



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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DECEMBER 2017 LEGAL UPDATE

Happy Holidays!!

Legislative Update

SB 90 – Use of Wireless Communications Devices While Driving

Introducer(s): Senators Keith Perry, Rene Garcia, Debbie Mayfield,
Jose Javier Rodriguez, Daphne Campbell, & Dennis Baxley
Last Action: In Transportation as of 10/30/17
Related Bill(s): 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. The Bill specifically directs all proceeds from enforcement of this violation to be remitted to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund of the Department of Health. Additionally, 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): Senators Greg Steube & Denise Grimsley
Last Action: On Judiciary Committee agenda for 12/5/17
Related Bill(s): HB 383 (Bill is identical to SB)
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 148 – Open Carry of Weapons

Introducer(s): Senator Greg Steube
Last Action: On Judiciary Committee agenda for 12/05/17
Related Bills: HB 39
Effective Date: 7/1/18

Bill amends F.S. 790.053 [Open Carry], by reducing the penalty for a concealed weapons license holder to a non-criminal \$25.00 fine for a first offense and \$500.00 fine for a second offense. A third or subsequent offense is a second degree misdemeanor. The Bill also removes the language excusing a license holder's brief open carry Defense and moves same to F.S. 790.06 [License to Carry a Concealed Weapon or Firearm].

SB 152 – Sale of Firearms

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Introducer(s): Senator Greg Steube

Last Action: On Appropriations Subcommittee on Criminal and Civil Justice agenda for 12/7/17. (Bill has already passed its first committee)

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: Temporarily postponed in Judiciary on 11/14/17. Now on agenda for 12/5/17

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 346 – Motorcycle and Moped Riders

Introducer(s): Senator Keith Perry

Last Action: Favorable vote in Transportation (6-0). Now in Appropriations Subcommittee on Transportation, Tourism, and Economic Development on 11/17/17

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 years old).

SB 376 – Workers' Compensation for First Responders

Introducer(s): Senators Lauren Book, Jack Latvala, Annette Taddeo, & Bill Montford.

Last Action: On Banking and Insurance agenda for 12/5/17

Related Bill(s): SB 126, HB 227, & HB 629

Effective Date: 7/1/18

Bill amends F.S.S. 112.1815 and 440.093, by deleting the requirement that a mental or nervous injury require an accompanying physical injury to receive compensation.

SB 482 – Driving While License Cancelled, Suspended, or Revoked

Introducer(s): Senator Randolph Bracy

Last Action: On Criminal Justice agenda for 12/4/17

Related Bills: N/A

Effective Date: 10/1/18

Bill amends F.S. 322.34, by eliminating the felony classification for a third offense. A second or subsequent violation constitutes a first degree misdemeanor.

SB 484 – Sentencing

Introducer(s): Senator Rob Bradley

Last Action: On Appropriations Subcommittee on Criminal and Civil Justice agenda for 12/7/17

Related Bills: N/A

Effective Date: 7/1/18

Bill amends F.S. 921.188, by permitting a court to sentence an offender for up to 24 months in county jail for offenses committed on or after July 1, 2018, if the offender's total sentence points score is more than 44 points, but no more than 56 points; the offender's primary offense is not a forcible felony (excluding burglary); the offender's primary offense is not punishable by a minimum mandatory sentence of more than 24 months.

An offender sentenced to county jail under this section may not receive gain-time or other sentence credit in an amount that would cause his or her sentence to expire, end, or terminate, or that would result in his or her release, before serving a minimum of 85 percent of the sentence imposed.

Furthermore, a court may only sentence an offender to county jail pursuant to this section if there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections. If the contract expires and is not renewed during an offender's sentence, the offender shall be turned over to DOC to complete the remainder of his/her sentence. The Bill also provides that DOJ shall compensate the county facility for housing the inmates sentenced under this provision.

SB 530 – Risk Protection Orders (“The Risk Protection Order Act”)

Introducer(s): Senator Audrey Gibson

Last Action: Referred to Judiciary; Appropriations Subcommittee on Criminal and Civil Justice; Appropriations; & Rules on 10/26/17

Related Bills: HB 231

Effective Date: 7/1/18

Bill creates F.S. 790.401, which authorizes risk protection orders to prevent persons who are at high risk of harming themselves or others from accessing firearms. The Bill also requires law enforcement agencies to develop certain policies and procedures and requires the termination of a license to carry a concealed weapon or firearm that is held by a person subject to such an order.

SB 566 – Unlawful Detention by a Transient Occupant

Introducer(s): Senator Dana Young

Last Action: On Commerce and Tourism agenda for 12/4/17

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 timeframe 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 644 – Juvenile Civil Citation and Similar Diversion Programs

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Introducer(s): Senator Randolph Bracy

Last Action: On Criminal Justice Committee agenda for 12/04/17

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 726 – Smoking Marijuana for Medical Use

Introducer(s): Senator Gary Farmer, Jr.

Last Action: Referred to Health Policy; Appropriations; & Rules on 11/15/17

Related Bills: N/A

Effective Date: 7/1/18

Bill amends F.S. 381.986 [Medical Use of Marijuana], by permitting the injection of the substance by smoking.

SB 750 – Public Records

Introducer(s): Senator Keith Perry

Last Action: Referred to Governmental Oversight and Accountability; Judiciary; & Rules on 11/15/17

Related Bills: HB 273

Effective Date: 7/1/18

Bill amends F.S. 119.07, by prohibiting an agency who receives a public record request from responding to such request by filing a civil action against the individual or entity making the request.

SB 838 – Sale or Delivery of Firearms

Introducer(s): Senator Gary Farmer, Jr.

Last Action: Referred to Judiciary; Governmental Oversight and Accountability; & Rules on 11/29/17

Related Bills: N/A

Effective Date: 7/1/18

Bill amends F.S. 790.065 [Sale or Delivery of Firearms], by requiring private sales to be accomplished through a licensed dealer. The Bill also amends F.S. 790.0655 [Waiting Period], by requiring that a licensed dealer facilitating a private sale must wait three days before transferring the firearm to the buyer.

SB 860 – Criminal History Records

Introducer(s): Senator Randolph Bracy

Last Action: Referred to Criminal Justice; Judiciary; Rules on 11/29/17

Related Bills: SB 862 & 690 (Applies to both minors and adults)

Effective Date: 7/1/18, but only if SB 862 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 a 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 862 amends F.S. 943.059 [Court-Ordered Sealing of Criminal History Records], by identifying administratively sealed records as confidential and exempt from public disclosure.

SB 928 – Theft

Introducer(s): Senator Randolph Bracy

Last Action: Filed on 11-16-61

Related Bills: HB 713

Effective Date: 10/1/18

Bill amends various statutes related to theft, by raising the threshold amount for a grand theft to \$1,500.00 (presently \$300.00).

SB 936 – Juvenile Justice

Introducer(s): Senator Bobby Powell

Last Action: Filed on 11/16/17

Related Bills: SB 288, HB 509 & HB 195

Effective Date: 7/1/17

Bill amends F.S. 944.292 [Suspension of Civil Rights], by excluding minors who are convicted as an adult from the suspension of their civil rights.

Bill also amends F.S. 985.556(2) [Involuntary Waiver], by removing the state attorney's ability to directly charge a minor 14 years or older as an adult. Under this scheme, the state attorney would have to request a waiver hearing from the court regardless of the minor's age and/or the offense committed.