

The Rap Sheet

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Enforcement Officers
Subcommittee are listed
on the back page**

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Florida Laws - Legislative Update

Effective Date: October 1, 2016

HB 75 (Chapter 2016-15) repeals F.S. 948.11(7) and moves its provisions into the newly-created F.S. 843.23. It defines "electronic monitoring device" to include any device that is used to track the location of a person. It makes it a third-degree felony for a person to intentionally and without authority remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review, or to request, authorize, or solicit another person to do the same acts. This bill also amends F.S. 948.11(1), by clarifying that the Department of Corrections may electronically monitor an offender sentenced to community control only when the court has imposed electronic monitoring as a condition of the community control.

SB 180 (Chapter 2016-5) substantially amends F.S. 812.081, governing the theft, embezzlement, or unlawful copying of trade secrets. F.S. 812.081(1)(c) is amended to include financial information among the possible forms of information within the definition of "trade secret" as used in this section. Financial information must still meet the preexisting requirements set forth in this section before it is to be considered a trade secret as defined by this section.

SB 218 (Chapter 2016-185) amends F.S. 414.39, regarding the fraudulent use of an Electronic Benefits Transfer (EBT) card. The bill provides a particular definition for "trafficking" in EBT cards. The bill also provides that a person who is in possession of two or more EBT cards and tries to sell one commits a first-degree misdemeanor, while a second or subsequent offense is a third-degree felony.

SB 380 (Chapter 2016-187) provides enhanced criminal penalties if a person commits a third or subsequent violation of an injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking and cyberstalking. The bill increases the penalty to a third degree felony for a person who has two or more prior convictions for violations of an injunction and then commits a third or subsequent violation against the same victim.

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IMPORTANT!

Next PPCC meeting, Wednesday, November 16th, 2016
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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HB 387 (Chapter 2016-81) creates F.S. 775.0863 to provide for a separate hate crime statute and upward offense reclassification for crimes that evidence prejudice based on a mental or physical disability of the victim. Such a disability is defined as a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person's ability to perform the normal activities of daily living. Under the new law, reclassification requires evidence that the perpetrator perceived, knew, or had reasonable grounds to know or perceive, that the victim had a mental or physical disability.

SB 436 (Chapter 2016-156) amends F.S. 790.163 and F.S. 790.164, which prohibit making false reports concerning planting a bomb, explosive, or weapon of mass destruction, to also prohibit making a false report concerning use of a firearm in a violent manner. Commission of either of these offenses is a second-degree felony, punishable by up to 15 years imprisonment and a \$10,000 fine. The bill also creates F.S. 836.12, making it a first-degree misdemeanor to threaten a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, elected official, or any of their family members with death or serious bodily harm. A second or subsequent offense would be a third-degree felony.

HB 545 (Chapter 2016-24) amends and broadens the definition of "sexual abuse of a child" in F.S. 39.01 for purposes of finding a child to be dependent. The revision eliminates language that previously excluded children if they were under arrest or being prosecuted in a delinquency or criminal proceeding for a prostitution violation. The bill also revises F.S. 782.04 to add human trafficking to the list of enumerated offenses under the felony murder provision. The bill amends F.S.787.06 to provide for upward offense reclassification for the offense of permanently branding human trafficking victims if the victim suffered great bodily harm, permanent disability, or permanent disfigurement. The bill narrows the criminal offense of offering to commit prostitution or committing prostitution under F.S. 796.07(2)(e), to only apply to persons 18 years of age or older. The bill also amends F.S. 775.21, F.S. 943.0435, F.S. 944.606, and F.S.944.607 to add racketeering under F.S. 895.03 to the qualifying offenses for a sexual predator or sexual offender, if the court makes written findings that the racketeering activity involved at least one sexual offense included in the predicate offenses for sexual predator or sexual offender designation.

HB 821 (Chapter 2016-228) prohibits an agent or attorney representing a claimant before the United States Department of Veterans Affairs (VA) for benefits from requesting or obtaining reimbursement from the claimant for assessments charged to the agent or attorney by the VA, under 38 USC s.5904(6)(A), relating to payment of the fee charged by the agent or attorney for such representation. The bill provides that an agent or attorney who requests or obtains reimbursement of an assessment from the veteran claimant commits a second-degree misdemeanor.

HB 1219 (Chapter 2016-102) requires each state agency and authorizes each political subdivision of the state to develop and implement a written veterans' recruitment plan that establishes annual goals for ensuring the full use of veterans in the agency or political subdivision's workforce. The bill applies to veterans and their family members who are entitled to veterans' preference in appointment and retention in public employment pursuant to F.S. 295.07(1). The bill provides for the Department of Management Services (DMS) to annually collect and publish on its website a statistical data workforce report for each state agency.

HB 1333 (Chapter 2016-104) amends numerous provisions of the laws pertaining to registration of sexual predators and sexual offenders to more closely align Florida's registry laws with requirements of the federal Sex Offender Registration and Notification Act (Adam Walsh Act). The bill requires sexual predator/offender registration by a parent or guardian convicted of kidnapping, falsely imprisoning, or luring or enticing his or her child if the child is a minor and the offense has a sexual component. The bill clarifies that the "Romeo and Juliet" exemption, found in F.S.943.0435, applies only to consensual acts, and removes sexual battery as a qualifying offense. The bill clarifies which court will hear a sexual offender's petition for removal from registration requirements, and deletes inoperable language regarding calculation of the registration period. The bill further includes lewd or lascivious battery upon an elderly or disabled person as an offense that requires sexual offenders to register quarterly and for life. It also modifies reporting requirements for international travel, requires sexual predators/offenders taking online courses at Florida higher education institutions to report such information, requires institutions of higher education to be notified by the sheriff, the Department of Corrections, or the Department of Juvenile Justice of such attendance, and clarifies the obligation to obtain a driver license or identification card.

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SB 1470 (Chapter 2016-208) amends several sections of Florida Statutes concerning penalties relating to the regulation of stone crabs and spiny lobsters. F.S. 379.365 is amended to clarify that penalties to be imposed under this section are in addition to those penalties provided in F.S. 379.407. Regarding spiny lobster regulation, F.S. 379.3671 is amended to change the penalties relating to subsequent violations of its provisions. Notably, this bill provides that a fourth violation of this section within 48 months after any three previous violations shall result in permanent revocation of all of the violator's saltwater fishing privileges, including bringing an action against the endorsement holder's saltwater products license in accordance with F.S. 379.407. F.S. 379.407 is also amended to add that it is a major violation under this section for a recreational or commercial harvester to possess an undersized spiny lobster. The bill further provides that for violations involving the possession of fewer than 100 undersized spiny lobsters, each undersized spiny lobster may be charged as a separate offense as provided in this section, though the total penalties assessed in such a factual scenario may not exceed four years imprisonment and a fine of \$4,000. The bill further provides where a violation involves 100 or more undersized spiny lobsters, the violation is a third-degree felony with a mandatory civil fine of at least \$500, and the Florida Fish and Wildlife Conservation Commission shall assess the violator with an administrative penalty of up to \$2000 and may suspend the violator's license privileges under this chapter for up to 12 months. Finally, F.S. 921.0022 is amended to account for the aforementioned changes within the criminal punishment code.

SB 7022 (Chapter 2016-214) amends a public records exemption found in F.S. 406.136, which previously made any recording or depiction of the killing of any person confidential and exempt from a public records request. Now, the scope of this provision has been narrowed from making confidential the depiction of the killing of any person to apply only to the killing of a law enforcement officer acting in the lawful execution of the officer's duties. The bill also eliminates the sunset provision set to repeal the provision on October 2, 2016.

HB 7071 (Chapter 2016-151) amends several sections of Chapter 838, Florida Statutes, regarding public corruption. The bill expands the scope of Chapter 838 by amending the applicable definitions of public servant and public contractor, as well as creating new definitions for a governmental entity and a public contractor. These changes render more persons subject to criminal offenses such as official misconduct and unlawful compensation. The bill also expands the scope of those subject to prosecution for bid tampering to include specified contractors. Finally, the bill removes the element of "corrupt intent" from the offenses of unlawful compensation, bribery, official misconduct and bid tampering. "Corrupt intent" is replaced with "knowingly and intentionally."

Case Law

Prepared by Felony Screening Chief Joe Robinson

Foley Jr. v. State, 41 Fla. L. Weekly D888a (5th District)

Foley was the front seat passenger in a vehicle which was stopped by Citrus County Sheriff's Deputy Seffern for a traffic infraction. The deputy asked the driver for her license, registration, and insurance card, and the driver complied. Deputy Seffern then asked the driver for consent to search the vehicle, but the driver refused. The deputy thereafter called for a K-9 backup, and Deputy Laborda, also with the Citrus County Sheriff's Department, arrived on the scene with a drug-sniffing dog. Deputy Laborda walked his dog around the vehicle, and the dog alerted at the front passenger door. The vehicle was then searched by the deputies, and methamphetamine was found in the front passenger door panel. Ammunition was thereafter confiscated from the search of duffel bags owned by Foley that were located in the backseat of the vehicle. A firearm that was wrapped in camouflage tape was also seized from the vehicle, and Foley's fingerprints were found on the camouflage tape. Foley was arrested, and the driver was released after being issued a warning for a traffic violation.

The trial court did not address the motion to suppress that Foley filed, finding that Foley did not have standing to challenge the search of the vehicle. In his motion to suppress, Foley essentially argued that an unreasonable delay occurred between the time of the initial traffic stop and the issuance of the traffic citation warning, resulting in an "illegal detention" and, therefore, an "illegal seizure" of the evidence. The 5th DCA agreed with Foley's argument, stating "Additionally, while the use of a narcotics dog to sniff a vehicle does not constitute a search and may be conducted during a traffic stop, "the canine search of the exterior of the vehicle must be completed within the

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time required to issue [the traffic] citation. Put differently, law enforcement's authority from the seizure ends when tasks tied to the traffic citation are, or reasonably should have been, completed, making the 'critical question . . . not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff 'prolongs' -- i.e., adds time to -- 'the stop.' "

The court also held the defendant had standing to challenge the search, recognizing the general rule that passenger of vehicle lacks standing to contest search of vehicle except where passenger establishes legitimate expectation of privacy in area searched by demonstrating ownership interest or other lawful proprietary interest in area – which the defendant did.

The Court reversed Foley's convictions and sentences and the denial of his motion to suppress, and remanded the case with directions that the trial court address the merits of his motion.

All opinions of the Third District Court of Appeal (3d DCA) and the Supreme Court are binding in our Circuit. All other DCA opinions are binding in this District only if there are no contrary opinions in the 3d DCA.

All PPEC 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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