

CRIMINAL OFFENSES AND PENALTIES

CS/CS/CS/HB 29 — Unlawful Use of Utility Services

by Criminal and Civil Justice Policy Council; Energy and Utilities Policy Committee; Public Safety and Domestic Security Policy Committee; and Rep. Grimsley and others (CS/CS/CS/SB 236 by Criminal and Civil Justice Appropriations Committee; Judiciary Committee; Criminal Justice Committee; and Senators Dean, Aronberg, Baker, and Crist)

The bill amends s. 812.14, F.S., relating to trespass and larceny with relation to utility fixtures, to create a new first degree misdemeanor offense. Specifically, it is a first degree misdemeanor for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected by willfully tampering with a meter, receiving electricity without payment, or other unlawful acts in relation to utility fixtures specified in s. 812.14, F.S. Prosecution of this first degree misdemeanor does not preclude prosecution for theft of utility services (as provided in the bill) or prosecution of theft under s. 812.014, F.S. (the general theft statute).

The bill also creates a first degree misdemeanor theft offense. Specifically, it is a first degree misdemeanor to commit theft of utility services for the purpose of facilitating the manufacture of a controlled substance.

The bill specifies what evidence constitutes prima facie evidence of intent to commit these first degree misdemeanors.

If approved by the Governor, these provisions take effect October 1, 2009.

Vote: Senate 37-0; House 114-0

CS/CS/HB 57 — Law Enforcement Explorers

by Criminal and Civil Justice Policy Council; Public Safety and Domestic Security Policy Committee; and Rep. Reed and others (CS/SB 508 by Criminal Justice Committee and Senators Hill and Crist)

The bill amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of assault and battery offenses, as applicable, knowingly committed against a law enforcement officer, firefighter, or other person specified in the statute. The bill adds “law enforcement explorer” to the list of specified persons in the statute, so that assault and battery offenses committed against a law enforcement explorer engaged in the lawful performance of his or her duties are classified the same as assault and battery offenses against other persons specified in the statute. The change also means that a reclassified battery of a law enforcement explorer will be subject to an 8-year mandatory minimum term of imprisonment, if the person committing the battery possessed a firearm or destructive device during the commission of the battery.

The bill defines a “law enforcement explorer” as “any person who is a current member of a law enforcement agency’s explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents.”

If approved by the Governor, these provisions take effect October 1, 2009.

Vote: Senate 40-0; House 117-0

CS/HB 123 — Human Smuggling

by Full Appropriations Council on General Government and Health Care and Rep. Snyder and others (CS/SB 502 by Criminal and Civil Justice Appropriations Committee and Senators Dockery, Crist, and Aronberg)

The bill provides that a person who transports into this state an individual who the person knows, or should know, is illegally entering the United States from another country commits a first degree misdemeanor. A person commits a separate offense for each individual he or she transports into this state in violation of this new section.

If approved by the Governor, these provisions take effect October 1, 2009.

Vote: Senate 37-0; House 111-0

CS/CS/SB 526 — Court Costs

by Criminal and Civil Justice Appropriations Committee; Criminal Justice Committee; and Senators Lynn and Crist

The bill amends s. 938.10, F.S., increasing the court cost which must be imposed in specified cases involving minors, from \$101 to \$151.

In addition, the bill expands the list of offenses against minors to which the court cost applies to include the following:

- Section 796.035, F.S., relating to selling or buying of minors into sex trafficking or prostitution;
- Section 847.012, F.S., relating to sale of harmful materials to minors or use of minors in production of harmful materials;
- Section 847.0133, F.S., relating to the prohibition of certain acts in connection with obscenity;
- Section 847.0138, F.S., relating to transmission of material harmful to minors to a minor by electronic device or equipment; and

- Section 893.147(3), F.S., relating to use, possession, manufacture, delivery, transportation, or advertisement of drug paraphernalia.

The court cost must also be imposed for any violation of the following sections:

- Section 775.21, F.S., relating to the Florida Sexual Predators Act;
- Section 823.07, F.S., relating to abandonment of iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or airtight units;
- Section 847.0125, F.S., relating to the retail display of materials harmful to minors;
- Section 847.0134, F.S., relating to the prohibition of an adult entertainment establishment that displays, sells, or distributes materials harmful to minors within 2,500 feet of a school; and
- Section 943.0435, F.S., relating to registration of sexual offenders.

The bill provides that the additional \$50 court cost is to be disbursed to the Office of the Statewide Guardian Ad Litem.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 37-0; House 119-0

LAW ENFORCEMENT

CS/HB 177 — Firearms Transactions

by Policy Council and Rep. Adams and others (CS/SB 1340 by Criminal Justice Committee and Senator Crist)

The bill provides that secondhand dealers and pawnbrokers who elect to electronically submit firearms transaction records to law enforcement agencies must submit the name of the manufacturer and caliber information of each firearm in Florida Crime Information Center coding. They must also submit the model and serial number, although Florida Crime Information Center coding for those identifiers does not currently exist.

The bill also clarifies that the law prohibiting the keeping of records of firearms transactions, unless there is a statutory exception, applies to entities as well as individuals.

This bill substantially amends s. 790.335, F.S.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 38-0; House 118-0

CS/CS/HB 271 — Confidential Informants

by Criminal and Civil Justice Policy Council; Public Safety and Domestic Security Policy Committee; and Rep. Nehr and others (CS/CS/SB 604 by Judiciary Committee; Criminal Justice Committee; and Senators Fasano and Joyner)

The bill (Chapter 2009-33, L.O.F.) creates a new and currently unnumbered section of the Florida Statutes that addresses the use of confidential informants by state and local law enforcement agencies. Specifically, the bill:

- Provides a short title: “Rachel’s Law.”
- Defines “confidential informant” and other key terms.
- Requires a state or local law enforcement agency that uses confidential informants to:
 - Inform a person who is requested to serve as a confidential informant that the agency cannot promise inducements and that the value and any effect that assistance may have on pending criminal matters can be determined only by the appropriate legal authority;
 - Provide this person with an opportunity to consult with legal counsel upon request before the person agrees to perform any informant activities, but the opportunity to consult with counsel does not create a right to publicly funded legal counsel;
 - Ensure that all personnel who are involved in the use or recruitment of confidential informants are trained in the agency’s policies and procedures; and
 - Adopt policies and procedures that assign the highest priority in operational decisions and actions to the preservation of the safety of confidential informants and others.
- Requires the agency to establish policies and procedures that address the recruitment, control, and use of confidential informants, including:
 - Information that the agency shall maintain concerning each confidential informant;
 - General guidelines for handling confidential informants;
 - A process to advise a confidential informant of conditions, restrictions, and procedures associated with the agency’s investigative or intelligence-gathering activities;
 - Designated supervisory or command-level review and oversight in the use of a confidential informant;
 - Limits or restrictions on off-duty association or social relationships by agency personnel involved in investigative or intelligence gathering with confidential informants;
 - Guidelines to deactivate confidential informants; and
 - The level of supervisory approval required before a juvenile is used as a confidential informant.
- Requires the agency to establish policies and procedures to assess the suitability of using a person as a confidential informant by considering, at a minimum, factors specified in the bill, such as the age and maturity of the person.

- Requires the agency to establish written security procedures that, at a minimum, address secured retention, restricted access, and lawful destruction of records relating to confidential informants.
- Requires that the agency perform a periodic review of actual agency confidential informant practices to ensure conformity with the agency's policies and procedures and the requirements of the bill.
- Provides that the provisions of the bill and policies and procedures adopted pursuant to those provisions do not grant any right or entitlement to a confidential informant or a person requested to be a confidential informant, and any failure to abide by those provisions may not be relied upon to create any additional procedural or substantive right enforceable at law by a defendant in a criminal proceeding.

These provisions were approved by the Governor and take effect July 1, 2009.

Vote: Senate 40-0; House 117-0

PUBLIC SAFETY

CS/HB 115 — Sexual Offenders and Predators

by Public Safety and Domestic Security Policy Committee and Rep. Kiar and others
(CS/CS/SB 340 by Judiciary Committee; Criminal Justice Committee; and Senators Ring and Crist)

The bill encourages all public libraries to adopt an Internet safety education program, including the implementation of a computer-based education program, which has been endorsed by a government-sanctioned law enforcement agency or other reputable public safety advocacy organization and is designed for children and adults. The purpose of the Internet safety education program is to promote the use of prudent online deportment and broaden awareness of online predators. The program must be interactive and age-appropriate.

While the bill only encourages public libraries to adopt the program, the bill requires annual reporting by public libraries to the Division of Library and Information Services (division) on the number of program participants who complete the program. The annual report must also include information on program participants completing the program as a result of strategic partnerships or collaboration between the library and other entities. The bill also requires the division to adopt rules by April 1, 2010, that reward those libraries in the program grant application process which have had 1 percent or more of their annual number of program participants, based on the total number of registered borrowers from the preceding year, complete the program. The division must adopt rules to allocate 10 percent of the total points available in the library services and technology grant application evaluation process to public libraries that are in compliance with the 1-percent target, beginning with the grant application cycle for FY 2011-2012.

The bill also requires sexual predators and sexual offenders required by law to register or re-register specified information to also provide their home telephone number and any cellular

telephone number they may have as part of the registration or re-registration process. Violation of this requirement is punishable as a third degree felony under existing penalty provisions relating to failure to provide required information.

The bill also adds s. 847.0135(4), F.S., relating to traveling to meet a minor for the purpose of engaging in unlawful sexual activity, to the list of offenses that may require a person, if convicted of the offense, to register as a sexual predator or sexual offender.

The bill also modifies a state criminal jurisdiction provision in s. 847.0135, F.S., the Computer Pornography and Child Exploitation Act, and provisions of s. 847.0138, F.S., relating to transmission of harmful material to a minor by electronic device or equipment. These amendments, when read together with ch. 910, F.S., relating to jurisdiction and venue, allow for prosecutions of unlawful transmissions that originate from outside of Florida to minors residing in Florida and unlawful transmission that originate within Florida to minors residing outside of Florida.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 40-0; House 117-0

HB 1003 — Sale and Delivery of Firearms

by Rep. Drake and others (SB 658 by Senator Baker)

The Firearm Purchase Program (FPP) performs criminal record checks on potential firearm purchasers who are making the purchase from licensed firearm dealers in Florida. The background check is required by both federal and Florida law and the purchaser currently pays \$5 for the service. The Florida Department of Law Enforcement administers the FPP. The FPP provides federally licensed Florida firearm dealers a state-based option to the federal National Instant Criminal Background Check System (NICS). The program has been reviewed four times for continuation since its creation in 1989.

This bill essentially eliminates the periodic sunset review of the Firearm Purchase Program by deleting the October 1, 2009, repeal date and making the next review contingent upon any consumer fee increase for the service over the current statutory limit of \$8.

This bill substantially amends s. 790.065, F.S.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 39-0; House 115-0

CS/CS/SB 2276 — DNA Database

by Judiciary Committee; Governmental Oversight and Accountability Committee; and Senators Oelrich and Lynn

This bill requires that persons who are arrested for or charged with any felony offense submit a DNA sample at the time they are booked into a jail, correctional facility, or juvenile facility. This requirement will occur, as funding is provided, over the next 10 years. The first phase will begin on January 1, 2011, and will require the DNA sample from persons arrested for felony crimes set forth in chs. 782 (murder), 784 (assault and battery), 794 (sexual battery), and 800 (lewd or lascivious acts), F.S.

The bill is also a reorganization of s. 943.325, F.S., commonly known as the DNA Database statute. This has required a substantial rewording of the section; however, current law is mostly clarified or simplified.

The notable changes and additions to the section include:

- New requirement that both adult and juvenile sex offenders and sexual predators provide DNA samples, if they have not already done so upon conviction in Florida;
- Definitions of certain terms as used in the statutory reorganization are created;
- A reporting requirement that the Florida Department of Law Enforcement (FDLE) must fulfill in even-numbered years;
- New FDLE administrative duties;
- A delineation of the types of samples that may be kept in the database;
- More specificity with regard to who may take a DNA sample;
- Requirements for obtaining DNA samples from juveniles, who otherwise qualify, transferred to Florida through the Interstate Compact on Juveniles, and adults, who otherwise qualify, transferred through the Interstate Corrections Compact;
- Requirements regarding the information collecting agencies must submit to FDLE with a sample;
- Restrictions on the use of DNA samples; and
- Legislative findings.

The section reorganization also includes the creation of two new crimes related to the misuse of DNA records or samples, and refusal to provide a DNA sample.

The bill adds language in paragraphs (12)(d) and (e) of s. 943.325, F.S., that is not contained in current law which provides that:

- The detention, arrest, or conviction of a person based upon a database match or database information will not be invalidated if it is later determined that the sample was obtained or placed in the database by mistake.

- All DNA samples submitted to the FDLE for any reason shall be retained in the statewide database and may be used for all lawful purposes as provided in the section.

In subsection (16), the bill provides that unless FDLE determines that a person is otherwise required by law to submit a DNA sample for inclusion in the statewide database, FDLE must, upon proper verification of the information submitted by a person requesting removal of the DNA information, promptly remove DNA analysis and any biological samples from the statewide DNA database.

This bill substantially amends s. 943.325, F.S., and amends ss. 760.40 and 948.014, F.S., for the purpose of conforming those sections to the provisions of the bill.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 39-0; House 116-1

VICTIM PROTECTION

CS/CS/SB 168 — Florida Statewide Task Force on Human Trafficking

by Higher Education Committee; Criminal Justice Committee; and Senators Joyner, Rich, Wilson, and Crist

The bill creates a new and currently unnumbered section of the Florida Statutes that creates the Florida Statewide Task Force on Human Trafficking within the Department of Children and Family Services. The task force is abolished on July 1, 2011. The purpose of the task force is to examine the problem of human trafficking and recommend strategies and actions for reducing or eliminating the unlawful trafficking of men, women, and children into Florida.

The task force consists of the following governmental members, or a designee:

- The executive director of the Department of Law Enforcement, who serves as co-chair;
- The Secretary of Children and Family Services, who serves as co-chair;
- The Chief Financial Officer;
- The Commissioner of Agriculture;
- The Attorney General;
- The State Surgeon General;
- The statewide prosecutor;
- The executive director of the Florida Commission on Human Relations;
- The Secretary of Business and Professional Regulation;
- A sheriff; and
- A police chief.

The task force consists of the following nongovernmental members or a designee:

- The executive director of the Florida State University Center for the Advancement of Human Rights;
- The executive director of the Florida Immigrant Advocacy Center;
- The secretary of the Coalition of Immokolee Workers;
- The executive director of the Florida Coalition Against Human Trafficking;
- The executive director of the Florida Freedom Partnership;
- The executive director of Gulf Coast Legal Services;
- The executive director of the Florida Council Against Sexual Violence; and
- The executive director of the Florida Coalition Against Domestic Violence.

The Governor is required to appoint a sheriff and a police chief to the task force by July 1, 2009, and may appoint ex officio members at any time. Members of the task force serve without compensation or reimbursement for per diem or travel expenses.

The bill requires the task force to receive the Statewide Strategic Plan currently being formulated by the Florida State University Center for the Advancement of Human Rights. This plan must be presented at the first meeting of the task force no later than November 1, 2009. The work of the task force is to receive, revise, and propose a plan of implementation of the strategic plan no later than October 1, 2010.

The bill requires the Florida State University Center for the Advancement of Human Rights to carry out numerous activities, including, but not limited to, collecting and organizing data concerning the nature and extent of trafficking of persons in Florida and measuring and evaluating the progress in Florida in preventing trafficking, protecting and providing assistance to victims of trafficking, and prosecuting persons engaged in trafficking activities.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 40-0; House 118-0

CS/SB 1312 — Sexual Battery

by Criminal Justice Committee and Senators Fasano and Joyner

The bill creates a new section, s. 794.052, F.S., that will be similar to the current statute requiring domestic violence victims to be advised about services available to them through the domestic violence centers. The bill requires the investigating law enforcement officer to immediately notify sexual battery victims of their legal rights and remedies; assist them in obtaining any necessary medical treatment resulting from the alleged incident, a forensic examination, and crisis-intervention services from a certified rape crisis center; and advise sexual battery victims that they can contact a certified rape crisis center about services.

Additionally, the Florida Council Against Sexual Violence, in conjunction with the FDLE, must develop a standardized notice of available rights and remedies that will be distributed statewide to all law enforcement agencies to be used for sexual battery victims. The notice must include

the resource listing and telephone number for the local certified rape crisis centers as designated by the Florida Council Against Sexual Violence.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 38-0; House 114-0