



Tenth Circuit Legal Advisor

Jerry Hill, State Attorney

Vol. 14 No. 8

August 2000

Latest law from Tallahassee

By Mike Cusick

The Legislature did not add very many new crimes this year. The following article covers many of the changes in the criminal statutes. All of the new laws are available on the Internet at "http://sun6.dms.state.fl.us/eog_new/eog/orders/2000pg1.html".

316.078 - Interference with Official Traffic Control Devices or Railroad Signs or Signals. Effective October 1, 2000. Damaging or removing such devices or signals previously was a non-criminal non-moving traffic violation. It is now punished as criminal mischief under 806.13. The degree of the charge is based on the amount of damage done to the device or signal. While this statute also allows for prosecution for removing the signal or device, that is more properly charged as theft under 812.014.

372.83(3) - Making, Forging, Counterfeiting, or Reproducing a Fishing or Hunting License or Possessing Such a License. Effective July 1, 2000. Creates a third degree felony for the unauthorized making, forgery, counterfeiting, or reproduction of a freshwater fishing, hunting or saltwater fishing license. The penalty is the same for possessing an unauthorized forged, counterfeit or imitation license.

787.03(6)(b) - Interference With Custody Defense. Effective July 1,

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2000. Restricts the defense available to the parent who takes a child in Interference With Custody cases only to those situations where the parent, after taking the child, makes a report to the sheriff's office or the state attorney's office in the county where the child resided about the reasons that the child was taken. The parent must supply the current address and telephone number of the location where the parent and child are staying. In addition, the parent must commence a custody proceeding within a reasonable time after taking the child which is consistent with the Federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction Act. Finally, the parent must notify the sheriff's office in the county where the child resided of any change of address or phone number.

828.123- Prohibition of Dog and Cat Fur Sales. Effective June 1, 2000. Creates a third degree felony for killing a dog or cat with the intent to sell or give away the pelt, or for possessing, importing, selling, buying, or accepting a dog or cat with the intent to kill the dog or cat for the purpose of selling or giving away the pelt. It is a first degree misdemeanor to possess, import, sell, buy or accept a dog or cat pelt, with the intent to sell or give it away.

843.021 - Possession of a Concealed Handcuff Key. Effective July 1, 2000. Creates a third degree felony for possessing a concealed handcuff key. Concealed is defined as being carried in a manner that indicates an intent to prevent discovery of the key by a law enforcement officer. It is a defense if the defendant immediately upon being placed in custody, actually and effectively discloses the key to law enforcement. It is also a defense that the defendant is employed in law enforcement, security or bail bonding and immediately makes the key's presence known.

877.111 - Distribution of Nitrous Oxide. Effective July 1, 2000. Creates a third degree felony for knowingly distributing, selling, purchasing, transferring, or possessing more than 16 grams of nitrous oxide. Provides exceptions for certain commercial and business purposes.

893.13 - Purchase, Sale Delivery, Possession With Intent to Sell or Deliver Methamphetamine. Effective October 1, 2000. The penalty for purchasing, selling, delivering, or possessing with the intent to sell or deliver methamphetamine is increased from a third degree felony to a second degree felony. The penalty for these same methamphetamine offenses committed within 1,000 feet of a

school, place of worship, or convenience business and within 200 feet of a college, university, park, or public housing facility are all increased to first degree felonies. In short, the legislature has decided to treat methamphetamine in a manner similar to cocaine.

893.135 - Trafficking. Effective October 1, 2000. Gama-hydroxybutyric acid (GHB), 1, 4-Butanediol, and 3, 4-Methylenedioxyamphetamine (MDMA), also known as “ecstasy”, along with other phenethylamines are added to the trafficking statutes.

893.147 - Drug Paraphernalia. Effective October 1, 2000. Adds as paraphernalia items such as cannisters, balloons, charging bottles, “whip-its”, tanks and other items which can be used to store or expel nitrous oxide.

943.325 -DNA Database. Effective July 1, 2000. Adds convicted burglars (juveniles and adults) to the list of individuals who must supply blood specimens to FDLE, so that their DNA may be classified and added to the statewide database. It applies to all defendants convicted in the future, as well as to individuals within the state who are presently in prison or on probation, community control, parole, probation or other court-ordered supervision.

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The “Tenth Circuit Legal Advisor” is published by the Office of the State Attorney

FROM THE COURTS

Edited by Chip Thullbery

Statute penalizing sale of drugs near church is constitutional

In this Polk County case the defendant was charged with and convicted of sale of a controlled substance within 1,000 feet of a church.

On appeal, he argued that the statute under which he was charged was unconstitutional. The Second District rejected his argument and affirmed.

Hobby v. State, 25 FLW D1671 (Fla. 2d DCA July 12, 2000).

Enterprise element of RICO defined

The defendant was charged with RICO and several robberies.

At trial, the evidence established that he and others planned and

carried out a series of home invasion robberies of drug dealers over a period of a year.

He was convicted as charged.

On appeal, he argued that he was not guilty of RICO because the State had failed to establish the existence of an enterprise.

The Supreme Court rejected this argument and affirmed, holding that in order to establish RICO's enterprise element, the State must prove the existence of an ongoing organization, formal or informal, which has a common purpose of engaging in a course of conduct and which functions as a continuing unit.

Gross v. State, 25 FLW S555 (Fla. July 21, 2000).

Oxycodone weight measured by the pill

The defendant was charged with trafficking in oxycodone and filed a motion to dismiss, asserting that the State could not establish a *prima facie* case as to a trafficking amount of the drug.

The trial court denied the motion, and on appeal, the Second District affirmed, holding that because oxycodone is a Schedule II drug, the aggregate weight of the pills containing the oxycodone may be used to determine whether the defendant possessed a trafficking amount.

Eagle v. State, 25 FLW D1638 (Fla. 2d DCA July 7, 2000).

Evidence insufficient to show possession

The defendant, a juvenile, was charged with possession of a controlled substance and possession of drug paraphernalia.

At his trial, the evidence established that a high school dean searched the trunk of a student’s car which was parked in the school parking lot. Inside the trunk he found a backpack belonging to the defendant in which there were two baggies and a pipe containing marijuana residue.

The defendant, who was not a student at the school, admitted that the backpack was his but said he had not seen it for several days and denied putting the pipe or baggies in it.

The court found him guilty as charged, but on appeal, the Fourth District reversed, holding that the State failed to

prove constructive possession because the defendant was not in the vicinity when the contraband was found and there was no evidence that he was aware of its presence.

E.H. v. State, 25 FLW D1629 (Fla. 4th DCA July 5, 2000).

Shelter staff do not receive enhanced battery protection

The defendant, a juvenile, was charged with battery on a detention or commitment facility staff member.

At his trial, the evidence established that the Department of Children and Families removed him from his home and placed him in a children’s shelter.

While there, he battered two staff members. He was convicted as charged.

On appeal, the Third

District reversed and reduced his conviction to simple battery, holding that a children’s shelter is not a detention or commitment facility within the meaning of the statute.

G.S. v. State, 25 FLW D1610 (Fla. 3d DCA July 5, 2000).

Felony DWLSR Statute is constitutional

The defendants were charged with felony Driving while License Suspended and filed motions to dismiss, asserting that the statute under which they were charged was unconstitutional.

In some instances the motions were denied and in others granted.

On appeal, all the District Courts which considered the issue found the statute

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constitutional.

The Supreme Court then granted review and likewise found the statute constitutional, further holding that prior convictions within the meaning of the statute include cases where adjudication is withheld as well as cases where the defendant is adjudicated.

Raulerson v. State, 25 FLW S542 (Fla. July 13, 2000).

Defendant detained during execution of search warrant in custody for Miranda purposes

The defendant was charged with sexual battery of a child and other related crimes and filed a motion to suppress statements he made to the police.

The facts on which the motion was based were that during the execution of a search warrant at the defendant's residence, the

police directed the defendant to stand under a tree in the yard.

While he was standing there, an officer engaged him in conversation and he made the statements which he sought to have suppressed.

The officer did not give him his *Miranda* warnings.

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

On appeal, the Second District reversed, holding that the defendant was in custody for purposes of *Miranda*.

Killian v. State, 25 FLW D1584 (Fla. 2d DCA June 28, 2000).

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*The "Tench Circuit Legal Advisor" is published by the Office of the State Attorney,
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