



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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LEGISLATIVE UPDATE

The following Legal Update summarizes Legislation adopted during the 2011 regular Legislative Session, which are of significant interest to Law Enforcement and with an effective date of **October 1, 2011**. The State's intention to preempt all local regulations and ordinances deserves special attention because of the penalties and consequences of non-compliance.

Blue Emergency Alerts

F.S. 784.071 has been established to address the potential of an assault or battery upon a law enforcement officer in the line of duty and the officer is subsequently determined to be missing. At the request of an authorized person employed at a law enforcement agency, the Florida Department of Law Enforcement is authorized to activate the emergency alert system and issue a "Blue Alert" if the following conditions are met:

- a law enforcement officer has been killed, or
- has suffered serious bodily injury, or
- has been assaulted with a deadly weapon, and
- is missing while in the line of duty

and the suspect has fled the scene of the offense and the agency investigating the offense has determined that the suspect poses an imminent threat to the public or other officers. The "Blue Alert" will include a detailed description of the suspect's vehicle, or other means of escape, or license plate if available for broadcasting and dissemination to avert further harm to assist in the subject's apprehension. The "Blue Alert" must be immediately disseminated to the public through the emergency alert system by broadcasting the alert on television, radio, and the message signs that are located on the State's highways.

Preemption of all Local Firearm Regulations

F.S. 790.33 is amended to specifically express the State's intention to preempt the "whole field of regulation of firearms and ammunition" to include the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage and transportation of a firearm. The preemption means that all existing and future county, city, or municipal ordinances as well as any administrative regulations or rules adopted by local or state government related somehow to firearm regulations are declared null and void. The amendment makes "Any person, county, agency, municipality, district, or other entity" that violates the Legislature's preemption of the firearms and ammunition regulatory field liable under the statute.

Knowing and willful violations may result in a civil fine of up to \$5,000 against public officials, and public funds may not be used to defend or reimburse any person found to have knowingly and willfully violated the law. If the violation is committed by someone

acting in an official capacity or otherwise under color of law, it is grounds for termination of employment or contract or removal from office by the Governor.

****All local ordinances, all policies, and regulations that have an impact on the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage and transportation of firearms and ammunition will no longer be valid and enforcement actions based on them will likely be considered a “knowing and willful violation” resulting in a civil fine, a lawsuit, and constituting grounds for termination or removal from office by the Governor.***

Sexting

A minor commits the offense of sexting if he or she knowingly uses a computer, or other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video which depicts nudity, as defined in F.S. 847.001(9), and is “harmful to minors”, as defined in F.S. 847.001(6). It is also a violation for a minor to possess a photograph or video of any person that was transmitted or distributed by another minor, which depicts nudity, and is harmful to minors.

The 1st violation of the law is a noncriminal offense, punishable by 8 hours of community service or a \$60 fine in lieu of such service. It is a 1st first-degree misdemeanor to violate the law after having committed a noncriminal sexting violation. It becomes a 3rd degree felony to violate the law after being found to have committed a 1st degree misdemeanor sexting offense.

Credit Card Theft

F.S. 817.60(8) has been established, creating a 3rd degree felony for a person to knowingly possess, receive or retain a credit card or debit card that has been taken from the possession or control of another without the cardholder’s consent and with the intent to impede the recovery of the credit card or debit card by the cardholder. It is not a violation for a retailer, in the ordinary course of business, to possess, receive, or return a credit card or debit card that the retailer does not know was stolen or to possess or retain a credit card or debit card that the retailer believes is stolen for the purpose of a subsequent theft investigation.

Animal Abuse

F.S. 828.126 is created making it a 1st degree misdemeanor for a person to knowingly engage in any sexual conduct or sexual contact with an animal or to knowingly cause or abet another to engage in any sexual conduct or sexual contact with an animal or to knowingly permit any sexual conduct or sexual contact with an animal conducted on any premises under his or her control.

“Ashley Nicole Valdes Act”

F.S. 316.027(1)(b) is created by providing that a person who is arrested for failure to stop a vehicle at the scene of a crash involving the death of any person, and who has previously been convicted of leaving the scene of a crash, racing on the highways, driving under the

influence, or felony driving while license suspended, revoked or cancelled, must remain in custody until a first appearance for a bail determination.

“Officer Andrew Widman Act”

F.S. 948.06 has been amended concerning violation of probation or community control by adding language that if a Judge finds reasonable grounds that a probationer or offender has violated his or her probation or community control by committing a new substantive violation of law, the Judge may issue an arrest warrant for the subject.

Public Records Exemptions

F.S. 119.071(5)(g) has been reenacted to provide for the exemption of biometric identification information, including any record of friction ridge detail, fingerprints, palm prints and footprints from public records disclosure.

F.S. 787.03(6)(c) has been reenacted to provide for the public records exemption of information submitted to a Sheriff or State Attorney for the purpose of obtaining immunity from prosecution for the specified offense of interference with custody,

F.S. 790.0601 has been reenacted to provide for the public records exemption of personal identifying information relating to all persons who have applied for or received a concealed weapons or firearms license.