



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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October, 2015 LEGISLATIVE AND LEGAL UPDATE

LEGISLATIVE UPDATE

SB 220 – Contraband Forfeiture

Introducer(s): Senator Aaron Bean

Related Bills(s): None

Last Action: Referred to Criminal Justice; Appropriations Subcommittee on Criminal and Civil Justice & Fiscal Policy Committees on 9/15/15

Effective Date: 7/1/16

Bill amends the Florida Forfeiture Contraband Act by:

- Requiring each law enforcement agency to perform a review, at least annually, to ensure that all seizures meet the requirements of the Act.
- Requiring each seizing agency to adopt and implement written policies and procedures for the prompt release of seized property when probable cause is not established.
- Requiring that all seized property must be promptly reviewed by supervisory personnel and the agency's legal counsel.
- Requiring that an annual report be prepared specifying the type of property seized, its approximate value, the court case number, the type of offense connected to the seizure, disposition of the property, and the amount of proceeds received and/or expended in seizing the property. This report shall be made available to the public, if requested.

SB 360 – Victim Assistance

Introducer(s): Senator Jeff Clemens

Related Bill(s): None

Last Action: Filed 9/25/15

Effective Date: 7/1/16

Bill amends F.S. 960.001, to require a law enforcement agency to immediately notify a victim that their property has been found in the possession of a pawnbroker. The agency must also provide the victim with the name and location of the pawnshop and instructions on filing a replevin action and the procedures set out in F.S. 539.001(15) (Return of property from a pawnbroker).

SB 274 – Sealing of Juvenile Criminal History Records

Introducer(s): Senator Christopher Smith

Related Bill(s): None

Last Action: Referred to Criminal Justice, Judiciary and Appropriations Committees,
on 9/17/2015

Effective Date: 7/1/16_

Bill creates F.S. 943.05825, which requires that a juvenile's criminal history be sealed upon completion of all sentences for the related offenses. The Bill creates an exception for any juvenile that is transferred to adult court. The Bill also permits criminal justice agencies access to the sealed record for the purpose of determining eligibility for pre-arrest, post-arrest, or teen court diversion programs, criminal investigations, or if the juvenile is a candidate for employment with a criminal justice agency.

SB 300 – Weapons and Firearms

Introducer(s): Senator Don Gaetz

Related Bill(s): HB 163

Last Action: Filed 9/16/15

Effective Date: 7/1/16_

Bill Creates F.S. 776.00111, which requires the Judiciary to strictly construe any statute that implicates the right to bear arms or self-defense. The Bill also amends F.S. 790.02 (Officer to arrest without a warrant and upon probable cause) by removing "reasonable grounds", thereby requiring an officer to have probable cause to arrest an individual for unlicensed carrying of a concealed weapon. Lastly, the Bill amends F.S. 790.053 (Open carrying of a weapon) to permit a concealed weapon license holder to openly carry a firearm or weapon.

The proposed House Bill also removes civil immunity from any government official or employee infringes on the right to bear arms unless probable cause exists to believe that a crime was committed.

Legal Update

8th Circuit Upholds Stop Based on License Plate Reader (LPR)

United States v. Williams, 796 F.3d 951 (8th Cir. Mo. 8/7/15)

A police officer was driving her patrol car when its LPR gave an alert concerning a nearby car. The LPR alert indicated that a man named Hicks was associated with the car and was wanted by a neighboring police department for domestic assault. The alert also stated that Hicks might be armed and dangerous, but it did not explain how or when Hicks was associated with the car. The officer conducted a traffic stop, identifying the driver as Hicks and the front-seat passenger as Williams. When a back-up officer directed Williams out of the car, Williams patted at his waistband twice, and appeared to be nervous. The officer frisked Williams and recovered a handgun from his waistband. The government indicted Williams for being a felon in possession of a firearm.

Williams filed a motion to suppress the firearm, arguing that the LPR alert did not provide the officer with reasonable suspicion to conduct the traffic stop. The court disagreed.

First, the court recognized there were no reported federal decisions that specifically dealt with the use of an LPR system in the *Fourth Amendment* context. The Court then reasoned that the LPR system is no more than an automated flyer or bulletin system. As such, the Court applied previous court decisions which held that a flyer or bulletin issued concerning a wanted person may provide an officer with reasonable suspicion to conduct a *Terry* stop in an attempt to obtain further information. The Court further held it was reasonable for the officer to conduct the stop even though she could not identify the driver until after she stopped the car. The court noted that common sense dictates that police officers will often be unable to confirm the race or gender of a driver before initiating a traffic stop.

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