



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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2013 LEGISLATIVE UPDATE

The following Legislative Update synthesizes Legislation adopted during the 2013 regular Legislative Session of general interest to Law Enforcement **with an effective date of October 1, 2013**. New Legislation with effective dates of January 1, 2014, will be referenced in future Legislative updates.

Texting While Driving Law

F.S. 316.305 has been amended, making texting while driving a secondary non-criminal traffic offense. This new law provides for exceptions for emergency service personnel and law enforcement personnel. It also exempts wireless interpersonal communication that does not require manual entry of multiple letters, numbers, and symbols or that does not require reading text messages. The new law also restricts the admissibility of a person's billing records to determine when a violation occurred to only those incidents involving a traffic crash death or serious injury.

3B Filing False Documents and Liens

This new law significantly enhances options available to address and remove from public records false documents and liens against real or personal property. Often practiced by "sovereign citizens" and others to harass public officials and employees, this law is not limited to these types of individuals.

F.S. 817.535 has been created making it a third-degree felony to "file" or direct another to file, with intent to defraud or harass another, any "instrument" containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property. The crime is enhanced one degree upward if the victim is a public officer or employee as defined in the law. The penalty is enhanced if the violator committed the offense while incarcerated, or under any post-release supervision. The court's written finding shall be forwarded to the jail or correctional facility for consideration whether disciplinary action or forfeiture of gain-time or early release credits shall occur. Upon conviction for a violation of law, a court shall issue an order declaring the instrument that is the basis for the conviction null and void. A court may order the instrument sealed and removed.

The law authorizes government agencies to provide legal representation to public officers or employees if the defendant's actions relate to the officer or employee's public or official capacity.

4B Distribution of Materials Harmful to Minors

This new law amends F.S. 847.012 to prohibit the distribution of harmful materials as defined in F.S. 847.012(3) to minors on school property. The new law also provides for the definition of school property. A violation of this new provision is a third-degree felony.

5B Theft of Utility Services

This new law amends F.S. 812.14 to provide that theft of utility services used to manufacture controlled substances is a theft offense. The new law increases the amount of a civil penalty for theft of utility services from the current penalty of three times the value of the services unlawfully obtained or \$1,000, whichever is higher, to three times the amount stolen or \$3,000, whichever is higher.

6B *Gang Prevention Crimes*

This new law provides a number of provisions related to criminal gangs including increasing the penalty for trespassing in school safety zones from a second-degree misdemeanor to a first-degree misdemeanor when the subject of the trespass has previously been convicted of an offense related to criminal gangs in F.S. Chapter 874. A second-degree felony has been established for any person who intentionally causes, encourages, solicits or recruits another person under the age of 13 to become a criminal gang member when a condition of membership or continued membership is the commission of a crime. This provision also authorizes county and municipal jails to designate an individual for the assessment of criminal gang members or associates amongst inmates, with the authority to transfer information on inmates believed to be criminal gang members to local law enforcement agencies.

7B *False Reports to Law Enforcement Officers*

This new law amends F.S. 837.05 by adding a third-degree felony offense for knowingly giving false information to a law enforcement officer. The statute previously provided that the offense was a first-degree misdemeanor. The statute is further amended to provide for the third-degree felony when the person has been previously convicted of the same crime, where the information the person gave to the law enforcement officer was communicated orally, and the officer's account of that information is corroborated by an audio recording, video recording, a written or recorded statement by the person who gave that information, or by another person who was present when that person gave the information to the officer and heard that information.

8B *Theft of Personal Identification Information*

F.S. 817.5685 is created which defines "personal identification information." The new law provides that it is unlawful for a person to knowingly and intentionally possess the "personal identification information" of another without authorization. Simple possession of the "personal identification information" of four or fewer people is a misdemeanor of the first degree. If a person is found in knowing and intentional possession of the personal identification information of five or more people, that violation is a felony of the third degree. The new law does provide for some common sense exceptions.

9B *Public Records Exemptions for Law Enforcement Spouses and Children*

This new provisions expands public records exemptions relating to police agency personnel information. Under the new law, the names of the spouses and children of active or former sworn or civilian law enforcement personnel, including those of correctional officers and correctional probation officers, are deemed exempt. Also exempt are the names of spouses and children of personnel of the Department of Children and Families whose duties include investigation of abuse, neglect, exploitation, fraud, theft, or other crimes. Also exempted are the names of the spouses and children of current or former State Attorneys, Assistant State Attorneys, Statewide Prosecutors, or Assistant Statewide Prosecutors.

Crimes Involving Bulk Merchandise Containers

F.S. 506.265 is created which requires a purchaser of five or more plastic bulk merchandise containers from one seller to obtain from the seller proof of ownership of the containers, to maintain a specified transaction record of the sale, verify the seller's identity by a valid driver's license or other government-issued photo identification, to maintain a copy of the seller's identification, and pay for the containers by means other than cash.

Restrictions on Massage Establishments

F.S. 480.0475 is created which prohibits massage establishments from operating between the hours of midnight and 5:00 a.m., unless the massage establishment is located on the premises of a health care clinic, hotel, motel, bed and breakfast, timeshare property, public airport, or pari-mutuel facility, as defined by Florida Statutes. The prohibition does not apply to a massage performed by a massage therapist acting under the prescription of a licensed physician. The new law also provides for an exemption for operating during a special event if approved by the county or municipality in which the establishment operates. A massage establishment is prohibited from being used as a principal domicile unless the establishment is also zoned for residential use. A massage establishment licensee or license applicant may also be disciplined or denied a license if the establishment advertises to engage or attempts to engage a patron in unlawful sexual misconduct.