



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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JANUARY 2018 LEGAL UPDATE

Happy New Year!!

Legislative Update

HB 9 – Federal Immigration Enforcement

Introducer(s): Representative(s) Larry Metz; Larry Ahern; Thad Altman; Jim Boyd; Cord Byrd; Brad Drake; Dane Eagle; Jay Fant; J.W. Grant; Joe Gruters; Bill Hager; Don Hahnfeldt; Sam Killebrew; Thomas Leek; Stan McClain; Lawrence McClure; Robert Olszewski; Bobby Payne; Ray Rodrigues; Bob Rommel; Ross Spano; Charlie Stone; Frank White; Jayer Williamson; Clay Yarborough

Last Action: Passed all three House Committees

Related Bills: SB 308 – Introduced 1/9/17

Effective Date: 7/1/18

Bill creates the "Rule of Law Adherence Act", which prohibits a state entity, law enforcement agency, or local governmental entity from adopting or having in effect a sanctuary policy and requires cooperation with federal immigration authorities. Bill also requires any official, representative, agent, or employee of a state entity, local governmental entity, or law enforcement agency to promptly report a known or probable violation of this chapter to the Attorney General or the state attorney having jurisdiction over the entity or agency. Any reporter cannot be disciplined for their actions and is protected by the Whistle-blower's Act. Furthermore, the Bill creates a penalty of \$1000-\$5000 a day for each day that the policy was in effect starting with October 1, 2018. Lastly, the Bill creates a civil cause of action for damages against any state entity, local governmental entity, or law enforcement agency that is in violation of this Bill, when an person is injured or killed by an illegal alien who had access to the victim due to the entity's failure to adhere to the requirements of the Bill.

SB 90 – Texting While Driving

Introducer(s): Senators Keith Perry; Rene Garcia; Debbie Mayfield; Jose Javier Rodriguez; Daphne Campbell; Dennis Baxley; Linda Stewart; Annette Taddero

Last Action: In Appropriations Subcommittee on Transportation, Tourism, & Economic Development (Passed Transportation 5-0 & Passed Communications 7-1)

Related Bills: HB 33 (In Judiciary as of 1/9/18)

Effective Date: 10/1/18

Bill amends F.S. 316.305 [Florida Ban on Texting While Driving] by permitting the enforcement 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 92 – Children in Motor Vehicles

Introducer(s): Senators Lauren Book & Linda Stewart

Last Action: Introduced 1/9/18

Related Bills: HB 115

Effective Date: 10-1-18

Bill amends F.S. 316.6135, prohibiting the leaving of children under the age of 6 in a vehicle unattended for any length of time. Presently the statute has a 15 minute time period and an exception for leaving the vehicle running.

SB 112 – Involuntary Examinations under the Bake Act

Introducer(s): Senator Daphne Campbell

Last Action: Introduced 1/9/18

Related Bills: HB 573

Effective Date: 7/1/18

Bill amends F.S.S. 394.455 & 394.463 by authorizing physician assistants and advanced registered nurse practitioners to execute a certificate stating that they have examined a person and find the person appears to meet the criteria for involuntary examination.

HB 165 – Threats to Kill or Do Great Bodily Harm

Introducer(s): Representative(s) Stan McClain & Jay Fant

Last Action: Passed first read in Judiciary (16-3). Bill already passed in Criminal Justice.

Related Bills: SB 310 (Introduced 1/9/18)

Effective Date: 7/1/18

Amends F.S. 836.10, by removing the requirement that the threat be made directly to the alleged victim and reduces the penalty from a second degree felony to a third degree.

SB 376 – Workers’ Compensation for First Responders

Introducer(s): Senator(s) Lauren Book; Dana Young; Annette Taddeo; Bill Montford

Last Action: On Commerce and Tourism on 1/16/18 (Passed Banking and Insurance 10-0)

Related Bills: SB 376 & HB 227

Effective Date: 7/1/18

Bill amends F.S. 112.1815 by changing the standard of proof for demonstrating a mental or nervous injury to a preponderance of the evidence (presently the standard is clear and convincing evidence.) Bill also provides that a payment of indemnity may be due if a mental or nervous injury results in disability or death of the first responder, even if no physical injury occurred.

SB 482 – Driving While a Driver License or Privilege is Cancelled, Suspended, or Revoked

Introducer(s): Senator(s): Randolph Bracy & Darryl Rouson

Last Action: Appropriations Subcommittee on Crim and Civ Justice on 12-9-17 (Passed CJ 4-1)

Related Bills: N/A

Effective Date: 10/1/18

Bill amends F.S. 322.34, by removing the felony penalty for third or subsequent convictions.

SB 484 – Sentencing

Introducer(s): Senator(s): Rob Bradley

Last Action: First read in Criminal Justice on 1/9/18

Related Bills: N/A

Effective Date: 7/1/18

Bill amends F.S. 921.188, by permitting a judge to sentence an offender to up to 24 months in county jail when their sentencing guidelines meet a certain threshold.

SB 566 – Unlawful Detention by a Transient Occupant

Introducer(s): Senator Dana Young

Last Action: Rules on 1/12/18 (Favorable vote in Judiciary 10-0)

Related Bills: HB 385

Effective Date: 7/1/18

Bill revises the factors that establish whether a person qualifies as a transient occupant by adding the consideration of 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 618 – Subpoenas in Investigations of Sexual Offenses

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

Last Action: In Judiciary as of 1/12/18 (Passed CJ 7-0)

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(s): Randolph Bracy; Daphne Campbell; & Annette Taddeo

Last Action: Criminal Justice Committee agenda for second read on 1/9/17 (Passed 1st read 4-2)

Related Bills: SB 1392 & 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 866 – Sentencing

Introducer(s): Senator(s): Randolph Bracy

Last Action: 1/10/18 in Judiciary

Related Bills: SB 570 & HB 355

Effective Date: 10/1/18

Bill amends F.S. 775.082, by increasing the total sentencing guideline points from 22 to 44 for the imposition of non-prison sanctions for any offense committed on or after 10/1/18. The Bill also permits a jury or a judge, if the defendant waives a jury, to find that a non-state prison sanction could present a danger to the public, in which case the judge could impose a prison sanction.

SB 928 – Theft

Introducer(s): Senator Randolph Bracy

Last Action: In Judiciary on 1/12/18

Related Bills: HB 713

Effective Date: 10/1/18

Bill amends F. S. 812.014, by increasing the perquisite threshold for grand theft from \$300 to \$1500. Bill also requires that a third petit theft conviction be within three years of the most recent conviction to re-classify the offense as a felony.

SB 936 – Juvenile Justice

Introducer(s): Senator Bobby Powell

Last Action: On Criminal Justice Agenda for 1/16/18

Related Bills: SB 1552, SB 288, HB 195, & HB 509

Effective Date: 7/1/18

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.

SB 1048 – Firearms

Introducer(s): Senator Dennis Baxley

Last Action: On Judiciary agenda on 1/18/18

Related Bills: HB 1419

Effective Date: Upon becoming law

Bill amends F.S. 790.06, by permitting a church, a synagogue, or any other religious institution to authorize a person licensed under this section to carry a firearm on property owned, rented, leased, borrowed, or lawfully used by the church, synagogue, or religious institution.

SB 1256 – Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices

Introducer(s): Senator Jeff Brandes

Last Action: Referred to Criminal Justice & Judiciary on 1/11/18

Related Bills: HB 1249

Effective Date: 7/1/18

Bill amends various statutes by requiring in criminal cases that a court order or search warrant is required to obtain contents of electronic communications as provided in Ch. 934, F.S. Bill also creates for the intentional and unlawful access without authorization of certain devices and obtainment of wire, oral, or electronic communications stored within those devices.

SB 1298 – Juvenile Justice

Introducer(s): Senator Jeff Brandes

Last Action: Referred to Criminal Justice, Appropriations Subcommittee on Crim Justice and Civ Justice, & Appropriations

Related Bills: SB 1552 & HB 1417

Effective Date: 7/1/18

Bill amends F.S. 985.26, by requiring that a prolific juvenile offender who is taken into custody for a violation of the conditions of his or her non-secure detention must be held in secure detention until a detention hearing is held.

Bill also amends F.S. 985.433, by requiring that a court who determines that adjudication and commitment to the department are suitable, to receive and consider a predisposition report, including the department's recommendation, before committing the child. The predisposition report is an indispensable prerequisite to commitment which cannot be waived by any party or by agreement of the parties.

SB 1490 – Determining Bail

Introducer(s): Senator Randolph Bracy

Last Action: Referred to Criminal Justice, Judiciary, & Rules

Related Bills: SB 1882 & HB 967

Effective Date: 7/1/18

Bill amends F.S. 903.046, by creating a presumption that individuals arrested for allegedly committing nonviolent misdemeanors be released on nonmonetary conditions or nonmonetary restrictions.

Bill also amends F.S. 907.041, by removing the prohibition of imposing of non-monetary pre-trial release for dangerous crimes.

SB 1602 – Cannabis

Introducer(s): Senator Randolph Bracy

Last Action: Referred to Criminal Justice, Appropriations Subcommittee on Criminal and Civil Justice, & Rules

Related Bills: HB 1203

Effective Date: 7/1/18

Bill creates F.S. 893.131, which makes personal use of cannabis (less than 20 grams) a civil infraction. A person over 18 y.o. shall be subject to a fine of not more than \$100. A person under 18 y.o. shall complete up to 15 hours of community service.