**DOES SANTA BREAK THE LAW?**

**BY: WILLIAM G. MORRIS, ESQ.**

Most children love Santa Claus. The jolly old elf brings gifts each year at Christmas. But, the times…they are a changing. Social activists have noted Santa may not be the kind jolly elf of years past. In fact, his actions may flaunt the law.

Santa enters the country with impunity and it does not appear that he stops at the border for processing. Although that has become more common place of late, for others Santa repeatedly goes in and out of the United States without a passport or any contact with governmental authority whatsoever. That violates numerous federal laws.

Santa’s entry to the United States appears to be via a flying sleigh. Under federal law and regulations of the Federal Aviation Administration, a pilot’s license is required to pilot flying aircraft unless the craft weighs less than 254 pounds, seats only one person and does not fly faster than 63 mph. It should be obvious that Santa’s craft flies far faster than 63 mph and, including all the toys and gifts, the sleigh clearly exceeds 254 pounds. It appears Santa is not only flying without a license, but also may be endangering other aircraft by failing to undertake training required to obtain a license and be certified as a pilot.

It is reported that Santa watches us while we are awake and when we sleep to see who is naughty and who is nice. Florida has laws prohibiting voyeurism and Constitutional protections for privacy. Santa’s monitoring activity may not rise to the level of criminal violations, but could give rise to civil liability. The problem for a plaintiff suing Santa would be arranging service of process. Although it is rumored that Santa’s headquarters is at the North Pole, the exact location is not known and might be impossible to find.

Santa enters homes while the occupants are sleeping and sometimes while they are away. At Common Law, that would be a crime known as breaking and entering. Breaking did not require actual breaking, but only entering a building with a body part. Coming down a chimney would certainly qualify.

In Florida, the crime of breaking and entering no longer exists. It has been replaced by statutes criminalizing burglary. Burglary requires entering a dwelling with intent to commit an offense unless the dwelling is open to the public or the defendant is licensed or invited to enter.

If Santa was charged with burglary, he would likely defend on the ground that he was invited or licensed to enter. But, even if invited or licensed, if Santa remains in a dwelling surreptitiously with the intent to commit an offense, after permission to remain has been withdrawn with the intent to commit an offense or attempt to commit a forcible felony, Santa is guilty of burglary.

Does taking cookies and milk constitute an offense under the burglary statute? Does Santa ever take anything else? It is reported that at least one child saw his mommy kissing Santa Claus underneath the mistletoe. If the kissing was consensual, Santa might not face a problem. But, if non-consensual, Santa may be guilty of assault and battery.

Although Santa seems well-liked, he may not be welcome everywhere. As such, his visit to property may violate Florida’s trespass statutes. Even before entering a home, Santa may be in violation of Florida law criminalizing trespass on property other than a structure. When entering the dwelling, if not authorized, licensed or invited, Santa is guilty of trespass.

Those concerned with the well-being of animals might point out that hooking up 8 reindeer to a sled and having them pull the sled all over the world in a single night could be detrimental to the animals. A person who unnecessarily overloads, overdrives, or torments any animal in the State of Florida can be guilty of a misdemeanor or even a felony.

What about the kids? Leaving coal in the stockings of children Santa unilaterally determines to be naughty could be intentional infliction of mental harm. Intentional infliction of mental harm on a child is committing an intentional act that could reasonably be expected to result in mental injury. Such action is both criminal civil child abuse under Florida law.

Florida law does not simply make child abuse criminal, but also allows for recovery of civil damages in a lawsuit when someone intentionally inflicts emotional distress. If the infliction is intentional, the injured person need only show the conduct was intentional, Santa should have known it would cause emotional distress, the conduct was outrageous and emotional distress severe. Is leaving coal when someone expected a nice gift intentional and outrageous, and expected to cause severe emotional distress? A jury may think so.

In simpler times and especially before the internet, Santa’s comings and goings may have never been questioned. Will that continue? To date, no prosecutions have been reported and no civil suits. For Santa’s sake, most hope that history continues.

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