



Broward County Chiefs of Police Association, Inc.

Legal Update

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MAY 2015 LEGISLATIVE AND LEGAL UPDATE

LEGISLATIVE UPDATE

SB 378 – Juvenile Justice (“Civil Citation”)

Introducer(s): Senators Rene Garcia; Audrey Gibson; Dwight Bullard: Christopher Smith & Nancy Detert

Last action: Enrolled 4/24/15

Effective date: If approved by the Governor, this Bill takes effect October 1, 2015.

The bill amends F.S. 985.12, to expand the use of juvenile civil citations by allowing law enforcement to issue a civil citation or participation in a similar diversion program to a juvenile who has committed up to three misdemeanors. (Former version of Statute permitted the issuance of a civil citation to a first misdemeanor offense.)

In addition, law enforcement will be authorized to issue a warning to the juvenile or inform the youth's parents of the offense, or require participation in a similar diversion program.

The bill also states that if an arrest is made, law enforcement must provide written documentation as to why the arrest is warranted.

SB 290 – Carrying a Concealed Firearm or Weapon

Introducer(s): Senators Jeff Brandes; Rob Bradley; Greg Evers & Joe Negron

Last action: Enrolled 4/15/15

Effective date: Bill takes effect upon becoming law

Bill amends F.S. 790.01, to provide an exemption from criminal penalties for carrying a concealed weapon or a concealed firearm when evacuating pursuant to a mandatory evacuation order during a declared state of emergency,

SB 766 – Surveillance by Drone

Introducer(s): Senator Dorothy Hukill

Last action: Enrolled 4/28/15

Effective date: If approved by the Governor, this Bill takes effect July 1, 2015.

The bill amends F.S. 934.50, prohibiting the use of a drone to record an image of privately owned real property or people on private property with the intent to conduct surveillance on the individual or property and without written consent to do so.

The bill also adds additional exceptions to the current law enforcement exceptions, to include activities by property appraisers, utilities, aerial mappers, cargo delivery systems, and any other person or entity engaged in a business licensed by the state.

The bill authorizes an aggrieved party to initiate a civil action and obtain compensatory and punitive damages and injunctive relief for a violation of the law.

SB 248 – Body Cameras/Public Record

Introducer(s): Senators Geraldine Thompson & Darren Soto

Last action: Enrolled 4/24/15

Effective date: If approved by the Governor, this Bill will take effect July 1, 2015.

Bill amends F.S. 119.071, to create a public records exemption for a body camera recording made by a law enforcement officer.

The bill makes a body camera recording confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence; or
- Within the interior of a facility that offers health care, mental health care, or social services; or
- In a place that a reasonable person would expect to be private.

However, a law enforcement agency may disclose a body camera recording in furtherance of its official duties and responsibilities, and may also disclose the recording to another governmental agency in the furtherance of its official duties and responsibilities.

A law enforcement agency must disclose a body camera recording to:

- A person recorded by a body camera (the agency must disclose those portions of the recording relevant to the person's presence in the recording);
- The personal representative of a person recorded by a body camera (the agency must disclose those portions of the recording relevant to the recorded person's presence in the recording);
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording (the agency must disclose those portions of the recording that disclose the interior of such place); and
- Pursuant to a court order.

The bill specifies grounds the court must consider in determining whether to order disclosure of the body camera recording. These grounds are in addition to any other grounds the court may choose to consider.

The Bill also requires that the law enforcement agency that made the recording be given reasonable notice of any hearing held to compel production of the recordings and an opportunity to participate in that hearing.

Also created is a minimum 90 day retention of all recordings.

The exemption applies retroactively. However, it does not supersede any other exemption existing prior to, or created after, the effective date of this exemption.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Notable Bills that died in the Senate

- SB 7080 - Body Camera Policy and Procedures
- SB 1444 - Backyard Gun Ranges
- SB 176 - Carrying a concealed firearm/weapon on a college/university campus
- SB 180 - Permitting the carrying of a concealed firearm/weapon in public schools
- SB 192 - Changing texting while driving to a primary traffic offense
- SB 528 - Medical Marijuana
- SB 1176 - Recreational Marijuana
- SB 7066 - Amending F.S. 381.986 (Low THC Cannabis)
- SB 1470 - Law Enforcement Lethal Use of Force Committee
- SB 1534 - Requiring agencies to submit 50% of forfeiture proceedings to victim trust fund

LEGAL UPDATE

Rodriguez v. U.S., ---S.Ct. ----, 2015 WL 1780927 (U.S.S.C., April 21, 2015)

A K-9 officer stopped Rodriguez for driving on a highway shoulder, a violation of Nebraska law. After the officer attended to everything relating to the stop, including checking the driver's licenses of Rodriguez and his passenger and issuing a warning for the traffic offense, he asked Rodriguez for permission to walk his dog around the vehicle. When Rodriguez refused, the officer detained him until a backup officer arrived. The K-9 officer then retrieved his dog and the K-9 alerted to the presence of drugs in the vehicle. An ensuing search revealed methamphetamine. The testimony demonstrated that 7-8 minutes had elapsed from the time the officer issued the written warning until the dog alerted.

The Court found that "the tolerable duration of police inquiries in the traffic stop context is determined by the seizure's mission to address the traffic violation that warranted the stop, and attend to related safety concerns." The Court further acknowledged that an officer may conduct certain unrelated checks during an otherwise lawful traffic stop. However, the officer may not do so in a way that prolongs the stop, absent reasonable suspicion.

Accordingly, the Court held that prolonging a traffic stop for 7-8 minutes beyond the time required to address the traffic violation for the purpose of performing a drug dog sniff, absent reasonable suspicion or consent, was an unreasonable detention under the Fourth Amendment.