

The Rap Sheet

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July 2013

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**Members of the Crimes
Against Law
Enforcement Officers
Subcommittee are listed
on the back page**

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There will be no
Police-Prosecutor Coordinating Committee
Meeting in July or August

The next scheduled meeting after the summer hiatus
will be on September 18, 2013 at 2:00 p.m.
and will include the annual Legislative Update

Summary of PPCC Meeting June 19, 2013

Agencies represented: SAO, M-DPD, Surfside PD, Aventura PD, Sunny Isles Beach PD, University of Miami PD, FDLE, Hialeah PD, Pinecrest PD, Coral Gables PD, State Fire Marshall, North Miami Beach PD

Agenda Items:

Failure to Return Leased Property:

Marie Jo Toussaint, Division Chief of the SAO Criminal Intake Unit, spoke about violations of section 812.155, failure to redeliver leased property. In order to prove this third degree felony (it is a third degree felony if the value of the property leased is \$300 or more), one of the things we must show is that the defendant failed to return the leased property within 5 days of the receipt of a demand for the return of the property, sent via certified mail. Sometimes, the lessors are sending letters demanding a payment, *or* arrangements for payment, *or* return of the property. In response to such a letter, a lessee may come into the store, make a payment or partial payment, and then again, fail to make future payments. At this point, the lessor must send another letter, clearly demanding the return of the property within 5 days, in order to benefit from the statutory presumption of abandonment or refusal to redeliver the property. Marie Jo provided a sample of such a demand letter:

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IMPORTANT!

Next PPCC meeting, **Wednesday, September 18, 2013 at 2:00 p.m.**

State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136

All are invited to attend

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“You are hereby notified that the leasing contract you signed on _____, has been terminated for failure to meet your payment requirements. This is a demand for the immediate return of ___ [property] ___ that you leased from us on _____. Pursuant to Florida Law, you have 5 days from the date of this notice to return our property or equipment. As indicated on your rental agreement, failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with section 812.155, Florida Statutes. Unless our property is returned within 5 days from the date of this notice, we will refer this matter to the _____ Police Department for criminal prosecution.”

If you’re called to investigate a complaint for failure to redeliver leased property, make sure that such a five-day notice is included in the paperwork provided to you.

Restraining Orders:

Victims often come to the State Attorney’s Office seeking the issuance of a domestic violence restraining order, advising that they have directed here by police. The State Attorney’s Office does not issue injunctions – the Clerk’s Office does. Victims may be directed to the main office, at the Courthouse Center (175 NW 1 Avenue) or the North Dade Justice Center, the South Dade Justice Center or the Hialeah Courthouse Center. Injunctions may also be obtained at the Coordinated Victim Assistance Center located at 2400 South Dixie Highway.

Issues from the Floor:

Charging Felony Traffic Offenses:

Do not charge felony traffic offenses by citation only; an arrest affidavit must be completed. If only a citation is issued, there is a delay in the processing of the citation in the Clerk’s Office such that we (meaning the State Attorney’s Office) may not even become aware of the case until the arraignment date has come and gone.

Bookings at TGK:

There is not a video hook-up to TGK at this time, so First Appearance hearings are having some glitches, but are improving. Officers advised that the initial delays in booking time have also been reduced.

A Selection of New Laws

Effective April 10, 2013:

Chapter 2013-02, House Bill 155: Electronic Gambling Devices

This new law attempts to clarify and expand upon four sections of Chapter 849: 849.0935 – Charitable or nonprofit organizations and drawings by chance, 849.094 – Game promotions in connection with the sale of consumer products or services, 849.16 – Slot machines, and 849.161 – Amusement games or machines. Notable among the changes is the expansion of the definition of a slot machine, to include not only the machine but a “system or network” of devices, that can be operated not only by the insertion of money, but also by account numbers, codes or other information and may include the application of skill by the user or simply elements of chance. A rebuttable presumption is added that a device or network is a prohibited slot machine “if it is used to display images of games of chance and is part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value”. There is a separate section dealing with the Chuck E. Cheeses and their ilk in the state (849.161), and, for some reason, truck stops are also included in this section. The law suits by Internet cafes and senior video arcades have already started flying all over the state, challenging the law’s constitutionality and arguing selective enforcement. Until they are resolved, however, the new law will stand.

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Effective April 24, 2013:

Chapter 2013-29, Senate Bill 294: Controlled Substances

MDMA was moved from Schedule I (a) to Schedule I(c). As the Legislature continues in its valiant effort to keep up with imaginative drug dealers, 26 other controlled substances were added to Schedule I(c); it's now up to 169 substances. The ways in which the isomers of these hallucinogenic substances can be found in the controlled substances was also expanded upon. Possession of 3 grams or less of some of these newly listed substances is a first degree misdemeanor, not a felony. I won't list them as it would give me a headache (e.g., 5-Fluoro AKB48 (N-((3s, 5s, 7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide). As Dave Barry would say, I am not making this up.

Effective July 1, 2013:

Chapter 2013-11, House Bill 49: Drug Paraphernalia

The retail sale of drug paraphernalia was added to section 893.147 as subsection (6). A first violation is a first degree misdemeanor, a second or subsequent violation is a third degree felony. Pipes, other than those primarily made of briar, meerschaum, clay or corn cob, are included in the definition of drug paraphernalia.

Chapter 2013-33, Senate Bill 92: "Freedom from Unwanted Surveillance Act"

In this as yet unnumbered new statute, it states that a law enforcement agency may not use a drone to gather evidence or other information. Then it lists the exceptions indicating when a law enforcement agency may use drones to gather evidence and other information:

- To counter a high risk of a terrorist attack when the Secretary of Homeland Security determines that credible intelligence indicates there is such a risk,
- When the law enforcement agency has obtained a warrant signed by a judge, or
- When the law enforcement agency possesses reasonable suspicion that swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.

Evidence gathered in contravention of this act is not admissible in a criminal case. Aggrieved parties may bring a civil action against a law enforcement agency for a violation of this act.

Chapter 2013-114, House Bill 489: Railroad Police Officers

A "railroad special officer" is defined and added to the list of law enforcement officers in section 784.07, assault or battery upon which qualifies the offender for an enhanced sentence.

Chapter 2013-116, House Bill 585: Secondary Metal Recyclers

"More than 2 lead-acid batteries" was added to the list in 538.26 of regulated restricted metals. Not unlike the newly enacted Miami-Dade County Ordinance on secondary metal recyclers, but the ordinance is worded "3 or more". The changes to the Miami-Dade ordinances in this area were completed prior to the July 1 deadline imposed by last year's Legislature, and therefore were not pre-empted by the state law enacted last year.

All PPCC Subcommittees, Chairs and members are listed below. Please contact any of the Co-Chairs or members if you have an issue to be addressed.

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