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TENTH JUDICIAL CIRCUIT

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Crime Victim Act**

From the Courts

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The White Collar Crime Victim Protection Act

Written by: Lori Winstead: Assistant State Attorney

White Collar Crime is not something the State of Florida takes lightly. White collar crimes involve the economic, psychological and emotional upheaval of another party, group of people, or organization at the hands of another. Essentially, the person committing the crime is not physically hurting anyone else, but he or she is stealing from others and is inflicting emotional and psychological harm. This harm could affect one person or one thousand people, and often the charges that come with such a white collar crime are based upon how many people were affected and how deep the crime affected them. The severity of the criminal charges also depends on who was being victimized and the amount of funds that were taken. The Legislature enacted § 775.0844, the White Collar Crime Victim Protection Act, in response to criminals using the internet and other electronic technology to victimize citizens; particularly the elderly. These crimes often result in a loss of a substantial sum of money.

What is a white collar crime?

A white collar crime is the commission of, or a conspiracy to commit, any felony offense specified in:

- Chapter 560 relating to Money Transmitters' Code,
- Chapter 812 relating to Theft,
- Chapter 815 relating to Computer-related Crimes,
- Chapter 817 relating to Fraudulent Practices,
- Chapter 825 relating to abuse, neglect, and exploitation of elderly persons and disabled adults,
- Chapter 831 relating to forgery and counterfeiting,
- Chapter 832 relating to the issuance of Worthless Checks and Drafts,



Assistant State Attorney Lori Winstead prosecutes economic crimes.

Chapter 838 relating to bribery and misuse of public office,

Chapter 839 relating to offenses by public officers and employees,

Chapter 895 relating to offenses related to racketeering and illegal debts, and

Chapter 896 relating to offenses related to financial transactions.

White collar crime could also be a felony offense that is committed with intent to defraud or that involves a conspiracy to defraud. It can be a felony offense that is committed with intent to temporarily or permanently deprive a person of his or her property or that involves a conspiracy to temporarily or permanently deprive a person of his or her property. Finally, white collar crime can be a felony offense that involves or results in the commission of fraud or deceit upon a person or that involves a conspiracy to commit fraud or deceit upon a person.

“Aggravated White Collar Crime” means committing at least two white collar crimes that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics. An aggravated white collar crime cannot be an isolated incident. Additionally, for this statute to apply, the defendant must have obtained or attempted to obtain a total of \$50,000 or more from the victims.

There are three different groups that can be considered a victim under aggravated white collar crime. The first group of victims is ten (10) or more elderly persons. An elderly person, as defined in F.S. §825.101(5), is a person 60 years of age or older, who is suffering from the infirmities of aging, as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. The second group of victims is 20 or more persons, as defined in F.S. 1.01 as

individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. The third possible victim is the State of Florida, any state agency, any of the state's political subdivisions, or any agency of the state's political subdivisions. In order to charge the suspect with Aggravated White Collar Crime, the specific group that the victim would belong must be determined, as well as the minimum amount of victims must be identified, located, contacted and willing to participate in the prosecution.

Aggravated white collar crime investigations; are they worth it?

A person convicted of an aggravated white collar crime is subject to a first degree felony. Further, unless stated otherwise in Chapter 921, an aggravated white collar crime will be ranked at offense severity level nine (9). A level nine is awarded 92 points on the Criminal Punishment Code Scoresheet which translates to 48 months as the lowest permissible prison sentence. In addition, a defendant may also be required to pay a fine of \$500,000 or double the amount of gain or loss, whichever is greater. Additionally, a person convicted of aggravated white collar crime must pay all court costs and restitution to each victim of the crime *"regardless of whether the victim is named in the information or indictment."* For restitution purposes, under F.S. §775.0844, a victim is defined as a person directly and proximately harmed as a result of the commission of the offense for which restitution may be ordered, including any person directly harmed by the defendant's criminal conduct in the course of the commission of the aggravated white collar crime. The court is required to hold a hearing to determine the identity of qualifying victims and shall order the defendant to pay restitution based on his or her ability to pay. The payment of restitution must be a condition of

probation. Notwithstanding any other law, the court may order continued probation for a defendant for up to 10 years or until full restitution is made to the victim. Even after the defendant takes a plea or is sentenced after a trial, the court retains jurisdiction to enforce its order to pay fines or restitution. Further, the court may initiate proceedings against a defendant for a violation of probation or for contempt of court if the defendant willfully fails to comply with a lawful order of the court without having to wait on the probation officer.

Does the Double Jeopardy clause prevent charging a defendant with both Aggravated White Collar Crime and other economic crimes, such as Scheming to Defraud, Uttering and Grand Theft?

If the suspect is charged with aggravated white collar crime, is that the only charge the suspect can be charged with? Simply said, no, there is no violation of the Double Jeopardy Clause. The Double Jeopardy Clause prohibits multiple convictions and punishments for the same offense. Without a clear statement to show legislative intent to authorize separate punishments for multiple offenses arising from the same criminal transaction, courts generally apply the "same elements" test. According to the Third District Court of Appeals under Headley v. State, 90 So.3d 912 (Fla. 3d DCA 2012), the White Collar Crime Victim Protection Act and the Florida RICO Act are similarly constructed, and both were enacted to allow for prosecution of the major offense as well as the predicate offenses. It has been previously held by Florida courts that being convicted of RICO as well as the necessarily lesser included offenses does not violate double jeopardy.

The presence of a White Collar Crime may not be obvious at first. White Collar Crime is used as a facilitator to commit other crimes such as mail theft, mail fraud, narcotics/drugs, organized crime, financial fraud, mortgage fraud, weapons trafficking, homicide, terrorism, wire fraud, and computer/internet intrusions. Sometimes these cases begin with other seemingly unrelated crimes such as purse theft, muggings, dumpster diving, and theft of documents or information from businesses, medical facilities, or hotels. Sometimes White Collar Crimes are discovered by alert patrol officers who observe suspicious activity of economic crimes. For example, recently a patrol officer pulled over a vehicle and while searching the vehicle incident to arrest, the officer looked in the back seat and discovered piles of mail from financial institutions, which included debit/credit cards. The officer also discovered debit/credit cards on the floorboards, the back seat, glove compartment, and in the driver's wallet. Many different names were on the front of the debit/credit cards, however, not the name of the driver of the vehicle. The patrol officer called the fraud detectives and when charges were filed, one of the charges included the Aggravated White Collar Crime.

How are these cases investigated? Investigation centers around and should be focused on satisfying the elements of the crime charged. Do not lose focus of what you are investigating; you do not need investigate the world. Develop a list of potential targets and subjects. Most crimes and almost every fraud have financial gain, or cover-up of loss as the primary motive. Do not forget, every case not only requires proving the defendant committed the criminal act, but also requires proof of intent, knowingly and willfully; you must have evidence

Under the aggravated white collar statute, the legislative intent in adopting the white collar crime statute was to “enhance sanctions imputed for nonviolent frauds and swindles, protect the public’s property, and assist in prosecuting white collar criminals.” As with RICO, the white collar crime statute was geared toward prosecuting those individuals who engage in a pattern of committing felony offenses involving fraud and deceit.

How the State Attorney’s Office Receives Economic Crimes Cases

The State Attorney’s Office receives economic crimes cases from many different sources. Often, law enforcement officers submit cases that have been brought to them by citizens. Sometimes the State Attorney’s Office receives calls from concerned citizens, such as a civil attorney on behalf of his or her client, who is a victim of an economic crime. Occasionally, victims do not know who to call and therefore call the State Attorney’s Office to report a crime, which may be referred to a local law enforcement agency.

of motive. Investigative procedures may include interviewing witnesses, presenting evidence to a prosecutor, issuing subpoenas, consensual recordings, court authorization for search warrants, pen registers, wiretaps, trash runs and mail covers. When investigating financial crime, consider examining personal and corporate bank accounts, credit card records, safe deposit records, brokerage accounts, real estate records, personal property, cars, boats, airplanes, law enforcement records, tax records, travel records, telephone records, divorce files, applications for credit, casino records, casino transaction reports, Currency Transaction Reports (CTR), and Suspicious Activity Reports (SAR). While gathering the documents, do not forget to talk to people. Witnesses with information might include relatives, ex-wives/husbands, boyfriend/girlfriends, neighbors, co-workers, caregivers, tellers, and mail carriers. The investigation and prosecution of an economic crime can be very time consuming. However, they are not victimless crimes. A single scam can destroy a company, devastate families by wiping out their life savings, or cost investors billions of dollars. Today's fraud schemes are more sophisticated than ever, however using these techniques will assist in tracking down the culprits and stopping their scams.

At the State Attorney's Office we have an Economic Crime division. The division is staffed with three Economic Investigators that are solely dedicated to investigating economic crimes. With over 35 years of combined experience in economic crime investigation, they investigate cases that include Employee Embezzlement, Money Laundering, Grant Theft, Scheme to Defraud, and Contractor Fraud. These cases involve individual victims or cases with numerous victims, small and large businesses, victims all over the State of Florida and occasionally outside of the state. The division is also staffed by two Assistant State Attorneys who prosecute only economic crimes. They are involved in all aspects of the case from investigation to resolution of the case. Additionally, the attorneys handle the subpoenas and search warrants, if necessary. If you have any questions or have an economic case, please call the Economic Crime Division at (863) 534-4804 and ask to speak to an attorney or one of the investigators.

FROM THE COURTS...



<http://www.sao10.com>

Bartow Phone Numbers:

Switchboard	534-4800
Misdemeanor Intake	534-4927
Misdemeanor	534-4926
Domestic Violence	534-4861
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse	534-4857
Homicide	534-4959
On Call Phone	860-8243
Worthless Checks	534-4874
Juvenile	534-4905
Main Fax	534-4945
Witness Management	534-4021
Fax	534-4034

**Officers can submit their vacation to
Witness Management at the follow-
ing email address:**

witmanagement@sao10.com

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DEFENDANT BEING QUESTIONED SHOULD HAVE BEEN NOTIFIED OF LAWYER'S ARRIVAL

The defendant was charged with three counts of attempted first-degree murder. As he was being arrested, he instructed his mother to contact his lawyer. The defendant was taken to the police department, signed a *Miranda* waiver and was interviewed by detectives. The defendant's attorney arrived at the police department, where the defendant was being questioned. The attorney's presence was not made known to the detectives questioning the defendant. During his interview with law enforcement, the defendant made incriminating statements that ultimately led to his conviction of three counts of attempted voluntary manslaughter. The trial court denied the defendant's motion to suppress his statements, finding that the defendant did not personally invoke his right to counsel. On appeal, the Fourth District reversed, holding that the defendant should have been notified promptly when the lawyer arrived at the police department and requested to meet with the defendant. *Bruce v. State*, 37 FLW D1750 (Fla. 4th DCA July 25, 2012).

DEFENDANT NOT GUILTY OF BATTERY ON A LEO BECAUSE OFFICER NOT ON DUTY

The defendant was charged with Battery on a LEO and Felony Battery (prior convictions). On the defendant's motion, the court severed the felony battery count, and the case proceeded to trial on the Battery on a LEO alone. At the trial, the evidence established that the defendant entered a convenience store where an off-duty officer was chatting with the store clerk. The defendant was upset about something and confronted the officer, knocking a cup of coffee out of the officer's hand and spilling it all over the officer. The defendant was convicted as charged. On appeal, the Second District reversed, holding that the state failed to prove that the victim was acting as an officer at the time of the battery. It reduced the conviction to misdemeanor battery but remanded the case for a determination of whether the conviction should be enhanced to a felony based on prior convictions. *Burney v. State*, 37 FLW D1791 (Fla. 2d DCA July 27, 2012).