

Legal Advisor

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STATE ATTORNEY

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| Misdemeanor | 534-4926 |
| Domestic Violence | 534-4882 |
| Victim Assistance | 534-4861 |
| Felony Intake | 534-4987 |
| Felony | 534-4964 |
| Investigations | 534-4804 |
| Violation of Probation | 534-4803 |
| CHILD ABUSE / NEGLECT | 534-4857 |
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| Worthless Checks | 534-4874 |
| Juvenile Division | 534-4905 |
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| WITNESS MANAGEMENT Misdemeanor/Traffic | 534-4021 |
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NEW LAWS 2008

By: Wayne Durden

In this article, Felony Director Wayne Durden provides his annual summary of new laws and changes to existing laws enacted by the Legislature last year, and of interest to the law enforcement community.

Effective July 1, 2008, a number of court-related costs and fines have been increased. Notably, fines related to DUI and BUI have essentially doubled. Chapter 08-211, Laws of Florida.

Effective July 1, 2008, the "Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008" became law. It allows employees, customers and invitees to possess lawfully owned firearms in locked private motor vehicles in many parking lots. A number of types of facilities are excluded, such as schools and correctional institutions. Chapter 08-07, laws of Florida.

Effective July 1, 2008, various provisions of Chapter 893, Florida Statutes, relating to Drugs, were amended. "Cultivating" has been defined at Section 893.02, Florida Statutes. Section 893.135, Florida Statutes, has been amended to provide that ownership of any place, structure or conveyance knowing of its use to manufacture drugs (in addition to leasing and renting) is

a third-degree felony; being in actual or constructive possession of such a place knowing of its use for drug trafficking is a second-degree felony; and, being in actual or constructive possession of such a place knowing of its use for manufacture of drugs and further knowing a minor is present or resides therein is a first-degree felony. Section 893.135(4), Florida Statutes, has been added to provide that possession of 25 or more cannabis plants constitutes presumptive evidence of intent to sell or deliver.

Also, Section 893.10, Florida Statutes, has been amended to provide that any "equipment" used to manufacture drugs may be photographed or videotaped and then destroyed on site instead of being taken into evidence if certain conditions are met. The requirements are:

1. The destruction of the equipment must be recorded,
2. By the supervising law enforcement officer,
3. In the manner described in Section 893.12(1)(a), and
4. Records thereof must be maintained for 24 months. Chapter 08-184, Laws of Florida.

Effective July 1, 2008, Section 893.03,

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Florida Statutes, relating to Drugs, has been amended to include “Salvia divinorum” and “Salvinorin A” as Schedule I(c), controlled substances. These substances are derived from a herb and are hallucinogenic drugs. Chapter 08-88, Laws of Florida.

Effective July 1, 2008, penalties for acts of “video voyeurism” have been increased under certain circumstances. Section 810.145 (8), Florida Statutes, has been created to provide that it is a third-degree felony to commit acts of video voyeurism if the defendant is at least 18 and the victim is a child in his or her care, if the defendant is at least 18 and a school employee and the victim is a student at that school, or if the defendant is 24 or older and the victim is younger than 16. A second or subsequent violation becomes a second-degree felony. Chapter 08-188, Laws of Florida.

Effective October 1, 2008, Sections 784.046(11), (12), (13), (14), Florida Statutes, have been created to impose some additional duties on law enforcement as relate to officer’s interactions with victims of “dating violence.” The new subsections require officers to assist dating violence victims to obtain medical treatment; provide certain specified information to such victims, apply to dating violence cases the statutory arrest policy set forth in Section 901.15(7), Florida Statutes; require the inclusion of certain specified information in police reports; impose upon the agency an obligation to forward a copy of the report to the nearest domestic violence center; and set forth a policy that the primary aggressor, as determined by the investigation, be arrested. Subsection (15) has been created to provide that it is a first-degree misdemeanor for a person to willfully violate a condition of pre-trial release if released from custody after having been arrested for dating violence, and provides that such person must be held in custody at least until first appearance hearing. Chapter 08-252, Laws of Florida.

Effective July 1, 2008, personal identifying information contained in records documenting “sexual violence” is exempt from public records disclosure pursuant to Section 741.313, as amended. Chapter 08-254, Laws of Florida.



Wayne Durden is the Felony Division Director at the State Attorney's Office. He has been with the office since 1987.

Effective July 1, 2008, various sections of Chapter 847, Florida Statutes, have been amended. The term “harmful to minors” has been slightly re-defined at Section 847.001. Section 847.011 (1)(c), Florida Statutes, has been created to provide that what was a first-degree misdemeanor at Section 847.011(1) (a), or a second-degree misdemeanor at Section 847.011(2), Florida Statutes, relating to distribution, display or possession of obscene materials, is now a third-degree felony for any violation of either subsection if a minor is depicted in acts or conduct harmful to minors. Chapter 847, Florida Statutes, has also been amended in several places to provide that ignorance or mistake as to a minor’s age is not a defense to crimes contained therein. Chapter 08-120, Laws of Florida.

Effective October 1, 2008, the crime of committing lewd or lascivious acts over a computer has been moved from Section 800.04(7)(b), Florida Statutes, to Section 847.0135(5), Florida Statutes. Section 847.002, Florida Statutes, has been created to require law enforcement agencies to submit images of children recovered in child pornography investigations to a national clearing house for possible identification of the children in those images, and in turn to submit such information to local prosecutors. Violations of Section 847.0135(5), Florida Statutes, have been added to the list of offenses for which “Prison Release Re-offender” (PRR) sanctions may be imposed, and are included in the definition of “violent career criminal” at Section 775.084, Florida Statutes. The Statute of Limitations has been expanded to include violations of Section 847.0135(5), Florida Statutes. Such violations are included in the list of crimes qualifying a person as a “Sexual Predator” pursuant to Section 775.21, Florida Statutes, and have been incorporated into the Kidnapping (FS 787.01), False Imprisonment (FS 787.02), Stalking (FS 784.048), and Luring and Enticing (FS 787.025), statutes. Chapter 08-172, Laws of Florida.

Effective October 1, 2008, Florida’s Public Records law at Section 119.071(2)(h), has been amended to provide that information identifying victims of sexual offenses now includes offenses in violation of Chapters 796, and 847, Florida Statutes, and further providing that “criminal investigative infor-

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mation” or “criminal intelligence information” may lawfully be shared with other governmental agencies in furtherance of their official duties. Chapter 08-234, Laws of Florida.

Effective July 1, 2008, Section 937.021, Florida Statutes, was amended, requiring law enforcement agencies to adopt written policies for investigating missing persons cases, requiring the acceptance of reports by law enforcement agencies, requiring a transmittal of the report to FCIC/NCIC within two hours of having received the report, and requiring law enforcement to obtain a DNA sample for any missing person if they have not been located within 90 days from available sources, including family members for analysis. Chapter 08-162, Laws of Florida.

Effective July 1, 2008, Chapter 39, Florida Statutes, which deals with Child Protection and the Department of Children and Families, has been amended to redefine the terms “abandoned” and “harm” at Sections 39.01(1), and 39.0139.01(32), Florida Statutes. Section 787.04 (3), Florida Statutes, relating to removing minors from the state in violation of a court order has been amended so that proof of knowledge of the order may be based on either “actual or constructive” notice. Also, Section 937.021(1), Florida Statutes, has been amended to prohibit a law enforcement officer from requiring a reporter of a missing child to present an order that a child be taken into custody, or any other court order, before accepting a report that a child is missing, Chapter 08-245, Laws of Florida.

Effective October 1, 2008, Section 921.244(1), Florida Statutes, has been amended to provide that upon any conviction of crimes enumerated in Section 775.084(1)(b)1.a. - o., Florida Statutes, relating to Habitual Violent Felony Offenders, the court must prohibit contact with the victim(s) of the crime (s), and to require consecutive punishment for violations. Chapter 08-251, Laws of Florida.

Effective July 1, 2008, Section 825.102(2), Florida Statutes, has been amended to increase the degree of crime for Aggravated Abuse of an Elderly Person or Disabled Adult from a second-degree felony to a first-degree felony. Also, Section 947.17296, Florida Statutes, has been created to require each certified law enforcement officer to successfully complete training on identifying and investigating elder abuse and neglect before June 30, 2011. Thereafter, an officer’s certifica-

tion becomes inactive until training is completed, Chapter 08-160, Laws of Florida.

Effective October 1, 2008, a new crime has been created at Section 843.21, Florida Statutes, and provides that a felony is committed when someone takes custody of a person injured as a result of criminal activity then deprives that person of medical care to avoid reporting or to hinder an investigation. It is a third-degree felony if the injured person’s condition worsens and a second-degree felony if death results. Chapter 08-208, Laws of Florida.

Effective July 1, 2008, the collection of DNA samples from convicted persons has been expanded from all felonies to include certain misdemeanor offenses as well. Bailiffs will now also be collecting DNA samples at sentencing from persons convicted of Stalking (FS 784.048), Voyeurism (FS 810.14), Obscenity crimes (FS 847.011), Exposing Minors to Harmful Images (FS 847.013), Computer Pornography (FS 847.0135), Surveilling People in Dressing Rooms (FS 877.26), and any other crime found to have been committed for gang related purposes pursuant to FS 874.04. Chapter 08-27, Laws of Florida.

Effective October 1, 2008, Florida has enacted an “Anti-Spoofing” law. It is codified at Section 847.487, Florida Statutes, and provide basically that it is a first-degree misdemeanor to enter or cause to be entered false information into a telephone caller identification system with intent to defraud, or to make calls knowing that false information has been entered. If done in conjunction with the commission of any other offense, the other offense is then reclassified to the next higher degree crime. There are exceptions for call blocking and law enforcement. Chapter 08-185, Laws of Florida.

Effective July 1, 2008, Section 903.011, Florida Statutes, has been amended to provide that bail may be posted either in the form of cash or surety, and different amounts cannot be set for each type. Also, notice must be given on bond forms that when a cash bond is posted the clerk will withhold any portion of cash bond necessary to satisfy court costs, court fees and fines “regardless of who posted the funds”. Chapter 08-224, Laws of Florida.

Effective October 1, 2008, the statutory prohibition contained in Sections 921.187(2), and 948.19(2), Florida Statutes, pre-

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venting certain defendants from being placed on community control for certain violent crimes has been deleted. Section 944.47(1)(a)(6), Florida Statutes, has been added to include cell phones or similar devices to the list of items which are “contraband” and may not be introduced or possessed in state correctional facilities. Also, Section 958.04(1)(b), Florida Statutes, relating to “youthful offenders” has been amended to provide that in order for a defendant to be sentenced as a youthful offender (for crimes committed on or after October 1, 2008) the defendant must be under 21 at the time of sentencing. Chapter 08-250, Laws of Florida.

Effective October 1, 2008, the “Kleptomaniac Claude Cooper From Cleveland Who Copped My Clean Copper Clappers Kept In My Closet Act” became law. It creates Section 812.145, Florida Statutes, to provide a first-degree felony for theft of copper or other nonferrous metals from utility or communications services providers, thereby causing damage to the facilities or disrupting services in the process. Chapter 08-195, Laws of Florida.

Effective July 1, 2008, Section 193.133, Florida Statutes, was created to impose upon law enforcement a duty to notify the Property Appraiser’s Office if probable cause is developed to establish that the value of real property was inflated for purposes of “mortgage fraud.” The property appraiser would then adjust the assessment of the value of the property. Notification by law enforcement may be delayed if the investigation would be compromised. Also, Section 817.545(5)(b), has been added to provide that the crime of mortgage fraud is now a second - degree felony if the stated loan value exceeds \$100,000. Chapter 08-80, Laws of Florida.

Effective July 1, 2008, Section 776.051, Florida Statutes, was amended to undo a decision of the Florida Supreme Court, and provides that a person may not use force to resist any arrest or, in addition, the good faith execution of any other legal duty. Chapter 08-67, Laws of Florida.

Effective October 1, 2008, Section 782.065, Florida Statutes, was created to provide a mandatory life sentence without possibility of release for murder of a law enforcement officer whether the murder was first-degree murder, (if the death sentence was not otherwise imposed), second-degree murder,

third-degree murder, or attempted felony murder, if the officer was engaged in the lawful performance of legal duty. Chapter 08-74, Laws of Florida.

Effective October 1, 2008, several laws related to gangs and gang activity have been created or revised:

Section 775.13(5)(b), Florida Statutes, relating to registration of convicted felons, has been added to require felons to identify themselves as gang members if their crimes were found to have been gang related.

Section 790.23(4), Florida Statutes, has been added to increase the level of crime to a first-degree felony punishable by life for the offense of felon in possession of a firearm if the defendant qualifies for enhanced penalties per FS 874.04, due to gang involvement.

Section 775.0846, Florida Statutes, has been amended to provide that it is “possession” of a bullet-proof vest and not “wearing” it that triggers the enhancement. Criminal gang related offenses and drug offenses are added to the list of crimes for which the bullet-proof vest enhancement applies.

Section 823.05, Florida Statutes, has been amended to include several new subsections permitting authorities to declare locations used for gang purposes “nuisances” and to take action to “abate” them.

Section 874.03, Florida Statutes, has been amended to redefine “criminal gang”, and significantly redefine “criminal gang member.” New definitions of “criminal gang associate,” “criminal gang related activity,” “electronic communication,” “hate group” and “terrorist organization” have been added.

Section 874.04, Florida Statutes, has been amended to require the “fact-finder,” usually a jury, to determine whether, beyond a reasonable doubt, the defendant was involved in furthering the interests of a criminal street gang. If so, enhanced penalties apply.

Section 874.09, Florida Statutes, has been amended to enable the Florida Department of Law Enforcement to develop and manage a statewide criminal gang database. Local law enforcement will have the ability to update the database.

Section 874.10, Florida Statutes, has been created to establish a first-degree felony punishable by life for a person who directs the activities of a criminal street gang.

Section 874.11, Florida Statutes, has been created to establish a third-degree felony for use of an “electronic communication” to further a gang interest.

Section 874.12, Florida Statutes, has been created to

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establish a second-degree felony for possession or creation of fake ID's used in connection with gang -related activities.

Section 895.02, Florida Statutes, has been amended to include "fleeing to elude," "accessory after the fact," and "sexual battery" for gang related purposes; and all "burglaries" and "trespass," and "harassing" witnesses to the list of crimes that may constitute "racketeering activity."

Section 903.046, Florida Statutes, relating to bail, has been amended to provide that any person arrested for a crime alleged to be "gang related" pursuant to Chapter 874, Florida Statutes, may not be released on bond until at least First Appearance hearing.

Section 903.046, Florida Statutes, has also been amended to provide that the burden of proving the source of funds that will be used to post bail is not related to criminal activity is on the defendant or person posting bail on the defendant's behalf.

Section 914.22, Florida Statutes, has been amended to increase penalties for "tampering with or harassing witnesses" depending on the degree of crime originally being investigated or prosecuted. So, for example, "tampering" is now a second - degree felony if the person tampered with is a witness in the investigation or prosecution of a third-degree felony, or a first-degree felony is committed if the person tampered with is a witness in a second-degree felony, etc.

Section 948.033, has been created to impose a new standard condition of probation prohibiting probationers or community controllees from associating with gang members or associates, except at the direction of law enforcement, if the defendant's conviction was found to have been gang related, Chapter 08-238, Laws of Florida.

Effective October 1, 2008, Chapter 831, Florida Statutes, has been significantly amended relating to counterfeit goods. Terms have been redefined; possessing more than 25 pieces of items bearing a counterfeit mark creates an inference of intent to sell; and the degrees of counterfeiting crimes are enhanced depending on the value of the counterfeit goods possessed, the number of goods bearing counterfeit marks, if injury results, or if the defendant has been previously convicted of a crime relating to counterfeit goods. Also, the court may impose a fine of up to three times the retail value of the goods, and shall order restitution to the trademark owner. Finally, law enforcement may seize and forfeit any property associated with counterfeiting goods, Chapter 08-25, Laws of Florida.

Effective October 1, 2008, Section 316.1926(1), has been created, and Section 316.2085(2), Florida Statutes, amended, to provide that it is a moving violation for popping "wheelies" on a motorcycle, and Section 316.1926(2) has been added to enhance penalties for exceeding the speed limit by 50 miles per hour or more. A first violation of either carries a \$1,000 fine, and a second carries a \$2,500 fine and a one-year license revocation. A third violation is a third-degree felony, with a \$5,000 fine and a license revocation for 10 years. Chapter 08-117, Laws of Florida.

Effective July 1, 2008, Section 322.34(10), Florida Statutes, has been created, which limits the circumstances in which Driving While License Suspended or Revoked is a felony. If the following conditions are met then the violation is a **misdemeanor** crime, not a felony:

- the defendant does **not** have a prior conviction for a forcible felony per FS776.08,
- **the DL suspension was for:** failing to pay child support, failing to pay any other financial obligation set forth in FS 322.245, failing to pay a civil penalty required by FS 318.15, failing to maintain insurance required by Chapter 324, Florida Statutes, failing to comply with attendance or other requirements for minors set forth in FS 322.091, or having been designated HTO (Habitual Traffic Offender) because of suspensions for any of the above.

Then, a first offense is a second-degree misdemeanor, and a second or subsequent offense is a first-degree misdemeanor. Chapter 08-53, Laws of Florida. (THE STATE ATTORNEY'S OFFICE RECOMMENDS THAT PERSONS WHO MAY FALL WITHIN THE PURVIEW OF THIS REVISED LAW BE CITED FOR A MISDEMEANOR. THE STATE ATTORNEY'S OFFICE WILL THEN DO THE BACKGROUND CHECK NECESSARY TO DETERMINE IF THE OFFENSE SHOULD BE UPGRADED TO A FELONY, AND IF SO CHARGE ACCORDINGLY).

Effective July 1, 2008, Sections 316.075, and 316.130, Florida Statutes, have been amended to require drivers to stop at certain intersections to allow pedestrians to cross a roadway when the pedestrian is already in the crosswalk or steps into the crosswalk, Chapter 08-33, Laws of Florida.

Effective July 1, 2008, Section 843.16, Florida Statutes, has been amended to allow sworn law enforcement officers to use



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radio equipment which are assigned law enforcement frequencies while in a personal vehicle going to and from work. Chapter 08-70, Laws of Florida.

Effective October 1, 2008, various other traffic laws have been created or amended, and fines related to DUI doubled (BUI fines were doubled in Chapter 08-211, above):

A non-criminal penalty has been created at Section 316.191, Florida Statutes, for being a "spectator" (as defined) at a drag race.

The threshold for enhanced penalties for DUI has been lowered from .20 to .15 alcohol levels at Sections 316.193 (4), Florida Statutes. (The .20 threshold for BUI has not been changed).

Section 316.645, Florida Statutes, has been amended to expand law enforcement officer's authority to make arrests at the scene of traffic crashes to include Chapter 320, Florida Statutes, violations.

Failure to display license plates on commercial trucks is now a noncriminal traffic violation punishable as a Chapter 318, moving violation pursuant to Section 320.0706, Florida Statutes, as amended.

Section 320.131 (4), Florida Statutes, has been amended to require that temporary tags be displayed in the rear tag brackets meant for tag display (and front brackets too, if so required). DHSMV is to develop weather-proof tags for such purpose.

Section 322.14(1)(a), Florida Statutes, has been amended to require that driver licenses must bear the RESIDENCE address of the driver (instead of the mailing address).

Section 322.15, Florida Statutes, has been amended to provide that when issuing a citation to a person who does not possess a license the person is required to

either place their fingerprints on the citation or the officer may collect the fingerprints electronically.

Various sections related to the placement of an "ignition interlock device" on the vehicle of a person convicted of DUI have been amended at Sections 316.193, 316.1937, 322.2715, and 322.291, Florida Statutes.

Section 322.61, Florida Statutes, was amended to provide that if a holder of a commercial driver license is convicted of various offenses set forth in FS 322.61 (3) (b), by operation of any commercial or non-commercial motor vehicle, they are disqualified from operating a commercial vehicle for one year

Section 322.61(6), Florida Statutes, was amended to provide that any holder of a commercial driver license who uses a commercial or non-commercial motor vehicle in connection with illegal drugs is permanently disqualified from operating a commercial motor vehicle. Chapter 08-176, Laws of Florida.

Effective July 1, 2008, Section 943.0581, Florida Statutes, is amended to provide that "administrative expunction" may be supported by application of the head of a law enforcement agency, or his or her designee, and to eliminate the need for an affidavit as long as the application is on agency letterhead. Chapter 08-249, Laws of Florida.

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

Coming Next Month:

Responding to the Gant Decision