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NEW LAWS – CONTINUED

By Jay Howell

First, an update from last month's article, which identified the new Florida Statute allowing for the use of what are called "therapy or service dogs" to assist Florida children in testifying in court.

In a recent New York case the 15-year-old victim was allowed to testify at trial with a registered service or therapy dog at her side regarding the sexual abuse of the child by her father. The judge in that case allowed the Golden Retriever to sit at the feet of the 15-year-old victim. After the conviction of the accused, the criminal defense attorney indicated that he will appeal the conviction in part because of the presence of the therapy animal. The defense will probably argue that the presence of the dog increased the sympathy of the jury for the victim herself.

The new Florida law allows the trial judge to set any conditions that the court finds to be just and appropriate while taking the testimony of a child under the age of 16 or a person with mental retardation, including the use of a service or therapy animal that has been evaluated and registered according to national standards. This provision applies in any proceeding involving a sexual offense. The judge is required by the

statute to take into consideration the age of the child, the interests of the child, the rights of the parties, and any other relevant factors that would facilitate the testimony by the child. My reading of this statute indicates that these provisions would apply to civil cases involving child sexual assault as well as criminal cases. We can expect to see challenges to the new law similar to the defense attorney's arguments in New York.

The 2011 legislature also added to the provisions of the misdemeanor criminal offense concerning the violation of a court injunction for protection. These provisions apply to a person who willfully violates an injunction for protection against repeat violence, sexual violence, or dating violence. The legislature added that the perpetrator's presence within 500 feet of the victim's residence, school, place of employment, or any place frequented by the victim, or their family, is a violation of the injunction and a misdemeanor crime. Previously the statute simply stated that going "to" the residence or school was a violation.

The legislature also made it a misdemeanor if the perpetrator intentionally comes within 100 feet of the victim's motor vehicle, whether or not that vehicle is occupied. They also added the act of defacing or destroying the victim's personal property, including the victim's motor vehicle, and the defendant's refusing to surrender firearms or ammunition if ordered to do so by the court. All of these acts in violation of an injunction remain a first degree misdemeanor, punishable by up to one year in the county jail. This new bill regarding injunctions is identified as Senate Bill 240. This new law took effect on July 1, 2011.

One of the problems that has traditionally plagued the crime victim's attempt to

seek injunctions for protection against violence is the difficulty in serving the defendant with the papers requesting that an injunction be granted. The 2011 legislature requires the Association of Court Clerks to develop an automated process through which the victim may request notification that the defendant has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence as well as other court actions related to the injunction. This will allow the victim to move forward in the injunction process by receiving an automatic notice that the paperwork has been delivered to the defendant. This new law took effect July 1, 2011, and is identified as House Bill 563.