and that there was an ice chest and beer cans lying around the vehicle.

Based on these facts, the officer ordered the defendant to submit to a blood test.

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"request"

The trial court granted the motion to suppress, but on appeal, the First District reversed, holding that the facts known to the officer gave probable cause to believe that the defendant was under the influence of alcoholic beverages at the time of the accident.

State v. Durden, 20 FLW D1310 (Fla. 1st DCA May 31, 1995).

Defendant not guilty of attempted kidnapping

The defendant was charged with, among other things, attempted robbery and attempted kidnapping.

At his trial, the evidence showed that he entered a store carrying a firearm and duct tape.

He ordered the victims into a storage area and began to secure them with the tape.

They resisted and thwarted the defendant's crime.

The defendant was convicted as charged but on appeal, the Fifth District reversed, holding that the attempt to restrain the victims was merely incidental to the principal plan of the defendant.

Humphries v. State, 20 FLW D1419 (Fla. 5th DCA June 16, 1995).

Probation officer can conduct search based on reasonable suspicion

The defendant was charged with trafficking in cocaine and filed a motion to suppress.

The facts on which the motion was based were that a state attorney investigator obtained information from a confidential informant that the defendant was

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"Suspicion"

dealing cocaine and then set up a controlled purchase at which the informant purchased cocaine from another individual in the presence of the defendant.

At the time the defendant was on probation, and the investigator relayed the information he had obtained to the defendant's probation officer.

The probation officer and the investigator went to the defendant's trailer where the probation officer conducted a search and found cocaine hidden under the floor of a hallway closet.

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

On appeal, the Third District affirmed, holding that evidence seized by a probation officer during a warrantless search of a probationer's residence may be used in a new criminal proceeding where the probation officer had reasonable grounds to believe that the search would reveal evidence of a violation of probation.

Soca v. State, 20 FLW D1363 (Fla. 3d DCA June 7, 1995).

Damage to vehicle not criminal mischief

The defendant, a juvenile, was charged with criminal mischief.

The evidence at the hearing showed that he attempted to strike the victim. However, he missed and struck the victim's automobile shattering a window.

The trial court found him guilty but on appeal the Fourth District reversed, holding that because the intent to strike the victim could not be transferred to an intent to damage the automobile the State had failed to prove the element of intent.

J.G. v. State, 20 FLW D1344 (Fla. 4th DCA June 7, 1995).

Informant's information provided probable cause

The defendant was charged with possession of cocaine and filed a motion to suppress evidence asserting that the officer arresting him lacked probable cause to believe he had committed a crime.

The facts on which the motion was based were that an officer was contacted by a confidential informant who had given him information on at least 20 prior occasions that had led to several felony arrests.

The information described the defendant to the officer by race, height and clothing and told the officer that the defendant was selling cocaine on the sidewalk in front of a particular location.

The informant said that the defendant wrapped cocaine inside rolled-up one dollar bills and placed them in his pants' pockets ready to sell.

The officer went to the location suggested by the informant and found the defendant exactly as he had been described.

The officer patted down the defendant and feeling a bulge pulled out several dollar bills, one of which contained cocaine.

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

On appeal, the Supreme Court affirmed, holding that the information given by the confidential informant provided the officer with probable cause to search and arrest the defendant.

State v. Butler, 20 FLW S245 (Fla. June 1, 1995).

Burning cross statute constitutional

The defendant, a juvenile, was **(See "constitutional" next page)**

"constitutional"

charged with erecting a flaming cross on the property of another and filed a motion to dismiss asserting that section 876.18, Florida Statutes, was unconstitutional.

The trial court granted the motion to dismiss, but on appeal, the Supreme Court reversed, holding that section 876.18 is not an unconstitutional infringement on freedom of speech.

State v. T.B.D., 20 FLW S274 (Fla. June 15, 1995).

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