



Broward County Chiefs of Police Association, Inc.

## ***Legal Update***

### **Legal Advisor Committee**

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### **JUNE 2017 LEGAL UPDATE**

#### **Legislative Update**

##### **SB 80 – Public Record [Fla. St. Ch. 2017-21]**

Last Action: Approved by the Governor on 5/24/17

Effective Date: 7/1/17

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 or permit the inspection of 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 business 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 Bill also has a provision which permits the award of costs and attorney fees to the agency if the court finds that the records request was for an "improper purpose". An "improper purpose" is defined as a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose.

##### **SB 118 – Criminal History Records**

Last Action: Presented to the Governor on 6/5/17

Effective Date: Upon becoming law

Bill creates F.S. 943.0586 (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 [Fla. Stat. Ch. 2017-72]**

Last Action: Approved by the Governor on 6/9/17

Effective Date: Upon becoming law

The Bill amends F.S. 776.032 [Stand Your Ground], by placing the burden on the state to prove, during a pre-trial hearing, by clear and convincing evidence that the defendant is not entitled to immunity from prosecution. This burden is triggered after the defendant presents a prima facie claim of immunity.

**HB 39 – Autism Awareness Training for Officers [Fla. Stat. Ch. 2017-43]**

Last Action: Approved by the Governor on 6/2/17

Effective Date: 10/1/17

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 312 – Eyewitness Identification**

Last Action: Approved by the Governor on 6/14/17

Effective Date: 10/1/17

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 502 – Florida Statutes [Controlled Substances] [Fla. Stat. Ch. 2017-3]**

Last Action: Approved by the Governor on 4/5/17

Bill amends F.S. 893.0356, requiring that an analog controlled substance be treated as the highest scheduled controlled substance of which it is an analog of, as defined in F.S. 893.03 (Drug Schedule).

**HB 557 – Controlled Substance Prescribing**

Last Action: Presented to the Governor on 6/14/17

Effective Date: 7/1/17

Amends F.S. 456.44, by limiting the initial quantity of opioids prescribed for the treatment of “acute pain” to a five day supply. The bill also requires that the dispensing of the substance must be reported to the Department of Health’s electronic monitoring system no later than the close of the next business day.

**SB 852 – Human Trafficking**

Last Action: Approved by the Governor on 5/23/17

Bill Amends F.S. 39.524, by requiring the Department of Children and Families or a sheriff’s office to conduct a multidisciplinary staffing to determine the child’s need for services and placement in a safe house or foster home. The Bill also requires that DCF and the sheriffs provide the Legislature with a report on the prevalence of child commercial sexual exploitation and the specialized services provided to such children.

**HB 1027 – Personal Delivery Devices/Drones**

Last Action: Presented to the Governor on 6/17/17

Effective Date: 7/1/17

The Bill defines a personal delivery device as an electrically powered device that: “(a) is operated on sidewalks and crosswalks and intended primarily for transporting property; (b) weighs less than 80 pounds,

excluding cargo; (c) has a maximum speed of 10 miles per hour; and (d) is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.”

The Bill amends F.S. 316.008 (Powers of Local Authorities), by permitting the operation of a personal delivery device on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law. However, a county or municipality may adopt regulations regarding the safe operation of these devices.

The Bill creates 316.2071, which provide that these devices, while operating on a sidewalk or crosswalk, have the rights and duties as a pedestrian under the same circumstances. However, the devices must not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians.

The Bill also requires that these devices be registered and that the operator have liability insurance.

The Bill also 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. However, a local government may enact ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of a drone, as long as the ordinance is not specifically related to the use of drones for the specific illegal act.

### **SB 1052 – Justifiable Use of Force [Fla. Stat. Ch. 2017-77]**

Approved by the Governor on 6/9/17

Bill Amends F.S. 776.013, by providing that a person in a dwelling or residence, in which they have a right to be, has no duty to retreat and may use non-deadly force against another when they reasonably believe that such force is necessary to defend themselves or others against the imminent use of unlawful force. The individual may also use or threaten to use deadly force if they reasonably believe it to be necessary to prevent the imminent death or great bodily harm to themselves or another, or to prevent the imminent commission of a forcible felony.

### **SB 8-A - Medical Use of Marijuana**

Last Action: Ordered engrossed, then enrolled on 6/9/17

The Bill permits the use of medical marijuana for qualifying medical conditions by edibles and vaping. However, smoking is prohibited.

Patients are required to be certified by a licensed Florida physician as having at least one of the qualifying medical conditions. If a patient is younger than 18 years of age, a second physician must also concur with the diagnosis and treatment. The following are qualifying medical conditions: Cancer, epilepsy, glaucoma, human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn’s disease, Parkinson’s disease, multiple sclerosis (MS); a medical condition of the same kind or class as those listed above; or Chronic nonmalignant pain that is caused by one of the enumerated qualified medical conditions or that originates from a qualified condition and persists beyond the usual course of that condition.

The Bill also requires physicians to complete a 2-hour course and examination, which must be completed upon each licensure renewal. Additionally, prior and subsequent to certifying a patient, a physician must:

- Determine that medical marijuana would likely outweigh the potential health risks to a patient;
- Check the patient's prescription history in the Prescription Drug Monitoring Database; and
- Recertify the patient every 30 weeks.

The Bill also requires that patients and caregivers provide proof of residency, register with the Department of Health, and possess an identification card. Additionally, DOH is required to create and maintain an online medical marijuana use registry for patients, caretakers and physicians.

The Bill also requires the DOH to license Medical Marijuana Treatment Centers (MMTCs) to cultivate, process, transport, and dispense low-THC marijuana, medical marijuana, and their delivery devices. The DOH is required to license the existing dispensing organizations previously created under the Compassionate Medical Cannabis Act as soon as practicable, but no later than July 3, 2017. The number of dispensing facilities each MMTC may initially establish is 25. However, MMTCs are permitted to operate five additional dispensing facilities for every 100,000 active patients in the medical marijuana use registry. Additionally, DOH is required to award ten additional MMTC licenses as soon as practicable, but no later than October 3, 2017. Furthermore, DOH must award four additional MMTC licenses for every 100,000 active patients in the medical marijuana use registry. The Bill also requires that all MMTCs have their products tested by marijuana testing labs certified by the DOH.

While all regulation pertaining to the cultivation, processing, and delivery of medical marijuana is preempted to the State, the Bill does permit local governments to regulate the locations of the dispensing facilities and may ban dispensaries within its borders. However, if a local government permits dispensing facilities, it may not limit the number of dispensing facilities that may be operated within its boundaries.

The Bill also establishes the Coalition for Medical Marijuana Research and Education within the Moffitt Cancer Center. This group shall conduct and disseminate scientific research, provide education, and guide policy on the ordering and dosing practices for the use of medical marijuana.

The Bill also requires DOH to implement a statewide marijuana education and illicit use prevention campaign regarding the health effects of marijuana use, particularly on minors and young adults. Additionally, Department of Highway Safety and Motor Vehicles must implement a statewide impaired driving education campaign to raise awareness and prevent marijuana-related and cannabis-related impaired driving.

Lastly, the Bill provides for criminal penalties against physicians, patients and caregivers who do not comply with the requirements of the Act.

**Note:** The Governor has seven (7) days, from the date the bill was presented to him, to sign or veto, if the bill was presented while the legislature was in session. For bills that are presented to the Governor after the legislative session ends, the Governor has fifteen (15) days to sign or veto the bill from the day it was presented.