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NEW LAWS – SEXUAL CRIMES

By Jay Howell

The recently concluded 2011 session of the Florida legislature included a new law that will have some significant impact in the way sexual crimes are charged and prosecuted by Florida authorities. This new law was effective July 1, 2011, and we are already witnessing its impact on the criminal justice system.

Traditionally, the courts have limited the prosecution's ability to bring evidence before the jury that reveals similar crimes that may have been committed by the accused. The new law simply states that if the defendant is charged with a sexual crime, evidence of his commission of other crimes involving sexual offenses is admissible and may be considered by the jury for its bearing on any matter to which it is relevant. This broad statement represents a departure from the traditional Florida court opinions limiting the state's ability to demonstrate to the jury that this isn't the only crime which the accused has committed.

The new law also allows witnesses under 16 years of age or persons with mental retardation to testify with the assistance of registered "service or therapy animals." Interestingly, the service or therapy animal must be evaluated and registered according

to “national standards.” The same section of the new law allows the judge to set “any other conditions” that he or she finds just and appropriate for the taking of testimony by a child. This will allow our courts to make special provisions to assist children under 16 in providing testimony in court.

The bill requires facilities which provide emergency room services, also known as sexual assault examinations, to perform these examinations in situations where a victim may **not** have reported the sexual crime to a law enforcement agency. Traditionally, the ER facilities or rape crisis centers would provide such examinations if the victim reported the crime to law enforcement. Under the new law, if the victim reports to the ER or rape crisis center and simply requests that such evidence be gathered for a possible future report to law enforcement, the facility must perform the forensic medical examination.

The new bill also adds a provision that the law enforcement officer who investigates an alleged sexual crime shall provide or arrange transportation for the victim to the facility which conducts sexual assault examinations.

The new law establishes a new procedure in the investigation of sexual crimes by law enforcement authorities. The new bill requires that prior to the officer’s submission of a final report, he or she must permit the victim to review the final report and to provide a statement as to the accuracy of the final report. I have not heard of any law enforcement agencies in our state that have established such a procedure in the past. I am certain that this new procedure was intended to improve the accuracy of the investigative reports of sex crimes, however, it will also provide new challenges for

prosecutors when the case is brought to trial. The state will have to be careful to not create a wedge between the victim and the investigating officer in regard to the accuracy of the report. If such a conflict exists, the criminal defense attorney will surely exploit it.

The new law contains additional changes in how our state authorities deal with sexual crimes. We will consider the rest of these changes in next month's article. The new law is CS/CS/CS House Bill 251 and can be viewed on the Florida Senate and House websites.