



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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NOVEMBER 2017 LEGAL UPDATE

Legislative Update

SB 90 – Use of Wireless Communications Devices While Driving

Introducer(s): Senator Rene Garcia

Last Action: Approved in Communications, Energy, & Public Utilities (7-1), In Transportation as of 10/30/17

Related Bill(s): SB 71 (withdrawn and replaced with SB 90) and HB 121

Effective Date: 10/1/18

Bill amends F.S. 316.305 [Florida Ban on Texting While Driving], by permitting the enforcement of the Statute as a primary offense. Additionally, all proceeds from enforcement of this violation shall be remitted to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund of the Department of Health. Furthermore, the Bill requires an officer to inform a person who is stopped for texting while driving of the person's right to decline a search of his or her wireless communications device.

SB 134 – Concealed Weapons or Firearms

Introducer(s): Senator Greg Steube

Last Action: Scheduled for Judiciary on 11/7/17, temporarily postponed.

Related Bill(s): HB 383 (Bill is identical to SB which has been referred to Criminal Justice Subcommittee; Oversight, Transparency and Administration Subcommittee; Judiciary Committee)

Effective Date: 7/1/18

Bill amends F.S. 790.06(12)(a), by permitting individuals with concealed weapons licenses to enter a courthouse with their weapon; after which they shall surrender their weapon to security personnel for storage.

SB 152 – Sale of Firearms

Introducer(s): Senator Greg Steube

Last Action: Approved in Judiciary (10-0), In Appropriations Subcommittee on Criminal and Civil Justice as of 11/9/17

Related Bills: HB 55

Effective Date: 7/1/18

Bill amends F.S. 790.065, by requiring FDLE to accept payment of the background check fees by electronic means, including, but not limited to, debit cards, credit cards, or electronic funds transfers.

SB 274 – Concealed Weapons

Introducer(s): Senators Kelli Stargel and Denise Grimsley
Last Action: On Judiciary agenda for 11/14/17
Related Bills: HB 113
Effective Date: 7/1/18

Bill amend F.S. 790.115 (Prohibiting the Possession of Weapons or Firearms on School Property), by permitting concealed weapon license holders to carry a concealed weapon or firearm on private school property, if a religious institution is located on the property. The bill also permits a license holder to carry in a public school, career center and college and university, regardless of whether there is a religious institution located on the property.

SB 298 – Criminal History Records (Sealing)

Introducer(s): Senator Randolph Bracy
Last Action: 10/30/17 in Judiciary
Related Bills: N/A
Effective Date: 7/1/18

Bill revises the requirements for obtaining a sealing of a criminal record by requiring the petitioner to attest that they have not been adjudicated delinquent for committing a misdemeanor offense specified in s. 943.051(3)(b) in the previous 10 years.

SB 336 – Law Enforcement Vehicles

Introducer(s): Senator Denise Grimsley
Last Action: 10/12/17 referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations
Related Bills: SB 356 SB 818 (adding non-law enforcement persons who may be exempt) & HB 141
Effective date: 7/1/18

Bill amends F.S. 338.155, by exempting all law enforcement vehicles (marked and unmarked) that are being used for official business from toll requirements.

SB 346 – Motorcycle and Moped Riders

Introducer(s): Senator Keith Perry
Last Action: On Transportation agenda for 11/14/17
Related Bills: HB 583
Effective Date: 7/1/18

Increasing the age in which a rider is not required to wear protective headgear to 21 years old (formally 16 y.o.).

SB 392 – Juvenile Justice

Introducer(s): Senator Randolph Bracy
Last Action: Referred to Criminal Justice; Judiciary; Rules on 10/25/17
Related Bills: N/A
Effective Date: 7/1/18

Bill increases the ages in which the State Attorney can either direct file on a juvenile offender as an adult or request the court to transfer a juvenile to adult court.

SB 400 – Concealed Weapons or Firearms

Introducer(s): Senator Daphne Campbell
Last Action: Referred to Health Policy; Commerce and Tourism; Rules on 10/25/17
Related Bills: HB 269
Effective Date: 7/1/18

Bill amends F.S. 790.06, by adding the requirement of a mental health examination, conducted by a licensed professional, prior to the issuance of a concealed weapons license. The licensed professional must find that the applicant is competent and of sound mind.

SB 406 – Retirement

Introducer(s): Senator Greg Steube
Last Action: Referred to Governmental Oversight and Accountability; Appropriations Subcommittee on General Government; Appropriations on 10/25/17
Related Bills: HB 251
Effective Date: 7/1/18

Bill provides an exception to the FRS reemployment after retirement limitation which permits a retiree to be reemployed by an employer participating in the FRS before completion of the 12-month limitation period, if the member is employed on a part-time basis and is not qualified to receive retirement benefits for the 12 calendar months immediately subsequent to the date of reemployment.

SB 418 –Criminal Justice Data Collection

Introducer(s): Senator Randolph Bracy
Last Action: Referred to Criminal Justice; Judiciary; Appropriations Subcommittee on Criminal and Civil Justice; Appropriations on 10/25/17
Related Bills: N/A
Effective Date: 1/1/19

Bill requires that the following entities report to FDLE:

- Law enforcement agencies shall report the number of persons arrested and released without being charged and the race and ethnicity of each of those persons.
- State Attorneys shall report the number of persons for whom formal charges were dismissed, and the race and ethnicity of each of those persons.
- Clerks of the circuit court shall report the number of persons admitted into a program for diversion from prosecution, the race and ethnicity of each of those persons, and the type of diversion program they participated in.

The Bill also requires FDLE to annually publish on its public website the information reported for the previous calendar year, aggregated by county, race, ethnicity, and type of diversion program, along with an assessment of the quality of the information received. This act shall stand repealed on December 31, 2021.

SB 430 – Restoration of Civil Rights

Introducer(s): Senators Perry Thurston & Keith Perry

Last action: Referred to Criminal Justice; Judiciary; Rules on 10/25/17

Related Bills: SJR 428, HB 59, & HB 61

Effective Date: On the effective date of SJR 428 or another amendment to the State Constitution which authorizes, or removes impediments to the enactment of this Bill

Bill amends F.S. 944.294, by creating an automatic restoration of a convicted felon's civil rights upon completion of his sentence. This automatic restoration only applies to specified felonies and does not apply to the right to possess firearms. Additionally, the Bill would be applied retroactively to all eligible convicted felons.

SB 456 – Bump-fire Stocks

Introducer(s): Senator Linda Stewart

Last Action: Referred to Judiciary; Criminal Justice; Rules on 10/25/17

Related Bills: HB 321

Effective Date: 10/1/18

Bill enacts F.S. 790.34, which creates a third degree felony for the possession, sale or transfer of a bump-fire stock. A bump-fire stock is defined as a gun conversion kit, a tool, an accessory, or a device used to alter the rate of fire of a firearm to mimic automatic weapon fire or which is used to increase the rate of fire of a semiautomatic firearm to a faster rate than is possible for a person to fire such semiautomatic firearm unassisted by a kit, a tool, an accessory, or a device. The Bill also creates a process for a person who possesses a bump-fire stock to relinquish same to a law enforcement agency for destruction.

SB 458 – Controlled Substance Providing

Introducer(s): Senator Aaron Bean

Last Action: Referred to Health Policy; Appropriations; Rules on 10/25/17

Related Bills: SB 8 & HB 21

Effective date: 7/1/18

Bill amends F.S. 456.44, by limiting an initial prescription for an opioid controlled substance to a seven (7) day supply. A refill of the prescription is limited to a thirty (30) day supply, unless the patient is in hospice care, is being treated for cancer, or is being treated for chronic nonmalignant pain as defined in this Statute.

SB 470 – Temporary Employment of Appointment of Officers

Introducer(s): Senator Kelli Stargel

Last Action: Referred to Military and Veterans Affairs, Space, and Domestic Security; Appropriations

Subcommittee on Criminal and Civil Justice; Appropriations on 10/25/17

Related Bills: HB 333

Effective Date: 7/1/18

Bill amends F.S. 943.131, by adding an exemption from completing a commission approved basic recruit training program for a member of the military special operations forces, providing that the employing agency or a criminal justice selection center verifies and documents that the applicant seeking the exemption has served in the special operations forces for a minimum of 10 years, and has successfully completed a special operations forces training course. The employing agency or criminal justice selection center shall submit documentation of satisfaction of these requirements to the commission.

“Special operations forces” means those active and reserve component forces of the military services designated by the Secretary of Defense and specifically organized, trained, and equipped to conduct and support special operations.

SB 548 – Traffic Infraction Detectors

Introducer(s): Senator Daphne Campbell

Last Action: Referred to Transportation; Community Affairs; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations on 11/2/17

Related Bills: SB 176 & HB 6001

Effective Date: 7/1/21

Bill repeals the Mark Wandall Traffic Safety Act.

SB 566 – Unlawful Detention by a Transient Occupant

Introducer(s): Senator Dana Young

Last Action: Referred to Commerce and Tourism; Judiciary; Rules on 11/2/17

Related Bills: HB 385

Effective Date: 7/1/18

Bill revises the factors that establish whether a person qualifies as a transient occupant by removing the consideration regarding whether the person receives mail at the residence and adding the factor of whether the person has used the property as an address of record with any official governmental entity within the past 12 months (previously no time frame was contained in the Statute).

The Bill also clarifies that a transient occupancy terminates when a transient occupant begins to reside elsewhere, surrenders the key to the dwelling, or agrees to leave the dwelling when directed by a law enforcement officer, the party entitled to possession, or a court. Furthermore, a transient occupancy is not extended by the presence of personal belongings of a former transient occupant.

SB 592 – Law Enforcement Practices

Introducer(s): Senator Randolph Bracy

Last Action: Referred to Criminal Justice; Judiciary; Rules on 11/2/17

Related Bills: HB 397

Effective Date: 1/1/19

Bill creates F.S. 316.651, which requires a law enforcement officer or other traffic enforcement officer who conducts a traffic stop and issues a traffic citation to record on the citation the race of the person to whom the citation is issued. The Bill further requires that the law enforcement agency maintain the information and provide it to DHSMV.

DHSMV shall collect the information by jurisdiction and shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which shows separate statewide totals for the state's county sheriffs and municipal law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies.

Bill also creates F.S. 943.1714, which prohibits a law enforcement officer from engaging in racial profiling in the performance of his or her official duties, including, but not limited to, conducting a traffic stop, making a physical arrest, or taking a person into custody. Additionally, each law enforcement agency in this state shall adopt departmental policies to prohibit the practice of racial profiling. As used in this Bill, the term "racial profiling" means determining probable cause for and carrying out the detention, interdiction, or other disparate treatment of a person based solely on the person's race or ethnicity.

SB 618 – Subpoenas in Investigations of Sexual Offenses

Introducer(s): Senators Dennis Baxley, Greg Steube, Lauren Book, Daryl Rouson, & Debbie Mayfield

Last Action: Referred to Criminal Justice; Judiciary; Appropriations; Rules on 11/2/17

Related Bills: HB 581

Effective Date: 10/1/18

Bill creates F.S. 934.255, which authorizes an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain persons or entities for the production of records, documents, or other tangible things and testimony, and authorizing a court to punish a person who does not comply with a subpoena as indirect criminal contempt.

SB 644 – Juvenile Civil Citation and Similar Diversion Programs

Introducer(s): Senator Randolph Bracy

Last Action: Referred to Criminal Justice; Appropriations Subcommittee on Criminal and Civil Justice; Appropriations

Related Bills: HB 489

Effective Date: 7/1/18

Bill amends F.S. 985.12, by mandating the issuance of a civil citation to a juvenile who admits to committing a first-time misdemeanor offense, if the misdemeanor is one of the enumerated offenses. The Bill also provides a law enforcement officer with discretion to issue a civil citation for non-enumerated offenses, as well as second and third violations of enumerated offenses. If an officer does not issue a "discretionary" civil citation, the officer must provide written documentation detailing why the arrest was necessary.

The Bill also amends F.S. 943.051, by preventing the fingerprinting of a juvenile that is placed into a civil citation program.

SB 690 – Criminal History Records

Introducer(s): Senator Jeff Brandes

Last Action: Referred to Criminal Justice; Judiciary; Rules on 11/8/17

Related Bills: SB 692

Effective Date: 7/1/18, but only if SB 692 or similar legislation is passed in same session

Bill amends F.S. 943.0586 (Administrative Sealing of Criminal History Records), by providing that regardless of any prior criminal conviction of an adult or minor, the Criminal Justice Information Program

shall administratively seal the criminal history records pertaining to an arrest or incident of alleged criminal activity of an adult or minor charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency upon notification by the clerk of court that all the charges related to the arrest or incident were declined to be filed by the state attorney or statewide prosecutor, were dismissed or nolle prosequi before trial, or resulted in a judgment of acquittal or a verdict of not guilty at trial.

SB 692 amends F.S. 943.059 (Court-ordered Sealing of Criminal History Records), by identifying administratively sealed records as confidential and exempt from public disclosure.