



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 October 1, 2012.**

Intentionally Providing False Information

F.S. 837.055, establishes the new offense of *False Information to Law Enforcement during an Investigation*, creating a third-degree felony to knowingly and willfully provide false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation and the child who is the subject of the investigation subsequently suffers great bodily harm or death.

The "911 Good Samaritan Act"

Newly created F.S. 893.21, otherwise known as the "911 Good Samaritan Act" provides that a person acting in good faith who seeks medical assistance for a person experiencing a drug-related overdose and needs medical assistance, may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence relating to such possession was obtained as a result of the overdose and need for medical assistance. This new provision also provides that a person who experiences a drug-related overdose and needs medical assistance, may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence relating to such possession was obtained as a result of the overdose and need for medical assistance.

"Protect Our Children Act of 2012"

The "Protect Our Children Act of 2012" revises sections of law concerning minors who are victims of various sexual-related and video voyeurism crimes. F.S. 827.071(5)(a), is amended regarding sexual performance by a child, so that if a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, the offender can be charged with a separate violation for knowingly possessing, controlling, or intentionally viewing an image of each child involved in the sexual conduct. The penalty for these offenses in F.S. 815.145(8)(b) have been increased from a third-degree felony to a second-degree felony for each of the video voyeurism offenses. F.S. 775.21, F.S. 943.0435 and F.S. 944.606(1)(b), is amended concerning sexual predators, by adding F.S. 815.145(8)(b) to the list of violations for which such persons are required to be categorized and subject to registration with the Florida Department of Law Enforcement (FDLE).

Expanding the Public Records Exemption Definition of "Telephone Numbers"

F.S. 119 has expanded definition of "telephone numbers" in F.S. 119.071(4)(d)1 that now includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communication devices and the new definition will apply to all the public records exemptions referencing "telephone numbers". The amendment also adds exemptions for "dates of birth" to persons included in the exemptions in F.S. 119.071(4). Categories of persons covered include all law enforcement personnel.

"Deputy John C. Mecklenburg Act"

F.S. 782.04(1)(a)(2), (3), and (4) is amended to provide when a death occurs as a result of aggravated fleeing or eluding with serious bodily injury or death, a person could be charged with either first or second-degree murder. F.S. 782.065 is revised to require a life sentence for persons convicted of specified murder offenses if the victim is a specified correctional officer or correctional probation officer. ***Effective Date: October 1, 2012.***

Stalking, Cyberstalking, Protection Orders and Injunctions

Creates F.S. 784.0485 is created establishing detailed procedures and provisions related to obtaining an injunction for protection against stalking or cyberstalking, including duties of the courts, clerks of court, and law enforcement agencies. These procedures are similar to the laws enacted to address injunctions and orders for protection against acts of domestic, repeat, sexual, or dating violence. This new provision includes the right of law enforcement officers to arrest a violator per F.S. 901.15(6) to enforce the terms of an injunction. If an injunction is issued and the petitioner (victim) requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner to assist in the execution of the service of the injunction. Within 24 hours of the service of the injunction, the law enforcement officer who served such must forward written proof of the service of process to the sheriff having jurisdiction over the residence of the petitioner. F.S. 784.0487 is also created establishing detailed procedures and provisions concerning what constitutes a violation of an injunction for protection against stalking or cyberstalking and what can be done for violation of such an injunction, including the duties of the court and the State Attorney's office. F.S. 741.315 has been revised in recognition of foreign protection orders, by adding a violation of a protection order from another state related to stalking or cyberstalking if such state has similar laws to the newly-created ones referenced above, to the list of laws which must be accorded full faith and credit by law enforcement agencies in Florida. F.S. 784.048 is further revised creating a new subsection (9) which allows a sentencing court to consider issuing an order restraining the defendant from any contact with the victim for up to 10 years. F.S. 790.233 is also amended to prohibit a person from having in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect restraining that person from committing an act of stalking or cyberstalking, subject to a 1st degree misdemeanor.

Domestic Violence Related Public Records Exemptions

F.S. 741.30 is amended relating to domestic violence, and F.S. 784.046, relating to repeat violence, sexual violence, or dating violence, to allow a petitioner who requests notification of service of an injunction for protection against any of these types of violence, to also ask that certain information be held exempt from public records requirements for 5 years after receipt of the request. The exemption applies to information that reveals the home or employment telephone number or address, cellular telephone number, electronic mail address, or other electronic means of identification of the petitioner for the injunction. Changes to these laws require the Clerk of Court to inform the petitioner of his or her right to make a public record exemption request at the same time that the petitioner is making the request to be notified that the injunction was served. Information held by the clerks and law enforcement agencies, in conjunction with the automated injunction notification process which reveals the above-described personal identification information, is exempt from public records requirements upon written request of the petitioner. Access to the exempt information continues to be available to any law enforcement agency that is authorized by law to have access to such documents in the furtherance of the agencies' statutory duties.

Enhanced Penalties for Secondary Metals Recyclers

F.S. 538.23(1)(a) has been revised relating to violations and penalties for secondary metals recyclers, by increasing the penalty for violation of any of the laws enumerated 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), is increased from a third-degree felony to a second-degree felony.

Reporting of Child Abuse and Neglect

F.S. 39.201(1) is revised concerning mandatory reporting of child abuse, abandonment, or neglect to the Florida Abuse Hotline of the Department of Children and Families (DCF), by requiring the reporting of known or reasonably suspected abuse of a child by any adult to the "Hotline." This provision also adds a requirement to report when a child is a victim of childhood sexual abuse or is the victim of a known or suspected juvenile sexual offender. Currently, reporting is only mandated when a parent, legal custodian, caregiver, or other person responsible for a child's welfare is the alleged perpetrator of abuse, abandonment, or neglect of the child. When the "Hotline" receives reports, including via "web-based chat", under the newly-added situations, it must forward the call to the appropriate Sheriff's Office for further investigation. F.S. 39.205(1) is amended by increasing the penalty for willingly failing to report known or suspected abuse, or willingly preventing another person from reporting suspected abuse, from a first-degree misdemeanor to a third-degree felony. Under new F.S. 39.205(3), any Florida College System institution, state university, or nonpublic college, university or school whose administrators knowingly and willfully, after receiving information from faculty, staff, or institution employees, fail to report suspected child abuse, abandonment, or neglect committed on the property of said institution, or committed during an institution-sponsored event, or who willfully or knowingly fail to prevent such abuse, is subject to a 1 million dollar fine for failure to

report or take action. If an education institution's law enforcement agency fails to report or take action, the institution will also be subject to a 1 million dollar fine.

Crime Lab Funding

Amends newly renumbered F.S. 938.055 by stating that a court may assess a defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of F.S. Chapters 775 through 896, a fine of \$100 that is to be used by the Florida Department of Law Enforcement for the statewide crime lab system. This provision requires that the court assess the \$100 fine if the services of local county-operated crime lab were used in connection with the investigation or prosecution of a violation of any provision in F.S. Chapters 775 through 896.