



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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APRIL 2017 LEGAL UPDATE

Legislative Update

SB 80 – Public Record

Introducers: Senators Steube, Garcia, & Campbell

Related Bills: SB 246 & HB 163

Last Action: On 3/30/17 In Messages (Bill passed all Senate committees and has been sent to the House)

Effective Date: 7/1/2017

Bill amends F.S. 119.12 [Attorney Fees], by requiring the following as a prerequisite to an award of attorney fees or costs: 1) a finding by a court that the agency unlawfully refused to disclose the public record, and that the complainant provided written notice identifying the public record request to the agency's custodian of public records at least five days prior to filing the civil action. However, in order to be afforded the protections of this provision, the agency must prominently post in the agency's primary administrative building, where the records are routinely created and, on its website, the contact information of the agency's custodian of public record.

The most recent version of the Bill removed the court's discretion regarding the award of fees.

SB 118 Criminal History Records

Introducer: Senator Steube

Related Bills: HB 395 & HB 857

Last Action: 4/6/17, In Messages (Bill passed all House committees and has been sent to the Senate)

Effective Date: Effective on the same effective date as SB 450, or similar legislation, is adopted in the same legislative session.

Bill creates F.S. 943.0 (Administrative sealing of criminal history records) which requires that the Criminal Justice Information Program administratively seal the criminal history pertaining to an arrest or incident of an adult or minor charged with a felony, misdemeanor, or violation of a comparable municipal or county ordinance, upon notification by the clerk of court indicating that all charges were dismissed or nolle prosequi before trial, or resulted in a judgment of acquittal or a verdict of not guilty at trial and that all appeals by the prosecution have been exhausted.

SB 128 – Self-Defense Immunity

Introducers: Senators Bradley, Simpson, Bean, Baxley, Steube, Mayfield, Brandes, Bronson, & Benacquisto

Related Bills: HB 245

Last Action: Sent to the House on 3/121/17, passed on 3rd reading in house on 4/5/17, as amended

Effective Date: Upon becoming law

The Bill amends F.S. 776.032 [Stand Your Ground], by placing the burden on the state to prove beyond a reasonable doubt, during a pretrial evidentiary hearing, that the defendant is not entitled to immunity from prosecution.

SB 144 – Use of Wireless Communications Device while Driving (Texting While Driving)

Introducers: Senators Garcia, Campbell, Perry, & Mayfield

Related Bills: SB 1742, HB 47, & HB 69

Last Action: Favorable vote in transportation. Referred to Appropriations Subcommittee on Transportation on 3/23/17

Effective Date: 10/1/2017

Bill Requires that all proceeds collected from a violation of this section be remitted to the Dept. of Revenue for deposit in the Department of Health's Emergency Medical Services Trust Fund.

SB 1742 – Texting While Driving

Introducer: Senator Rodriguez

Related Bills: SB 144, HB 47, & HB 69

Last Action: Referred to Communications, Energy, and Public Utilities; Transportation; Appropriations Subcommittee on Transportation; Tourism; and Economic Development Committees on 3/14/17

Effective Date: 7/1/2017

Bill increases penalties for violations in school zones and school crossings. The Bill also requires agencies to adopt policies to prohibit the practice of racial profiling in the enforcement of this Section.

SB 154 – Autism Awareness Training for Officers

Introducer(s): Senators Thurston & Garcia

Related Bills: HB 39 & 219

Last Action: First read in Appropriations Committee on 4/11/17. (Last Committee in Senate)

Effective Date: 10/1/2017

Bill creates F.S. 943.1727, which requires agencies to implement Autism Awareness training as part of the agencies' continued employment training. This training can count towards the annual 40 hour training requirements defined in F.S. 943.135 [Requirements for Continued Employment].

SB 188 – Vacation Rentals

Introducers: Steube & Perry

Related Bill: HB 425

Last Action: In Community Affairs Committee (2nd Committee), 4/3/17 Vote temporarily postponed.

Effective Date: Upon becoming law

Bill prohibits the enactment of ordinances specifically regulating vacation rentals. The bill does not apply to any ordinances enacted prior to June 1, 2011.

SB 196 – Juvenile Civil Citation and Similar Diversion Programs

Introducers: Flores, Bracy, Garcia, Baxley, Gibson, Steube, Rodriguez, Perry, Rouson, Powell, Rader, Clemens, Brayon, Farmer, Passidomo, Montford, & Benacquisto

Related Bills: HB 213 & HB 205

Last Action: On Appropriations Committee for 4/13/17

Effective Date: 7/1/2017

The Bill requires that each county establish and operate at least one juvenile civil citation program or similar program. The Bill also mandates an officer must issue a civil citation to a juvenile who commits a first time qualified misdemeanor offense. Furthermore, the Bill gives an officer discretion with regards to the issuance of a citation for a non-enumerated offense or for a second or third violation of an enumerated offense. However, if an officer chooses to arrest a juvenile for a first time non-numerated offense, or for a second or third enumerated offense, the officer shall provide written documentation explaining why the arrest was warranted.

SB 312 – Eyewitness Identification

Introducer(s): Senator Baxley

Related Bills: HB 643

Last Action: Passed third reading in Senate on 4/6/17

Effective Date: 10/1/2017

Bill creates F.S. 92.70, which requires that all lineups [photographic and live] be administered by an independent administrator, i.e. an investigator who is not part of the investigation and is unaware of the identity of the suspect. The bill also provides alternative means in which an investigator who is part of the investigation may administer the lineup. These methods require that the administrator is not able to see the photographs as they are being viewed by the witness. The Bill also requires that a specific admonition be read to the witness to ensure that the identification process is not suggestive.

SB 406 - Medical Cannabis (Bill to be entitled)

Introducers: Senators Bradley, Young, & Hutson

Related Bills: SB 1844, SB 614, HB 1177, SB 1388, HB 1397, SB 1472, SB 1666, SB 1758

Last Action: In Appropriations Subcommittee on Health and Human Services on 4/6/2017

Effective Date: Upon becoming a law

Bill amends F.S. 381.986 [Compassionate use of low-THC and medical cannabis], by providing legislative intent, defining and re-defining terms, authorizing physicians to issue certifications to specified patients, establishing requirements for physicians, amending criminal penalties and establishing new criminal

violations, prohibiting unlicensed activity, establishing requirements for caregivers, requiring the DOH to issue identification cards by Oct. 3, 2017, requiring the DOH to establish requirements for the independent testing laboratories, grandfathering existing Marijuana Medical Treatment Centers (MMTCs), establish a system tracking marijuana from seed to sale and increasing MMTCs to five centers by Oct. 3, 2017, increasing the number of MMTCs when a certain number of patients are registered in the compassionate use registry, allowing the DOH to grant variances to the MMTCs and authorizing emergency rulemaking procedures by the DOH.

This Bill also creates F.S. 1004.4351, establishing the Coalition for Medical Marijuana Research and Education Act and the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc.

“Medical use” is defined, in the Constitutional Amendment as “the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualified patient or caregiver for use by the caregiver’s designated qualifying patient for the treatment of a debilitating medical condition”. However, medical use does not include smoking, possessing, use, or administration of marijuana not purchased from an approved MMTC, the transfer of marijuana to anyone other than the qualifying patient or caregiver, the use or administration of any type of marijuana not specified on the patient’s certification, the use or administration on any public transportation, any public place, place of employment, if restricted by employer, state correctional institutions, any preschool, primary or secondary school or a school bus, vehicle, aircraft or motorboat. Any impermissible use as described above is a misdemeanor of the first degree.

This Bill also creates two new 1st degree misdemeanor offenses: 1) A qualifying patient or caregiver cultivating marijuana or purchasing marijuana from other than an MMTC, and 2) fraudulently representing that a patient has a medical debilitating condition in order to be issued a physician certification for marijuana. Additionally, a person is not exempt from criminal prosecution for an offense related to impairment or intoxication resulting from the medical use of marijuana.

All qualifying patients (even out-of-state patients if the home state allows for lawful dispensing of marijuana) and caregivers must be registered in the online compassionate use registry database and receive an identification card. The database shall be accessible to law enforcement agencies for verification. Designated caregivers must be 21 or older unless the caregiver is a close relative. Only one caregiver may be registered for a patient at a time. The qualifying patient, younger than 18, may not purchase marijuana. Qualifying patients/caregivers cannot purchase more than a 90-day supply, unless a physician prescribes and updates the registry. The cannabis delivery device (manner in which substance is ingested) must be specified on the identification card/registry. MMTCs may produce and dispense marijuana as an edible food product, however, that product may not be in a format designated to be attractive to children.

MMTCs will be allowed to make wholesale purchases and/or distribution to another MMTC and all growth and process of the marijuana must take place in an enclosed structure. MMTCs may not dispense marijuana or a cannabis delivery device between the hours of 9:00 p.m. to 7:00 a.m. Additionally, transportation between MMTC and independent testing laboratory will require 2 people in the vehicle.

SB 448 – Prearrest Diversion Programs

Introducer(s): Senator Brandes

Related Bills: SB 450, HB 367, & HB 369

Last Action: On Appropriations Subcommittee for Criminal Justice and Civil Justice Agenda for 4/13/2017

Effective Date: 7/1/2017

Bill creates F.S. 901.40, which provides a model policy for local communities and public and private educational institutions who desire to implement an adult prearrest diversion program.

SB 550 – Public Records/Murder Witness

Introducer(s): Senators Bracy & Campbell

Related Bills: HB 111

Last Action: Passed in Rules Committee (Last Senate Committee) on 4/6/2017

Effective Date: 7/1/2017

The Bill amends F.S. 119.011(2) [Agency Investigations], by classifying any criminal intelligence or investigative information which reveals the identification of a murder witness to be kept confidential and exempt for a period of two (2) years from the date of the murder. However, an agency may disclose the information in the furtherance of its official responsibilities and duties; or to assist in locating or identifying the witness, if the agency believes the witness is missing or endangered; or to another governmental agency for use in the furtherance of their official responsibilities and duties.

SB 624 – Body Cameras

Introducer(s): Senator Steube

Related Bill(s): HB 305

Last Action: Favorable vote in Rules Committee (Final Senate Committee) on 4/6/17. Place on agenda calendar for 2nd reading.

Effective Date: 7/1/2017

Bill amends F.S. 943.1718, requiring agencies that permit officers to wear cameras to have general guidelines permitting officers' review of relevant footage prior to authoring a report or providing a statement about the incident. However, this provision may not apply to an officer's duty to provide information necessary to secure a crime scene or identify suspects or witnesses.

HB 779 – Weapons and Firearms (Open Carry)

Introducers: Representatives Combee, Altman, Byrd, Drake, Eagle, Fischer, M. Grant, & Rodriguez

Related Bill: SB 646 (Temporarily postponed in Judiciary on 3/28/17)

Last action: Favorable vote on 3rd read in Judiciary Committee on 4/5/17

Effective Date: 7/1/2017

The Bill reduces the penalty for open carrying to a 2nd degree misdemeanor for an individual who does not possess a concealed weapons license and a \$25.00 civil penalty for a concealed weapons license holder. Additionally, a concealed weapons license holder who commits a second or third offense would be assessed a \$500.00 civil fine for a second offense, and a 2nd degree misdemeanor for a third or subsequent offense.

SB 832 – Drones

Introducer: Senator Young

Related Bill: HB 1027

Last Action: Favorable vote in Criminal Justice and Transportation Committees. On 4/4/17 in Communications, Energy, and Public Utilities

Effective Date: 7/1/2017

The Bill creates F.S. 330.41, which preempts regulation of unmanned aircraft to the State, except for areas in which federal law affords municipalities and counties to regulate.