



Broward County Chiefs of Police Association, Inc.

## ***Legal Update***

### **Legal Advisor Committee**

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### **SEPTEMBER 2016 LEGAL UPDATE**

#### **Legislative Update**

The Senate will convene on Tuesday, November 22, 2016, for the Organization Session.

#### **Case Law Update**

Dougan v. Bradshaw, 2016 WL 3745378 (Fla. 4<sup>th</sup> DCA July 13, 2016)

**Facts:** Sheriff's deputies conducted a safety check on Dougan after a family member called and expressed concern that he was suicidal. Although Dougan was not arrested or Baker Acted, deputies removed his lawfully-owned firearms from his home. Dougan made several requests for the return of his firearms, but was informed by the Sheriff's Office that they would not be returned without a court order.

Dougan filed a replevin action against the Sheriff and obtained a court order requiring the return of his firearms. Thereafter, Dougan filed a lawsuit, pursuant to Florida Statute 790.33 (Firearm Preemption), alleging that the Sheriff enforced an illegal policy of retaining lawfully-owned firearms seized in conjunction with a safety check. Dougan sought damages for the deprivation of his property rights and the cost of bringing the replevin action, as well as an injunction preventing the Sheriff from enforcing its policy. The trial court dismissed the action and Dougan appealed.

**Holding:** The Fourth District Court reversed the trial court's dismissal finding that Florida Statute 790.33 "creates a private cause of action for declaratory and injunctive relief, as well as actual damages up to \$100,000.00 for anyone who is "adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation" of section 790.33". In support of the retention of Dougan's firearms, the Sheriff argued a court order returning the firearms was required in accordance with Florida Statute 933.14. This Section provides that "no pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a trial court judge".

In rejecting the Sheriff's argument, the Court held that Florida's Baker Act suggests that an individual exercising suicidal behavior is not engaging in a breach of the peace. Therefore, absent a criminal investigation or arrest, the Sheriff did not have the authority to retain Dougan's firearms.

**Note:** Since the Sheriff has filed for rehearing, this opinion is not final and binding. However, agencies should start reviewing their policies on firearm retention regarding Baker or Marchmen Act actions as well as other types of wellness checks. Florida Statute 790.33(3)(c) authorizes the imposition of a \$5,000.00 fine against any elected or appointed local government official(s) and the administrative agency head that knowingly and willfully violates this Statute. Additionally, Subsection (3)(e) provides for the termination or removal from office of any person acting in their official capacity for an entity who is found to knowingly and willfully violate this preemption.