

The Rap Sheet

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April-May 2018

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

IN THIS ISSUE:

PAGE

Agenda items	1-4
Case Law.....	5-7
PPCC Subcommittees.....	8

Summary of the April 18th , 2018 PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, Miami PD, Miami Beach PD, Homestead PD, Sunny Isles Beach PD, Miami Springs PD, Pinecrest PD and Medley PD.

Agenda Items

New Laws

Chapter 2018-3 -- MARJORY STONEMAN DOUGLAS HIGH SCHOOL PUBLIC SAFETY ACT

Effective Date March 9th, 2018

This bill contains several amendments to numerous sections and a number of new sections.

It amends **Section 394.64** (The Baker Act) to allow law enforcement to use reasonable force as necessary to gain entry and take custody of someone against whom a Risk Protection Order has been issued and gives them the authority to temporarily hold firearms or ammunition indicated in the order, and go back for additional guns at a later time if certain enumerated criteria are met.

It amends **Section 790.064** to prohibit a mentally defective from purchasing, owning and possessing firearms.

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IMPORTANT!

Next PPCC MEETING, June 20th, 2018

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It amends **Section 790.065** as follows: the new **Subsection 13** provides that a person younger than 21 years old may not purchase a firearm, with certain exceptions. A licensed importer, licensed dealer or licensed manufacturer who sells or transfer or facilitates a sale or transfer of a firearm to a person younger than 21 years old commits a 3rd degree felony. The old Subsection 13 has become Subsection 14.

It amends **790.0655** to increase the mandatory waiting period for gun purchase from 3 days, to 3 days *or whenever record check is completed, whichever is longer with certain exceptions*. It added rifles and shotguns as firearms for which a waiting period is mandatory. A person who violates this section commits a 3rd degree felony.

It creates **Section 790.401** - The Risk Protection Order Act – As stated by the legislature, the intent of this Act is to temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement officers to petition a court for a Risk Protection Order to keep a respondent from possessing or purchasing a firearm when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.

It amends **Section 836.10** by adding to the title “conduct a mass shooting or an act of terrorism” which now reads: Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism and by prohibiting a person from making, posting, or transmitting a threat in a writing or other record, including an electronic record, to conduct a mass shooting or an act of terrorism, in any manner that would allow another person to view the threat. A violation of this section remains a 2nd degree felony

Effective Date October 1st, 2018

It creates **Section 790.222** - Bump-Fire Stocks Prohibited - which prohibits a person from importing into this state, or transferring, selling, keeping for sale, offering for sale, possessing or giving to another person a bump-fire stock. A person who violates this section commits a 3rd degree felony.

Affidavit Pre-files – Some police departments submit sworn affidavit packets in cases involving victimless crimes, i.e., possession of drugs or firearms. This is done in order to keep officers on the street as much as possible but this purpose is defeated when we have to schedule officers to appear for a PFC because they failed to provide essential information, i.e., reason for the stop or search, the location of contraband, etc.

The notarized affidavits must be submitted to us prior to the first PFC date, generally, 4-5 days after the arrest. Cases have been dropped when the affidavit packet and/or requests for additional information were not provided by the 30th day.

Also, any case that involves a civilian witness cannot be submitted by affidavit.

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Time Limitation – Exceptions – Section 775.15(16)(a)

Florida Statutes 775.15 (16)(a)(b) allows the prosecution of a defendant accused of any of the enumerated offenses listed below, when identified through the use of DNA if the crime was prosecutable on or after July 1st, 2006 and there is enough DNA evidence available for testing by the accused. (16)(a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused:

1. Aggravated battery or any felony battery offense under chapter 784.
2. Kidnapping under s. 787.01 or false imprisonment under s. 787.02.
3. An offense of sexual battery under chapter 794.
4. A lewd or lascivious offense under s. 800.04, s. 825.1025, or s. 847.0135(5).
5. A burglary offense under s. 810.02.
6. A robbery offense under s. 812.13, s. 812.131, or s. 812.135.
7. Carjacking under s. 812.133.
8. Aggravated child abuse under s. 827.03.

(b) This subsection applies to any offense that is not otherwise barred from prosecution on or after July 1, 2006.

Felony Murder Charge - Felony murder requires an underlying offense. Recently, a defendant was arrested and erroneously charged with attempted felony murder when the correct charge was attempted second degree murder. This is important because attempted felony murder is a non-bondable offense whereas attempted second degree murder is bondable.

E-Notify Notices - E-Notify notices have numbers that indicates the purpose of each notice that the SAO generates and sends to police officers; therefore, it is essential that officers read the notice to insure they know what is required of them. Each notice for a PFC indicates that the officer is to bring all case reports, documents and any other related information. **In addition, these notices are effective tools for supervisory audits!**

30: 1st notice; officer called to schedule PFC as required

36: 1st notice; officer failed to provide witness information OR failed to call Case Screening to schedule a pre-filing conference (PFC)

38: Affidavit PFC but officer is required to appear to provide additional information

40: Video PFC- 2nd notice - Officer failed to schedule a PFC and subsequently failed to appear when scheduled.

42: Affidavit PFC -Officer failed to call to schedule an affidavit PFC so that the affidavit packet can be reviewed.

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47: 1st notice – Additional officer scheduled for PFC.

48: Affidavit PFC -1st notice – the officer called to schedule a PFC to have affidavit paperwork review. Officer is advised to submit signed and notarized Affidavit Packet by a specific date.

49: 1st notice, Video PFC

132: Narcotics not send to lab; request to submit drugs to lab

285 Officer appeared BUT failed to provide required paperwork. Officer is requested to forward paperwork

Electronic Submission of Documents via the A-Form Management System by SAO Information System Director Hamilton Davies

The State Attorney's Office would greatly appreciate the assistance of all police agencies in requiring their officers to send their reports and other documents, etc. to the SAO via the A-Form Management System (AFM). Doing this is cost effective for both police agencies and the SAO and would result in a more effective and efficient process.

SAO will receive the documents electronically from the AFM the same day

- The Assistant State Attorney is determined by the system and notified automatically
- No more lost/misdirected documents as they are stored in the AFM and the SAO Vcase virtual case file
- All documents are tracked in the AFM as proof that they were sent
- No need for an officer to bring paper copies of documents to the SAO

Attaching documents is simple: In the AFM, Search for the A-Form, click Attached Documents (below the A-Form) choose NEW ATTACHMENT and upload the document.

Testimony Establishing a “High Crime Area”

D.R. v. State, 941 So.2d 536 (2006)

Testimony by a police officer that an area is a “high crime area” must be established by competent evidence that is current, and within the personal or collective knowledge of the officer. Details such as the number and type of arrests, the dates and locations and the proximity to the incident, areSo critical in the testimony. Out-of-date conclusions, unreinforced by specific contemporary information, is legally insufficient to satisfy the requirements of the Fourth Amendment.

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Case Law Submitted by ASA Roberto Fiallo
The State of the Law on Violations Regarding Obscured
License Tags, Covered by Frames/Rims.

In *St. Jean*, the state sought review of the trial court's order suppressing evidence seized incident to a traffic stop. The word "Florida" on the tag was covered/obscured. Subsequently, narcotics were found and *St. Jean* was arrested. The appeals court upheld the trial court's ruling because there was no reasonable suspicion that a traffic violation had occurred.

The court construed the plain language of the 1995 statute, which in relevant part provides that every vehicle on state roadways "...shall at all times display the license plate assigned to it by the state, with all letters, numerals, printing, writing, and other identification marks upon the plates clear and distinct and free from defacement, mutilation, grease, and other obscuring matter, so that they will be plainly visible and legible at all times 100 feet from the rear or front." F.S. §316.605(1), Florida Statutes (1995); *State v. St. Jean*, 697 So.2d 956 (Fla. 5th DCA 1997).

The court held that in "...using the term, 'identification mark' as applied to state license plates in section 316.605(1), the legislature did not intend to include the name of the state and county at the top and bottom of the plate that identify the name of the state or county. Although the language of section 316.605, the overall statutory scheme suggests that the 'identification marks' that must be visible and legible are those that 'identify' the 'registration'." *Id.*

This was the state of the law until 2005 when the legislature specifically added the word "Florida" to what identification marks had to clear and distinct from obscuring matter (the license plate frame).

In *Pena*, the state sought review of the trial court's order suppressing the traffic stop, because the words "Florida" and "Sunshine State" on the tag were covered/obscured. *Pena* had been arrested for driving with a suspended license and narcotics were found inside the vehicle, subsequent to the stop. The trial court relied on the holding in *St. Jean* to grant the suppression motion. The appeals court reversed the trial court's ruling because the 2005 statutory change which included the word "Florida", provided the officer with probable cause to stop the vehicle. F.S. §316.605(1), Florida Statutes (2005); *State v. Pena*, --- So.3d --- (Fla. 3d DCA 2018), 2018 WL 2123004.

In 2016 the legislature again specifically removed the word "Florida" to what identification marks had to clear and distinct from obscuring matter (the license plate frame). This change is noted by the court in the *Pena* decision. *State v. Pena*, --- So.3d --- (Fla. 3d DCA 2018), 2018 WL 2123004. The bottom line for law enforcement officers is that the 2016 change to the language of the statute places the issue of probable cause to stop a vehicle, back to the position the court in *St. Jean* held. The ruling in *Pena* was based on the state of the law at the time that the vehicle was stopped.

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Stand Your Ground/Burden of Proof

In Love v. State, --- So.3d ---, (Fla. 3d DCA 2018), 2018 WL, the subject filed a motion asserting immunity from prosecution under Florida's Stand Your Ground law (F.S. §776.032 [Florida Statutes 2017]), because the crime was committed while defending another. The statute was subsequently amended by the legislature, shifting the burden of proof from the subject to the state, after a preliminary showing by the subject that they were entitled to the immunity from prosecution. The amendment became effective June 9, 2017.

The case reached the Third District Court of Appeals, on the constitutionality of the statute and whether the shifting of the burden was to apply retroactively. The court held that the statute was constitutional and that the shift in the burden did not apply retroactively. The subject had the burden to establish that they were entitled to immunity. The court also certified conflict with the Martin v. State, 2018 WL 2074171, 2D16-4468 (Fla. 2d DCA May 4, 2018), where the Second District held that the statute as amended applied retroactively.

Constructive Possession of a Firearm

In D.V. v. State, --- So.3d ---, (Fla. 3d DCA 2018), 2018 WL 2031072, LEOs approached a vehicle that was parked outside of a residence, occupied by three subjects. One subject (D.V.) was sitting in the rear seat on the passenger's side, and a firearm was observed on the rear seat, on the driver's side. There were two additional occupants in the front seats of the vehicle. One LEO testified that the firearm was "...like two or three feet" away from the subject in the rear seat, and a second LEO testified that it was approximately six to twelve inches from the subject's leg. The trial judge determined that the firearm "...was found either within a foot or two of [D.V.] near his thigh in the back seat." The firearm was operable and loaded.

The subject (D.V.) was arrested and the other two occupants were not. No evidence was presented that D.V. was the owner of the vehicle, nor was the firearm tested for fingerprints. The subject was cooperative and provided a DNA sample, but made no statements. No DNA evidence was presented before the court. After the State rested its case the subject moved for judgment of dismissal, arguing that the State failed to establish that the subject had dominion or control over the firearm. The trial court denied the motion, and the appeal followed.

The appellate court reversed the trial court's decision, holding that the State had failed to prove that the subject had dominion and control over the firearm.

The appellate court analysis discussed that where contraband found in jointly occupied vehicles, "...knowledge of the presence of the contraband and the accused's ability to maintain control over it will not be inferred and must be established by proof. The State is required to prove control with independent proof." (Citations omitted).

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Factually, the court found that there was no evidence that the subject moved in any way or reached for anything. No DNA evidence was presented at trial, even though the subject provided a sample, there was no fingerprint evidence on the firearm, and there was no evidence as to the ownership of the vehicle.

Police officers are reminded that constructive possession cases require more than mere proximity to the contraband, and that possession can be established through physical evidence and through circumstantial evidence.

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