



The Rap Sheet

Legal News for Law Enforcement in Brevard and Seminole Counties

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July 1, 2010
Volume XXIX, Issue 1

Message from State Attorney Norm Wolfinger



The 2010 legislation issue of the Rap Sheet is here. As in past releases of this edition, it would be advisable to view the actual bill(s) of interest after reading the summary presented. Although this year's legislators concentrated more than ever on state budget concerns, the bills that did pass will impact us all. Our thanks to each of you for your dedication and sacrifices made to protect the safety of the public you serve.

The "LobbyTools" website was used at length to review the new laws reported on here. We also thank the Florida Prosecuting Attorney's Association and the primary facilitator of their Legislative update, Monica M. Hofheinz, for the use of their review. We organized the laws using the subject headings used by the FPAA. You will need Adobe Acrobat reader to read the bills. It may be downloaded from:

<http://www.adobe.com/products/acrobat/readstep2.html>

To access the full body of the law you can use the hyperlink next to the title of the bills. If that does not work, go to the Florida Legislature's site and pull up the laws by their bill number. See www.leq.state.fl.us

Take Care & Be Safe,
Norm Wolfinger

2010 LEGISLATIVE SUMMARY

GENERAL CRIMES & RELATED MATTERS

SB 0704 Relating to Capital Felonies

This amended F.S. 921.141 to provide a new part (5)(g) which establishes a new aggravating circumstance if “the capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner. **Effect October 1, 2010.**

SB 808 Relating to Murder/Unlawful Distribution of Methadone

This law amends F.S. 782.04(1)(a)(3) to include methadone among the listed drugs. That provision of the murder statute makes it a first degree felony murder if a death by overdose results from the distribution by a person eighteen or over of any of the listed drugs. **Effective October 1, 2010.**

HB 1493 Relating to Career Offenders

This law amends F.S. 775.261 to prohibit and make it a misdemeanor of the first degree for any person to assist a career offender in eluding a law enforcement agency that is seeking to find the career offender to question them about, or to arrest them for, his or her noncompliance. It specifically prohibits withholding information or failing to notify law enforcement of non-compliance, harboring the career offender, concealing the offender or lying to law enforcement. **Effective July 1, 2010.**

HB 11 Relating to Crimes Against Homeless Persons

This bill amended F.S. 775.085(1), to add prejudice based on the victim’s homeless status to the list of types of prejudice which, if evidenced, would result in reclassifying offenses,. Any crime committed evidencing prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age is reclassified by making a first degree misdemeanor a third degree felony, a third degree felony a second degree felony and a first degree felony punishable by life. It also provides a definition for “homeless status.” **Effective October 1, 2010.**

HB 1455 Relating to Misrepresentation of Military Status

This bill amends s. 496.415, F.S to prohibit a person from falsely representing himself or herself as member of or representing U.S. Armed Forces or National Guard for purpose of solicitation of charitable contributions or participation in charitable or sponsor sales promotion. The bill also creates F.S. 817.312, prohibiting a person from wearing the

uniform of or any medal or insignia authorized for use by members or veterans of U.S. Armed Forces or National Guard with intent to misrepresent himself or herself as member or veteran of U.S. Armed Forces or National Guard while soliciting for charitable contributions and makes such violation is a third degree felony . **Effective October 1, 2010.**

HB 317 Relating to Threats

This law amends F.S. 836.10 to include electronic communication as a manner of violating this law against sending written threats to kill. **Effective October 1, 2010.**

HB 729 Relating to Practice of Tattooing

This creates F.S. 381.00771 and prohibits the practice of tattooing except by person licensed or registered by DOH; provides for licensure of tattoo artists & temporary registration of guest tattoo artists licensed in jurisdictions outside of state; requires tattoo artists to complete DOH-approved education course & pass examination; exempts certain personnel who perform tattooing for medical or dental purposes from regulation under specified provisions; requires licensure of permanent tattoo establishments & temporary establishments; provides practice requirements for tattoo artists, guest tattoo artists, tattoo establishments, & temporary establishments; requires DOH to inspect establishments at specified intervals; provides for fees for initial licensure or registration & renewal or reactivation thereof; authorizes adjustment of fees according to inflation or deflation; specifies acts that constitute grounds for which DOH may take disciplinary action; provides penalties for certain violations involving practice of tattooing; prohibits tattooing of minor child except under certain circumstances; provides that specified provisions do not preempt certain local laws & ordinances. **Effective January 1, 2012.**

SB 0318 Relating to Wildlife Regulation

This law amends F.S. 379.231 which regulates ownership, sale or release of nonnative animals. In addition to changing verbiage, it designates seven specific snake species and “any other reptile designated as a conditional or prohibited species by the commission” and prohibits sale, possession, breeding etc. of any new such animals unless the reptile was licensed prior to July 1, 2010. If previously licensed the reptile may only be possessed and cannot be sold, bred etc., although it can be transferred to another licensed owner. It also provides for a minimum \$100 fine for level two violations and creates a civil penalty providing for fines of not more than \$5,000.00. **Effective July 1, 2010.**

HB 0765 Relating to Animal Protection

This law creates restrictions on marketing horse meat, requiring that horse meat being transported, distributed, sold, purchased or possessed for the purpose of human consumption shall be clearly stamped, marked and described as horsemeat and providing that it is a felony of the third degree to violate this provision. It further provides for the suspension of the license of any business in violation of the requirements of this statute. It further amends F.S. 828.125 to provide that any person who willfully and unlawfully, by any means whatsoever, kills, maims, mutilates, or causes great bodily harm or permanent

breeding disability to any horse or cattle or any recognized registered hybrid of the specified genera, shall be guilty of a felony of the second 260 degree, punishable as provided by s. 775.082, s. 775.083, or s. 261 775.084, except that any person who commits a violation of this subsection shall be sentenced to a minimum mandatory fine of \$3,500 and a minimum mandatory period of incarceration of 1 year. **Effective July 1, 2010.**

HB 0615 Relating to Substantial Assistance

This law creates F.S. 921.186 to provide that the state attorney may request the sentencing court to reduce or suspend the sentence of any person who is convicted of violating any felony offense and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in criminal activity that would constitute a felony. The arresting agency shall be notified of any hearing on said motion and shall be heard in aggravation or mitigation as to such motion. The judge may reduce or suspend such sentence if it is determined substantial assistance was provided. **Effective July 1, 2010.**

HB 1291 Relating to Domestic Violence Fatality Review Teams

This law amends s. 741.316, F.S.; to delete requirement that Governor's Task Force on Domestic Violence provide information & technical assistance to local domestic violence fatality review teams; provides that information & records acquired by team are not subject to discovery or introduction into evidence in criminal or administrative proceedings in certain circumstances; provides that person who has attended meeting of team may not testify in criminal or administrative proceedings as to certain records or information produced or presented to team. **Effective July 1, 2010.**

SB 0200 Relating to Parole Interview Dates for Certain Inmates

This law amends FS 947.16(4)(g) by requiring that those persons who have been released due to a presumptive parole release and who have had that release vacated, and were convicted of murder or attempted murder, sexual battery or attempted sexual battery or sentenced to a 25 year mandatory minimum shall now be reviewed for parole within seven (7) years rather than the five (5) years previously specified. **Effective July 1, 2010.**

HB 1301 Relating to Violations of County Ordinances

This law amends F.S. 125.69(1) by providing that counties can specify penalties for violations of certain county ordinances relating to standards of conduct and disclosure requirements, effectively making them first degree misdemeanors. **Effective July 1, 2010.**

DRUGS, ALCOHOL & PARAPHANELIA

SB 2272 Relating to Controlled Substances

This law amends substantial sections of Chapter 456, F.S.; to limit the amount of prescription drugs people can buy from a pain management clinic if they don't have insurance. It provides that the department is entitled to access to medical records at a pain

clinic without a patient release when investigating inappropriate prescribing of pain medication by a pain clinic if there is probable cause to believe a violation of Ch 456 is occurring. It prohibits a dispensing practitioner from giving a patient more than a 72 hour supply of controlled substances if they pay from their own pocket. Amends s. 458.327, F.S.; to provide that the commission of certain specified acts involving a nonregistered pain-management clinic constitutes a felony of the third degree or a misdemeanor of the first degree. This legislation also requires all privately owned pain-management clinics, or offices that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications or by employing a physician who is primarily engaged in the same, to register with the DOH and provides that they are businesses. **Effective October 1, 2010.**

SB 1050 Relating to Ephedrine or Related Compounds/Sale

This law amends F.S. 893.1495 to prohibit obtaining or delivering to an individual in a retail sale any nonprescription compound, mixture, or preparation containing ephedrine or related compounds in excess of specified amounts on any one day, in any one purchase or over the course of a single month. Requires a purchaser of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine or related compounds to be 18, produce acceptable photo identification and sign for the medication. It also requires FDLE to create and maintain a computerized database to track purchases of ephedrine statewide. **Effective July 1, 2010.**

HB 33 Relating to Selling, Giving, or Serving Alcoholic Beverages to Persons Under 21 Years of Age

This law amends FS 562.11 relating to sale of alcohol to minors by increasing the penalty imposed for second or subsequent offense of selling, giving, or serving alcoholic beverages to a person under 21 years of age. If the second or subsequent offense occurs within one year of the first such offense, it reclassifies it to a first degree misdemeanor. It also specifies that it is a complete defense to such charge if the underage person sold to “falsely evidenced” they were 21, such person appeared to be over 21, and presented an identification card or passport and the person reasonably relied on such information in believing they were 21. **Effective July 1, 2010.**

SB 366 Relating to Retail Sales of Smoking Pipes and Devices

This law prohibits retail sales of certain described smoking pipes and smoking devices except by businesses holding a retail tobacco products dealer permit under F.S. 569.003 and provides a criminal penalty for unlawful sales of such items. **Effective July 1, 2010.**

SEX OFFENDERS

HB 119 Relating to Sexual Offenders and Predators

This law creates F.S. 856.022 which prohibits loitering or prowling by sexual offenders who committed their offenses against minors within specified distance of places where children were congregating; prohibits certain actions toward any child at a public park or playground by such offenders and prohibits the presence of certain offenders at child care

facility or pre- K through 12 school without notice and supervision; provides exceptions when a school is being used as a voting precinct etc. It also provides penalties for these offenses. **Effective upon becoming a law.**

HB 525 Relating to Statutes of Limitation for Sexual Battery

This law amends F.S. 775.15 by eliminating the statute of limitations for the prosecution of a criminal case for sexual battery of a child victim under 16 years of age at time of offense. It provides this amendment is applicable to any such offense which would not have been time barred on or before July 1, 2010. **Effective Date: July 1, 2010**

HB 7035 Relating to Criminal Justice

This law amends F.S. 384.34 by deleting the punishment of criminal quarantine. It amends F.S. 893.13 relating to sentencing by deleting the option of probation. It removes penalty provisions relating to criminal transmission of HIV; revises provisions relating to obsolete community residential drug punishment centers; repeals provisions relating to initiation of restoration of civil rights; removes definition of term "criminal quarantine community control"; repeals provisions relating to community service alternative to fines; repeals provisions relating to authorization for Correctional Privatization Commission to contract for youthful offender correctional facilities; repeals provisions relating to sheriff's training & respect programs. **Effective July 1, 2010.**

TRAFFIC

SB 0768 Relating to Luis Rivera Ortega Street Racing Act

This law amends F.S. 316.191 by revising penalties for exceeding speed and participating in certain competitions and exhibitions. Provides that a third violation of subsection (2), of the statute, which prohibits participation in any race, speed competition or contest, drag race etc., is a misdemeanor of the first degree with a minimum fine of \$2,000.00 and a driver license suspension for four (4) years. **Effective October 1, 2010.**

HB 795 Relating to Penalties for Traffic Law Violations

This law provides for person charged with noncriminal traffic infraction to make periodic payments to pay civil penalties & fees; provides for certain persons cited for specified offenses to provide proof of compliance to designated official; provides alternative citation disposition procedures for certain offenses; and provides for removal of habitual traffic offender designation upon proof of compliance by certain offenders. **Effective October 1, 2010.**

HB 971 Relating to Highway Safety & Motor Vehicles - 2010

This law contains substantial amendments to the Highway Safety & Motor Vehicle laws including F.S. Chapters 316, 318, 320 and 322. In addition to defining a "tri-vehicle" and setting requirements for said vehicles, it amends s. 322.271, F.S. to allow a person whose driving privilege has been permanently revoked because of four or more DUI convictions, to petition the department for reinstatement of their driving privileges upon the expiration of 10 years after the date of the last conviction or the expiration of 10 years

after the termination of any incarceration for DUI, whichever is later. **Effective October 1, 2011**, the expiration of 10 years is reduced to 5 years. It also allows municipalities to adopt an ordinance relating to golf cart operation. Other sections of the bill are effective **September 1, 2010**.

HB 0631 Relating to Motor Vehicles

This law contains legislation relating to DHSMV and re-defines recreational off-road vehicles; prohibits parking motor vehicles on certain property for purpose of displaying motor vehicle as being for sale, hire, or rental; provides local government may enact ordinances providing for the towing of vehicles in violation; removes the requirement that each law enforcement agency provide its own notice for such enforcement, etc. It includes an amendment to F.S. 318.14, restricting the right to attend driver improvement courses for infractions to no more than 5 within a lifetime. **Effective July 1, 2010**.

SB 962 Relating to Driver License Records

This law revises the authorized uses of license identification information maintained by the HSMV and released to the DCFS. Authorizes use for certain adult protective services investigations and provides conditions for such information to be used for verification of identity in determination of eligibility for public assistance and for certain fraud investigations. **Effective 07/01/2010**.

JUVENILES

SB 1058 Relating to Cooperation Between Schools & Juvenile Authorities

This law amends F.S. 985.04 to require that the school principal must include bus drivers as recipients of school's notification of the filing of felony charges on a juvenile. It amends further to require the Superintendent to notify direct supervision staff of the disposition of the juvenile's case. Note, that the statute does not specifically require State Attorneys to provide such disposition to the school. It also amends F.S. 1002.221 to allow release by school of education records of students to DJJ, law enforcement etc. without written consent of student or parents. **Effective 07/01/2010**.

STATE ATTORNEY'S, MEDICAID FRAUD & FDLE

SB 502 Relating to Special Investigators

This law amends F.S. 27.251 to allow State Attorneys to hire as special investigators municipal officers or county police officers or deputies provided such special investigator serves on a special task force. It provides such special investigators may be paid by the municipality or county. **Effective July 1, 2010**.

HB 951 Relating to Public Safety

This law amends F.S. 790.065 which deals with record checks for the sale of firearms. It is deletes the provision that someone who has been adjudicated mentally defective may

automatically get the department's records deleted upon request after five years passes from the restoration of the person to capacity by a court. It now provides that the person must petition the court that found them incompetent or insane or mentally defective to obtain deletion of the records and must copy the State Attorney's office with such request and that the State Attorney may participate in the hearing on said petition. It also provides the standard to be applied by the court. It also amends F.S. 943.05 to provide the department shall, to the extent funding is available, maintain and run criminal history checks using fingerprint and enter submitted fingerprints into the state database.

It establishes the department's authority to charge for doing background checks and further provides for coordinating our state level efforts with federal authorities. It amends F.S. 943.12 which pertains to the commission's responsibility for adopting rules for the certification, maintenance and discipline of LEO's and the amendment includes a requirement to adopt rules requiring demonstration of proficiency with firearms by LEO's. It further now permits a formerly certified Florida LEO to be exempted from taking basic recruit training if there has been no more than an eight (8) year break in employment from their last law enforcement position. **Effective July 1, 2010.**

SB 1484 Relating to Medicaid

Creates a Medicaid and Public Assistance Fraud Strike Force within the Division of Financial Services to oversee and coordinate state and local efforts to eliminate Medicaid and public assistance fraud and to recover state and federal funds. The Strike Force serves in an advisory capacity to the CFO. The Strike Force consists of 11 members who may not designate anyone to serve in their place; CFO (Chair), AG (Vice chair), ED of FDLE, Sec. of Health Care Adm., Sec. of Children and Family, State Surgeon General and five members appointed by CFO – two Sheriffs, two Police Chiefs, and one State Attorney. This legislation establishes substantial duties and responsibilities for this Strike Force including providing grants, contingent upon appropriation, for multiagency or state and local Medicaid and public assistance fraud efforts, which include, among many other listed items: providing for a Medicaid and public assistance fraud prosecutor in the Office of the Statewide Prosecutor, providing assistance to state attorneys for support services or equipment, or for the hiring of assistant state attorneys, as needed, to prosecute Medicaid and public assistance fraud cases and so much more. Transfers the responsibility of investigating public assistance fraud from FDLE to DFS. **Effective January 1, 2011.**

PUBLIC RECORDS

SB 0312 Relating to Pub. Rec./Public Defenders/Regional Counsel

This law amends the public records law, F.S. 119.071, by creating a public records exception for specified personnel information of current and former public defenders, criminal conflict counsel and civil regional counsel. **Effective July 1, 2010.**

HB 0551 Relating to Pub. Rec. & Meetings/County/Complaints on Conduct/Disclosure

This law amends F.S. 112.324 to revise exemptions from public record & public meeting requirements for complaints and related records in custody of and proceedings conducted by county or municipality with established local investigatory process to enforce more stringent standards of conduct and disclosure requirements; provides for future legislative review and repeal of exemptions under the Open Government Sunset Review Act; provides statement of public necessity. **Effective July 1, 2010.**

MISCELLANEOUS

HB 7131 Relating to Criminal Justice

This law amends F.S. 775.087, 775.25, 784.07, 831.16, etc. and clarifies references to repealed sections; removes outdated references; clarifies classification of certain violations; corrects grammatical errors; reenacts provisions; removes obsolete language; replaces outdated terminology; removes outdated statutory citation relating to definition of term "public utility" for certain purposes & defines term "public utility"; clarifies legislative intent; replaces obsolete references to state agencies. **Effective July 1, 2010.**

HB 0001 Relating to Statutes of Limitations

This bill, designated as the "Jeffrey Klee Memorial Act," amends F.S. 95.11, to eliminate the statute of limitations for wrongful death actions for intentional torts resulting in death from acts described in specified provisions relating to murder & manslaughter; provides for application. **Effective May 11, 2010.**

HB 91 Relating to Adult Protective Services

This law amends F.S. 415.101 to revise legislative intent with respect to adult protective services is to focus on vulnerable and elderly adults; amends F.S. 15.102 to define "activities of daily living;" provides that if the person suspected of abusing a vulnerable or elderly adult is not a relative, caregiver, or household member, the report shall be immediately transferred to the appropriate county sheriff's office; provides for DCFS to file petition to determine incapacity under F.S. 744.3201 and authorizes DHSMV to provide copies of drivers' license files to DCFS to conduct protective investigations. **Effective July 1, 2010.**

HB 303 Relating to Regulation of Real Estate Appraisers and Appraisal Management Companies

This law revises membership of Florida Real Estate Appraisal Board; requires appraisal management companies to register with DBPR; specifies application requirements & procedures; requires application, registration, & renewal fees for appraisal management companies; requires fingerprinting and criminal history records checks of, & provides qualifications for, certain persons who control appraisal management companies; requires nonresident appraisal management companies to consent to commencement of actions in

this state; provides for discipline of appraisal management companies by Florida Real Estate Appraisal Board; provides penalties indicating that any violation of the requirements shall be a misdemeanor of the second degree except where different punishment is specified in the section; revises requirements for retention of appraisal records; requires appraisal management companies to follow such requirements; requires DBPR & board to adopt certain rules. **Effective July 1, 2011.**

SB 370 Relating to Community Corrections Assistance

This law adds rehabilitative community reentry programs to the list of programs, services, and facilities that may be funded using community corrections funds. **Effective July 1, 2010.**

SB 0622 Relating to Gaming

This law recognizes that two prior proposed compacts between the State and the Seminole Tribe were voided, but that the Compact signed on April 7, 2010 is ratified and approved by the legislature; directs that the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation is designated as the state compliance agency having the authority to carry out the state's oversight responsibilities under the compact; and, directs the Governor to cooperate with the Tribe in seeking approval of the compact from the United States Secretary of the Interior, etc. **Effective April 28, 2010.**

HB 787 Relating to Child Abduction Prevention

This law amends F.S. 61.45 relating to court ordered parenting plans, by providing that if a motion is made by an individual or entity having that right under law, or upon evidence of a credible risk of the removal of a child, the court may, in addition to the previously authorized restrictions, issue an appropriate order requiring the child's name be placed in the Children's Passport Issuance Alert Program, may require surrender of the child's passport, require no application for a passport be made, require a bond sufficient to deter abduction and to cover the reasonable expenses of recovering the child if the child is abducted; providing the court may require by order that the party traveling outside of the designated geographic area provide contact information, and a travel itinerary; specifies a long list of behavior that may be prohibited such as contacting the child in non-designated locations and many other requirements that may be ordered to protect the child from abduction. **Effective Date: January 1, 2011.**

HB 1005 Relating to Corrections – 2010

This law amends F.S. 384.34 regarding penalties for violating F.S. 383.24 pertaining to offenses concerning sexually transmissible diseases and eliminates the penalty of criminal quarantine community control for violations. It amends F.S. 800.09 to prohibit a person in a correctional facility from committing a lewd or lascivious exhibition in presence of an employee and defines prohibited acts. It allows electronic submission of information regarding release of certain classes of inmates to Sheriffs of Chiefs of Police. It provides that DOC can electronically send Parole Commission monthly list of inmates

released and offenders terminated from supervision who may be eligible for restoration of rights. It prohibits employees of private correctional facilities from committing certain criminal acts. It authorizes DOC to electronically submit certain information to law enforcement regarding where released inmate plans to reside. It deletes the prohibition against placement of youthful offenders at certain institutions for mental health treatment. **Effective July 1, 2010.**

HB1193 Relating to Retirement

This law amends s. 121.021, F.S.; revising the definition of 'special risk member' to include certain members suffering a qualifying injury and are no longer capable of being employed in a Special Risk Class eligible position. Provides certain eligibility requirements and medical certifications. **Effective June 1, 2010.**