



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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2012 LEGISLATIVE UPDATE

The following Legal Update synthesizes Legislation adopted during the 2012 regular Legislative Session of general interest to Law Enforcement and with an effective date of July 1, 2012, or earlier. New Legislation with effective dates of October 1, 2012, or later, will be referenced in future Legal Updates.

Motor Vehicles Accident Reports and PIP Insurance

This new provision modifies Florida law relating to motor vehicle personal injury protection (PIP) insurance. It amends F.S. 316.066(1)(a), regarding the long form of the Florida Traffic Crash Report, requiring that such long form report be filed with the Department of Highway Safety and Motor Vehicles that involves; a crash which resulted in the death of, personal injury to, or any indication of complaints of pain or discomfort by any of the parties or passengers involved in the crash; or a crash which rendered a vehicle inoperable to a degree that required a wrecker to remove it from the crash scene; or involved a commercial motor vehicle. The changes also modify what information is required to be included on the Long Form report. This amendment also revises F.S. 626.989 by expanding the powers of the Division of Insurance Fraud of the Department of Financial Services to investigate persons making false claims for payment under the "Florida Motor Vehicle No-Fault Law".

Disabled Parking

F.S. 318.18(6) is revised regarding fines for illegally parking in spaces reserved for persons with disabilities, by adding language that requires the fine to be waived if a person provides to the law enforcement officer, parking enforcement specialist, or agency that issued the citation for violating the law, valid proof that the person committing the violation has a right to park in the reserved space. F.S. 320.0848 will now allow a parking enforcement specialist to confiscate an expired, stolen, lost, defaced disabled parking permit and confiscate such permit from any person who fraudulently obtained or used such a permit. This revision mandates that anyone convicted of unlawful use of a permit or enters a no contest plea to the charge, must wait 4 years before eligible to apply for a new disabled permit.

Concealed Firearms Licenses for Service Members

F.S. 790.062 now authorizes the Department of Agriculture and Consumer Services to issue a license to carry a concealed weapon or firearm under F.S. 790.06 if the applicant is otherwise qualified and is a service member as defined in F.S. 250.01 or is a veteran of the United States Armed Forces who was discharged under honorable conditions.

Restraining Pregnant Prisoners

This new law provides that any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner possible. The purpose of this general requirement is to mitigate the possibility of adverse medical consequences. There are reporting duties for any local agency where restraints are used on pregnant prisoners.

Failure to Return Personal Property and Report Stolen Property

F.S. 812.155 has been revised concerning the hiring, leasing, or obtaining personal property with the intent to defraud, or the failure to return such property. Changes to F.S. 812.155(4) establish prima facie evidence of the failure to redeliver the property or equipment within 5 days after receiving a demand for return from a courier service with tracking capability or by certified mail, return receipt requested from the provider of the equipment or property. The failure to pay any amount due that is incurred as a result of the failure to redeliver property after the rental period expires and the demand for return is made, is prima facie evidence of abandonment or refusal to return the property. Possession of the property by a third party does not alleviate the lessee of the obligation to return the property on time. A lessor of a vehicle that is not returned in time, and who has satisfied the requirement of the law regarding demand for return of the vehicle, is entitled to report the vehicle as stolen to a law enforcement agency and have the vehicle listed as stolen in the State and Federal registry.

Licensing of Physical Therapists; Availability of AEDs

Newley created sections in F.S. 486 adds language to F.S. 486.151 that makes it a first-degree misdemeanor for a person to practice physical therapy without an active license or temporary permit; to use a suspended, revoked, or void active license or temporary permit to practice physical therapy; or to obtain or attempt to obtain an active license or temporary permit by fraudulent representation.

F.S. 365.171(12)(b) has been revised to give 911 public safety telecommunicators the discretion to contact any private person or entity, that owns an automatic external defibrillator (AED) and, if a confirmed coronary emergency call is taking place at the location of the emergency is within a reasonable distance from the AED, and may provide the location of the emergency to the person or entity with the AED in an attempt to result in faster response times for persons having confirmed coronary emergencies.

Secondhand Dealers and Recyclers

This new law applies to transactions by secondhand dealers and secondary metals recyclers. F.S. 538.03(2)(k) has been revised removing flea markets from the list of businesses or transaction locations that are not subject to the secondhand dealer law. Flea markets must now follow the requirement of F.S.S. 538.03 through 538.17. F.S. 538.19 is also revised to require secondary metals recyclers to maintain both a paper and electronic copy of each purchase transaction. F.S. 538.235 is amended by modifying how a secondary metals recycler may pay for purchases made, depending on the type of property. Purchases may be made only between 7:00 a.m. and 7:00 p.m. and cannot be made from a person who is not using his or her own name or the registered name of the person's business, or from someone who is visibly under the influence of drugs or alcohol, or is under 18 years of age. F.S. 538.28 now preempts the regulation of purchase transactions involving regulated metals to the State. However, it does not preempt an ordinance or regulation originally enacted by a county or municipality before March 1, 2012. The penalty for violation of any of the laws enumerated in this section have been increased from a first degree misdemeanor to a third degree felony. The penalty for a secondary metals recycler who commits a third or subsequent violation of F.S. 538.23(1)(a), have been increased from a third-degree felony to a second-degree felony.

Advertising of Legal Notices

F.S. 50.0211 is created that requires a legal notice to be placed at no extra charge on a newspaper's website the same day that it is physically published in the newspaper.

Use of a Firearm during Commission of a Felony

F.S. 775.087(2)(a)1.r. is amended relating to minimum sentencing for felons who possess or use a firearm during the commission of, or attempt to commit, a felony. If an offender who is convicted of the offense of possession of a firearm by a felon has a previous conviction of committing or attempting to commit a felony listed in the section of law concerning Habitual Violent Felony Offenders and actually possessed a firearm or destructive device during the commission of the prior felony, the offender shall be sentenced to a minimum 10 year term of imprisonment.

Public Records, Exemptions

F.S. 119.071(4)(d)1.k. is a new section of the Public Records Statute that exempts from public records, release of the home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation.

Fraud During the Adoption Process

This new law addresses several issues relating to adoptions. Included among them are criminal acts by unlicensed adoption entities or assisting unlicensed persons or entities in publishing or broadcasting any advertisements about such unlicensed persons or entities. Adds the offense of adoption deception in F.S. 63.212 that applies to any person who is a birth mother, or a woman who holds herself out to be a birth mother, who is interested in making an adoption plan and who knowingly or intentionally benefits from the payment of adoption-related expenses if she knows or should have known that she was not pregnant at the time the sums were requested or received. Willful violation of this new law is a second-degree misdemeanor and it is a third-degree felony if the sums received exceed \$300.

New Synthetic Drugs

This new provision impacts controlled substances and synthetic cannabinoid-mimicking compounds such as "Spice" and "K2," as well as synthetic stimulants marketed as "bath salts," and adds 92 of these types of substances to the controlled substances schedule in F.S. 893.03(1)(c). Also included are new penalties that may be imposed for violation of the laws concerning the newly-added controlled substances.

*This provision only affects acts related to consumption of these products, not selling, dealing, displaying or distributing.

"Drug-Free Workplace Act" as it relates to State Employees

This extensive provision revises a number of provisions in the "Drug-Free Workplace Act", as it specifically applies to state employees and state agencies.

*The constitutionality of this law has been challenged through a court injunctive process.

911 Public Safety Telecommunicators

The requirement for all certification is waived for a person employed as a state-certified law enforcement officer provided the officer is selected by his/her chief executive to perform as a 911 Public Safety Telecommunicator, that the officer performs as a 911 Public Safety Telecommunicator on an occasional or limited basis, and the officer successfully completes a Department of Health-approved examination.

State Agencies, Background Screenings

This new provision addresses a number of areas of law concerning state employees, including provisions in F.S. 110.1127 relating to background screening and investigations, making it a first-degree misdemeanor to willfully, knowingly, or intentionally use information contained in records for purposes other than background screening or investigation for employment, or releasing such information to other persons for purposes other than pre-employment screening or investigation.

Human Trafficking Offenses

This new provision concerns several issues relating to human trafficking including adding language to F.S. 16.56 to permit the Office of Statewide Prosecution to investigate any violation of F.S. 797 including human trafficking, kidnapping and false imprisonment. F.S. 480.0535 is created mandating what documents a person working in a massage establishment must exhibit or display and giving the Department of Health and law enforcement agencies the right to randomly request and review such records. Provisions in the human trafficking law have significantly expanded increasing the penalties for such acts. Some of the newly-created offenses have penalties of up to first-degree and life felonies, including enhanced penalties for those who traffic minors and those who are legally authorized to work in the United States. F.S. 787.06(7) now allows any real or personal property that was used, attempted to be used, or intended to be used in violation of any provision of F.S. 787.06, human trafficking, to be seized and forfeited subject to the provisions of the Florida Contraband Forfeiture Act in F.S. Chapter 932.

Fraud Involved in On-Line Courses and Exams

This new provision in F.S. 1002.321(5) creates a second-degree misdemeanor for any person to knowingly and willfully take an online course or examination on behalf of another person for compensation.