



The Florida Senate

Interim Project Report 2000-26

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Committee on Criminal Justice

Senator Ginny Brown-Waite, Chairman

A REVIEW OF FLORIDA'S PAWNBROKING LAW

SUMMARY

This report is designed to provide an overview of Florida's pawnbroking law with special emphasis on the provisions addressing how a victim can retrieve stolen property found in a pawnshop.

The recommendations are designed to make the existing statute more "user-friendly" and to better educate victims of their rights, while maintaining the policy underlying the existing procedure. These recommendations were generated from staff research and suggestions made by interested parties.

Recommendation # 1

- ▶ The Legislature should require the creation and distribution of a "victim rights brochure," to inform victims of their rights under Florida law to recover stolen property from a pawnshop.

Recommendation # 2

- ▶ The Legislature should publish a form petition in chapter 539, F.S., which could be used by victims in order to initiate a court action to recover their property from a pawnbroker.

Recommendation # 3

- ▶ The Legislature should clarify that a criminal court judge is authorized to determine ownership of property and order any appropriate restitution in addition to the civil petition remedy already provided for in chapter 539.

BACKGROUND

The 1996 Legislature substantially revised the pawnbroking laws when it enacted the Florida Pawnbroking Act in chapter 539, F.S. Chapter 539, F.S., was subsequently amended in 1997 and 1999. There is no federal law regulating pawnshops.

Florida Pawnbroking Act regulates pawnshops

Chapter 539, F.S., contains numerous provisions, including:

- ▶ pawnbrokers are required to obtain a license, for each pawnshop, from the Division of Consumer Services of the Department of Agriculture,
- ▶ pawnbrokers must pay a \$300 license fee, which must be renewed annually; the fee substantially subsidizes the Division's pawnbroking activities,
- ▶ the Division is authorized to suspend or revoke a licence and to levy administrative fines; criminal penalties are authorized for certain violations,
- ▶ pawn service charges are limited to a total of 25 percent per month,
- ▶ victims who believe that a pawnbroker is in possession of property stolen from him or her may file a petition in civil court (court filing and process service fees are waived) and,
- ▶ local governments are prohibited from enacting ordinances that are more restrictive than the Act.

In addition, chapter 539, F.S., contains record-keeping requirements. The pawnbroker must complete a transaction form at the time of a pawn, specifying detailed information about the item pawned, identifying information about the person pawning the item, including a thumbprint. The transaction form must also disclose pawn finance terms.

Database bill did not pass 1999 Legislature

The pawnbroker must maintain a copy of the transaction forms for 1 year and deliver the forms on a daily basis to the appropriate local law enforcement official. Chapter 539, F.S., provides for electronic transferring of pawn transactions when a local law

enforcement agency supplies the appropriate software and the pawnbroker owns or is provided the necessary computer hardware. The 1999 Legislature considered but failed to pass a bill creating a statewide database for certain pawn transaction information to be accessed by law enforcement.

Florida pawnbroking criticized in national media

A *Dateline NBC* broadcast on Florida Pawnshops aired on May 11, 1999. The focus of this broadcast was a sting operation conducted by the Manatee County Sheriff's office from mid 1998 to January 1999. The Sheriff's office established "Buck's Eagle Pawnshop" to investigate the extent to which thieves and burglars would be willing to use a local pawnshop to fence their wares. Buck's Eagle was fully stocked and run by undercover deputies posing as pawnbrokers. To unsuspecting criminals it appeared to be a legitimate business.

Dateline NBC's hidden cameras captured how certain "frequent pawnners" used Buck's Eagle to fence what was obviously stolen property.¹ Some of the thieves and burglars developed enough confidence with the undercover deputies to reveal how they stole merchandise from private residences or area merchants.

The *Dateline NBC* reporter showed the hidden camera tapes to burglary victims who expressed shock and anger at depictions of criminals taking pride and joy in pawning stolen property at Buck's Eagle. *Dateline NBC* went on to criticize Florida's law, suggesting it was too lax and provided criminals with an easy method for selling stolen goods. The Buck's Eagle sting showed that for some criminals, Florida's law requiring a pawn transaction form and a thumbprint was insufficient deterrence. The report also suggested that the law places unfair burdens on the victims of stolen property.

The *Dateline NBC's* broadcast was unfortunately not the first time Florida pawnbroking has been spotlighted

in the national media. On December 21, 1997, CBS's *60 Minutes* aired a story critical of certain Florida pawnbroking practices and the Florida laws.

Concerned by these reports, the Senate President and Chairman Brown-Waite directed the Criminal Justice Committee to lead an interim study reviewing the Florida Pawnbroker Act. This report is designed to provide an overview of Florida law with special emphasis on the provisions addressing how a victim can retrieve stolen property found in a pawnshop. The report includes staff recommendations.

METHODOLOGY

The Criminal Justice Committee staff researched and reviewed the literature, statutes and case law relevant to this subject. Staff reviewed a representative sampling of statutes from other states. Staff also conducted dozens of interviews and held informal meetings with interested parties, including: pawnbrokers and their representatives, law enforcement officers, agency officials, and county commissioners.

On November 12, 1999, staff attended a meeting of the Florida Law Enforcement Property Recovery Unit (FLEPRU), held in Orlando Florida. FLEPRU is a statewide organization consisting of property recovery detectives. On December 1, 1999, staff conducted a site visit to a pawnshop located in Tallahassee, Florida. Representatives of the pawnbroking industry facilitated this site visit.

FINDINGS

"Pawnbroking is the oldest method of lending money in history, so old, in fact, that there has been no time in recorded history when a loan of money on a pledge has not been available." J. Oeltjen, *Pawnbroking On Parade*, 37 BUFF L. REV. 751, 758 (1989).

The pawnshop transaction begins when the borrower attempts to pawn a personal item, (the most common being jewelry). The pawnbroker will appraise the product based on his or her valuation of "current market demand, the condition of the property, and probable resale value in a few months if the property is not redeemed." *Id.* at 754. If the borrower accepts the valuation, the pawnbroker pays the amount and writes a pawn ticket describing the loan terms and the amount the borrower must pay to redeem the property. The loan to collateral ratio varies, but a loan which is

¹The Florida Pawnbrokers Association has criticized the *Dateline NBC* broadcast as unfairly portraying the activities of all legitimate pawnshops. It is important to keep in mind that the broadcast focused on the practices of undercover deputies in a sting operation and it is not fair to assume that these are common industry practices. However, the broadcast also detailed how certain local pawnshops accepted pawns for a suspiciously large quantity of new merchandise from a couple of thieves who also frequented Buck's Eagle.

approximately 50 percent of the resale value of the collateral is common.

Most consumers use pawnshops primarily because they have poor credit and would be denied loans from traditional institutions. A 1990 survey showed that 53 percent of costumers used pawnshops for "family or personal emergency" and 28 percent to "pay or consolidate bills." In a 1990 study of 3 states, the average loan size was between \$50 and \$70. J. P. CASKEY, *FRINGE BANKING, CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR* (1994). According to the Florida Pawnbrokers Association, the average Florida loan is \$79.

Governments have long regulated pawnshops

Governments have regulated pawnshops almost since their inception. *Id.* at 13. In the early 1800s, "concern that pawnbrokers exploited their customers and traded in stolen goods led many municipalities and some states to regulate the industry." *Id.* at 20. By the end of the nineteenth century, pawnshops were commonly regulated, but the regulations were rarely strictly enforced. *Id.* at 22. The common law of England, when adopted by Florida, included regulations "requiring the pawnbroker both to record the identity of the goods pledged, the amount loaned, and the name and address of the pledgor and also to give the pledgor a copy of the record." J. Oeltjen, *Florida Pawnbroking: An Industry in Transition*, 23 FLA. ST. U.L. REV. 995, 1011 (1996).

Enacted in 1903, the first Florida statute addressing pawnbrokers required pawnbrokers to keep a record. This statute was subsequently amended to specify that pawnbrokers were to record the name of the person who pawned an item and the name of the person to whom the item was sold. *Id.* at 1012. Record-keeping requirements were upheld against constitutional challenges, the Court finding them to be a valid exercise of police powers. *Newman v. Carlson*, 280 So. 2d 426 (Fla. 1973).

According to pawn shop expert John P. Caskey, insufficient resources devoted to regulation is a major theme which emerged from his study of fringe banking markets in the early 1990s (pawnshops and check cashing outlets). CASKEY at 9. Professor Caskey concludes: "...it is not enough merely to draft the regulations and expect them to be followed. Resources must also be devoted to publicizing the regulations and

enforcing them. Very few states currently make any effort in this respect." *Id.* at 122.

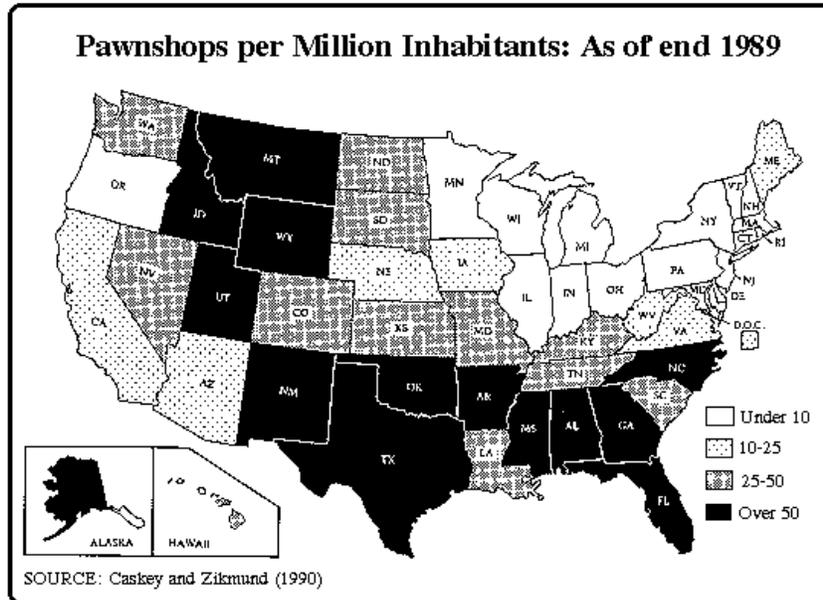
According to the Division of Consumer Services, local law enforcement monitoring is an important component to regulation since these agencies perform compliance checks. The Division does not usually deploy its investigators for local spot checks of pawnshops. Rather, Division investigators respond to specific complaints of violations of the statute. However, the Division's director questioned the value of increasing the Division's current investigate staff to undertake a more proactive role. The Director believes the good relationship established with the local law enforcement agencies, many of which aggressively track pawnshop activities, is sufficient.² These local property recovery detectives have formed the Florida Law Enforcement Property Recovery Unit (FLEPRU), a statewide organization designed to exchange information and discuss strategies.

Southern and Central Mountain states have the highest concentration of pawnshops

Pawnshops are prevalent. Nationally, there are more pawnshops today than there has ever been in the country's history. In 1988 there was an estimated 6,800 pawnshops in the United States. That number increased to more than 15,000 by 1997. In Florida, as of January 2000, there were 1,233 pawnshops registered with the Division of Consumer Services.

Historically, pawnshops have proliferated in major urban areas because the average pawn loan was quite small and in order to be profitable, pawnshops had to deal in high volume. The highest concentration of pawnshops is in the Southern and Central Mountain states. Most of these states have over 50 pawnshops per million inhabitants. As the map that follows shows, Florida is in the group of states with the highest concentration of pawnshops.

²According to the Division, the 1996 Legislature provided 2 full time investigators when it created the Florida Pawnbroking Act. However, pawnbroking investigations are spread among the Division's 6 investigators and its investigative supervisor. The Division devotes 3 ½ FTEs to technical functions such as responding to citizen questions and ensuring pawn transaction form compliance.



Favorable pawn service charges explain the high concentration of pawnshops

A study using regression analysis revealed states with the highest concentration of pawnshops have the following factors in common:

- ▶ high interest rates,
- ▶ higher percentage of low income families, and
- ▶ below-average education levels.

According to Professor Caskey, an economics professor at Swarthmore College, of these factors the most important in explaining the concentration of pawnshops in the Southern and Central Mountain states is the industry favorable interest rates permitted in these states.

For example, in Florida, although the monthly interest rate is held to 2 percent, the total monthly service charges are permitted to go as high as 25 percent of the amount financed. (The service charge after the 60th day is prorated by the day.) This has led some interested parties, particularly those in the law enforcement community, to criticize Florida for having an annual percentage rate of up to 300%.³ By contrast, in New York total rates are held to 3% monthly, which explains why New York City has only 70 licensed

pawnshops. See Article, *New York Times*, Aug. 19, 1997, p. 5.

The industry defends the current Florida rate by arguing that pawnbrokers should be fairly compensated for the costs and risks inherent in their business. Pawnbrokers must account for the overhead costs associated with storing, securing and insuring goods as well as complying with record keeping and other regulatory burdens.

Stolen property and its relationship to pawnshops

Property crime exacts an enormous cost. In Florida, in 1998 officials reported more than \$1.6 billion in the total value of stolen property. Law enforcement views the pawnbroking industry “as a major contributor to property crime in Florida.” Empirical data to conclusively establish a correlation between pawnshops and property crime is not plentiful. However, in the Fall of 1996, the *Sun-Sentinel* published an investigative report series which “is thought to be the first study to explore the relationship between crime and pawning activity.” *Sun-Sentinel*, Nov. 24, 1996.

The *Sun-Sentinel* conducted a computer analysis of the nearly 70,000 pawn transactions that took place in 1995 in Fort Lauderdale. The *Sun-Sentinel* detailed its major findings as follows:

- ▶ Of the city’s 50 most frequent pawners, 39 have criminal records in Florida: 19 have been arrested for burglary, theft or related crimes, another 14 have faced drug charges - almost always cocaine. Police say many burglars steal to support drug habits.

³According to the Florida Pawnbrokers Association, the annualized percentage ignores the fact that the vast majority of loans are short term, 30 to 60 days. Also, according to the Association, Florida’s pawn service charge average is 20% monthly, with some of the more competitive stores offering a rate as low as 10%.

- ▶ Pawnshops routinely accept merchandise that workers suspect is stolen. Shop owners say it's not their job to determine who owns property being pawned - their clients sign pawn slips swearing the property is theirs, and police get copies of these forms.
- ▶ Thieves brazenly pawn stolen goods, sometimes only hours after a burglary, then leave their names, addresses and thumb prints behind on pawn slips they know are being sent to the police. They get away with it, police say, because [officers] don't pay much attention to the forms. In fact, fewer than half the pawn slips forwarded to Fort Lauderdale police are entered into the department's computer, severely hampering efforts to detect suspicious activity or patterns.

According to the *Sun-Sentinel*: "Many of Fort Lauderdale's most prolific pawners have at least three characteristics in common: No job, an arrest record and a seemingly endless supply of things to pawn." The findings contained in the investigative series came as no surprise to the law enforcement community which has long contended that there exists a correlation between property crime and pawnshops.⁴

Some law enforcement agencies have conducted their own investigations of frequent pawners and discovered that a significant number are on community control. In Pinellas County, during a 4 month period in 1998, a law enforcement check of its county pawnshop database revealed that some 300 of a total 1400 community controls had visited a local pawnshop. Of these, 102 were arrested and the court subsequently violated their community control. A similar investigation conducted by the Fort Lauderdale Police Department in 1999 resulted in 127 violations of community control for persons found to have visited a pawnshop.

The pawnbroking industry counters that the correlation between property crime and pawnshops is refuted by statistics showing that an insignificant percent of stolen property is recovered in pawn shops. An often cited

study was conducted by the Collier County Sheriff's office from April 1, 1997 to January 1, 1998. This study revealed that the Sheriff's pawn shop division recovered as stolen property from pawnshops only .01 percent of the total number of items pawned. This study is supported by an industry analysis of 5 Cash America, Inc., stores in Palm Beach County. In these 5 stores for calendar years 1997 and 1998, law enforcement seized .07 percent of all items taken in as loans.

However, one cannot draw a firm conclusion from the .01 percent statistic. It is important to keep in mind that the figure represents the percentage of property actually identified as stolen and recovered, but many items such as jewelry are difficult to positively identify. Further, many victims do not record serial numbers making identification of electronic items very difficult.⁵

Chapter 539 provides a procedure for recovery of stolen property from pawnshops

Whether the actual percentage of stolen goods going through pawnshops is .01 percent or substantially higher, the fact remains that because pawnshops deal in such large volume, a significant number of stolen items wind up in Florida pawnshops. As a consequence, property crime victims are often able to locate items stolen from them in pawnshops. When this happens, chapter 539, F.S., provides a procedure for recovering the property. *See* s. 539.001(15), F.S.

A person (claimant) who believes property stolen from him or her has been sold or pledged to a pawnbroker is entitled to the following process:

- ▶ First, the claimant must notify the pawnbroker by either certified mail or in person of the claim. The notice must contain a description of the property.
- ▶ Next, if the claimant and pawnbroker do not resolve the matter within 10 days from notice, the claimant may petition the court to order return of the property. The pawnbroker is required to hold the property until the dispute is settled.
- ▶ The court is required to waive the filing fee for the petition to recover property and the sheriff shall waive the service fees.

⁴Of course pawnshops are not the only source for a criminal to exploit. Secondhand dealers, (regulated by Chapter 538), and fleamarkets, (currently unregulated), are other sources. Also, the pawnbroking industry is quick to point out that cargo theft accounts for a substantial amount of property crime in Florida.

⁵A recent Fort Lauderdale Police Department analysis showed that burglary victims were able to report serial numbers in only 15 percent of cases.

- ▶ If the court rules in favor of the claimant, he or she may recover costs from the pawnbroker, including reasonable attorney's fees.
- ▶ If the conveying customer is convicted, the court shall order the conveying customer to repay the pawnbroker the full amount the conveying customer received, plus all applicable pawn service charges. The conveying customer is also liable for paying the pawnbroker's attorney's fees and costs.
- ▶ The claimant is liable for the pawnbroker's costs if the court finds against the claimant or finds the claimant failed to comply with the notice provisions described above.

Section 539.001(10), F.S., provides that all items delivered to a pawnbroker in a pawn *or* purchase transaction must be securely stored and maintained for 30 days after the transaction. The pawnbroker must hold a *pawned* item for an additional 30 days after the maturity date, unless the item has been redeemed earlier.

Consequently, if an item is pawned immediately after it has been stolen, that item will be held by the pawnbroker for a minimum of 60 days before it is placed on the floor for resale. A victim who decides to search local area pawnshops for property recently stolen from him or her will not see it unless the pawnshop owner offers to show him the newly pawned goods which he or she is required to hold. However, a law enforcement officer may inspect all pledged or purchased goods. *See s. 539.001(12)(b), F.S.*

In addition, section 539.001 (16), F.S., authorizes a law enforcement official who has probable cause to believe that property in the possession of a pawnbroker is misappropriated, to place a written hold order on the property. The order may be up to 90 days, unless extended by court order.

Victims have been victimized twice

Despite these provisions, in a number of reported cases, victims have encountered difficulty in recovering stolen property which they have located in pawnshops. This has caused the Florida law to be criticized for allowing a "victim to be victimized twice." The victim is said to be victimized a second time when a pawnbroker demands the victim "buy back" the property by reimbursing the pawnbroker for the amount paid for the victim's property. While such a practice is discouraged by the Florida Pawnbrokers Association and it is not the typical practice of ethical pawnbrokers,

Florida law does not expressly prohibit a pawnbroker from seeking reimbursement from a victim as a condition to returning the property.

When a pawnbroker makes such a demand, victims are presented with the difficult decision of either reimbursing the pawnbroker and going home with their property that day or pursuing the chapter 539, F.S., court procedures to recover the property. The chapter 539, F.S., court procedures provide a mechanism by which a court can determine the ownership of property when ownership is seriously in question. However, an unscrupulous pawnbroker may use the specter of an unfamiliar court procedure to his or her advantage in cases where he or she does not seriously question a victim's ownership claims.

The industry has raised concerns with any statutory change which would prohibit pawnbrokers from seeking reimbursement. Notably, pawnbrokers often find themselves in the middle of domestic disputes when, for example, a child or wife pawns an item belonging to a parent or husband. In such situations, it may benefit all parties for the pawnbroker to request reimbursement for his or her loss as a simple solution to the dispute.

Additionally, there may be situations where reimbursement is a fair resolution; for example, in cases where a suspect is not apprehended and the victim does not have good proof of ownership despite having filed a police report. In such cases, the pawnbroker and victim may choose to cut their losses, and not risk a court proceeding, by working out a reimbursement agreement.

However, a problem may arise where victims do not understand they have legal remedies available. One law enforcement official commented that a number of victims "buy back" their property because they have not been informed of the court process available to them. According to this official, in his experience, the substantial majority of pawnbrokers requesting reimbursement will return disputed property once they are served with a petition for recovery.

The recommendations contained in this report are aimed at enhancing the victim's bargaining position by ensuring the victim is informed of his or her legal remedies should the parties not be able to come to an agreement. Through better education, victims will be armed with the knowledge that they have a choice not to agree to reimburse the pawnbroker and to file a

petition in court for return of the property, or request that the criminal court do the same.

Due process requires notice and hearing to pawnbroker when ownership is disputed

There is understandable frustration from many victims who discover their property at pawnshops and then encounter the pawnbroker unwilling to simply return the property to them. Many in the law enforcement community believe the existing court process is too cumbersome. As the Umatilla City Police Chief stated: "I am finding it very difficult telling the victims that they must pay the pawnbroker or obtain a court order to retrieve property owned by them."

However, the civil petition process contained in chapter 539, F.S., is the result of a federal court case holding a prior Florida statute unconstitutional. This statute, section 715.041(2), F.S. (1988), allowed an officer to recover property a victim claimed was in possession of the pawnbroker and return it directly to the victim. In striking down this statute, a federal court found that pawnbrokers have a possessory interest in goods pawned and until lawful ownership can be established, "the possessory interest held by the pawnbroker entitles him to continued retention of the property." *Florida Pawnbrokers and Secondhand Dealers Association, Inc. v. City of Ft. Lauderdale*, 699 F. Supp. 888, 891 (S.D. Fla. 1988). The statute violated the procedural due process guarantees in the Fourteenth Amendment because it required forced surrender of property without notice and hearing by an impartial decision maker.

Consequently, a pawnbroker has a right to ownership determined through a hearing process. As one court has commented: "[i]t may be supposed that a reputable pawnbroker would voluntarily surrender pawned articles in his possession, where there is plain proof of their theft with a clear identification of the real owner; nevertheless, the pawnbroker is entitled to test ownership and possessory rights in a civil action if he so elects." *Wacksman v. Harrell*, 189 N.E.2d 146, 150 (Ohio 1963).

Other states have statutes comparable to Florida's Any reforms aimed at changing the chapter 539, F.S., civil petition process must be crafted to address these constitutional issues. Staff reviewed a representative sampling of statutes from 15 other states to determine how Florida's civil petition statute compared.

In 9 of the 15 states reviewed, staff was unable to locate a statute specifically providing a process.

In the other 6 states, statutes referenced victim recovery in various ways ranging from a general statement that a pawned item may be recovered by its rightful owner (Massachusetts) to a detailed statutory procedure comparable to Florida's (Missouri, California & Pennsylvania). Missouri's statute was the only one to specify, like Florida's, that a victim who prevails in court may recover the costs of the action, including attorney fees. From this review it appears Florida's civil petition procedure is comparable to procedures in other states.

RECOMMENDATIONS

The following recommendations seek to improve the current law on victim recovery of stolen property from pawnshops. The recommendations are made with the assumption the Legislature wishes to maintain its current policy codified in a civil petition procedure initiated by the victim after notice to the pawnbroker. In recent years, there have been various proposals made and bills filed which substantially change this procedure, for example, by shifting the burden of filing the civil petition on to the pawnbroker. The recommendations contained in this report should not be viewed as an implicit recommendation against a fundamental policy shift. Of course, such a decision is ultimately within the Legislature's purview.

However, as described above, the existing law is the result of a federal court case holding a prior statute unconstitutional because it failed to provide pawnbrokers adequate due process protections. The Legislature should be mindful of these constitutional issues if it chooses to consider a fundamental policy change.

The following recommendations are designed to make the existing statute more "user-friendly" and to better educate victims of their rights, while maintaining the policy underlying the existing procedure. These recommendations were generated from staff research and suggestions made by interested parties.

Recommendation # 1

- ▶ The Legislature should require the creation and distribution of a "victim rights brochure," to inform victims of their rights under Florida law to recover stolen property from a pawnshop.

Discussion: A theft or burglary victim who believes property stolen from him or her was pawned has the right to recover the property from a pawnshop *without*

cost pursuant to section 539.01(15), F.S. In some cases victims are unaware that Florida law provides a procedure for recovery of stolen property. The statute provides that after a victim notifies a pawnshop of a claim, the parties have 10 days to resolve the matter. If they do not resolve the matter within this time, victims have the right to a court hearing in which filing and service fees are waived. A lack of knowledge about these procedures places victims at a disadvantage when they enter a pawnshop in search of stolen property.

In order to better educate victims, the Legislature should authorize the Division of Consumer Services to develop a brochure explaining a victim’s rights to property recovery under section 539.01(15), F.S. The brochure should also reprint the form petition published in statutes for use by victims to initiate a court action to recover their property from a pawnbroker. (See Recommendation # 2). In developing the brochure, the Division should consult with all interested parties including the Attorney General, Florida Department of Law Enforcement, Florida Sheriff’s Association, Florida Police Chief’s Association and the Florida Pawnbrokers Association. (The Orange County Sheriff’s Office has developed and currently distributes a brochure which could serve as a model.)

The brochures should be distributed by law enforcement officers when they come into contact with victims of a theft or burglary, whose property may have ended up being pawned. The Florida Sheriff’s Association and the Florida Police Chief’s Association could develop protocols for victim education and brochure distribution. The brochures should also be made available to pawnshops for distribution to victims who may enter stores demanding return of their property.

Recommendation # 2

- ▶ The Legislature should publish a form petition in chapter 539, F.S., which could be used by victims in order to initiate a court action to recover their property from a pawnbroker.

Discussion: The secondhand dealers statute, chapter 538, F.S., contains a form petition which a victim may use to initiate a court action to recover stolen property from a secondhand dealer. See s. 538.08, F.S. However, chapter 539, F.S., which regulates pawnbrokers does not contain an analogous form. Victims are thus unaware of what form to file in order to initiate the pawnbroker property recovery process. Publication of a form petition in chapter 539, F.S., will make it more convenient for victims to initiate the process on their own, if they choose not to hire a lawyer.

Recommendation # 3

- ▶ The Legislature should clarify that a criminal court judge is authorized to determine ownership of property and order any appropriate restitution in addition to the civil petition remedy already provided for in chapter 539, F.S.

Discussion: The secondhand dealers statute, chapter 538, F.S., provides that in addition to the civil petition for return of property, the state may file a motion as part of a pending criminal case related to the property to determine ownership and award appropriate restitution. See s. 538.08(4), F.S. However, chapter 539, F.S., which regulates pawnbrokers does not contain an analogous provision. Although section 539.001(16)(e)2., F.S., appears to authorize it, some criminal court judges and prosecutors have read chapter 539, F.S., to restrict the return of property remedy to civil courts through the civil petition process. As a result, some victims have to go through a separate proceeding before a different judge in order to recover property from a pawnshop even though the criminal court judge has the case before him or her. The Legislature should clarify that a criminal court judge is authorized to determine ownership and order return of property and appropriate restitution after proper notice of hearing is given to all parties, including the pawnbroker.

COMMITTEE(S) INVOLVED IN REPORT (*Contact first committee for more information.*)
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MEMBER OVERSIGHT
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