



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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FEBRUARY 2018 LEGAL UPDATE

Legislative Update

SB 8 – Controlled Substances

Introducer(s): Senators Lizabeth Benacquisto; Keith Perry; Kelli Stargel; Aaron Bean; & Kathleen Passidomo

Last Action: Placed on calendar for 2nd reading in Rules on 2/15/19 (last committee)

Related Bills: SB 458, HB 21, & HB 1159

Effective Date: 7/1/18

Bill prohibits the dispensing of certain controlled substances in an amount that exceeds a 3-day supply or a medically necessary 7-day supply, if certain criteria are met.

HB 9 – Federal Immigration Enforcement

Introducer(s): Representatives 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: Received in the Senate on 1/31/18

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 (Placed on calendar in Government Accountability on 2/5/18)

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 112 – Involuntary Examinations under the Baker Act

Introducer(s): Senator Daphne Campbell
Last Action: In Rules on 2/14/18 (Passed two committees)
Related Bills: HB 573 (Passed all three House committees)
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): Representatives Stan McClain & Jay Fant
Last Action: Favorable vote in all three committees. Placed on Calendar on 1/16/18
Related Bills: SB 310 (On Appropriations calendar for 2/22/18)
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.

HB 190 – E911 Systems

Introducer(s): Senators: Greg Steube; Dana Young; & Jeff Brandes
Last Action: In Appropriations as of 2/12/18 (Passed 1st committee)
Related Bills: HB 1057 (Favorable vote in two committees. Now in Commerce)
Effective Date: 7/1/18

Bill requires that the Technology Program within the Department of Management Services develop and implement a plan to require that emergency dispatchers be able to transfer an emergency call from one E911 system to another E911 system.

SB 270 – Involuntary Examination and Involuntary Admission of Minors

Introducer(s): Senator Greg Steube
Last Action: On Children, Families, and Elder Affairs agenda for 2/20/18 (Passed 1st committee)
Related Bills: N/A
Effective Date: 7/1/18

Bill authorizes a law enforcement agency to decline to transport a minor 14 years of age or younger to a receiving facility for mental health or substance abuse evaluation, if the parent or guardian of the minor agrees to transport the minor to the receiving facility. The Bill also requires that the examination of a minor 14 years of age or younger shall be initiated within 8 hours after the patient's arrival at the receiving facility.

SB 376 – Workers’ Compensation for First Responders

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

Last Action: 1/17/18, in Appropriations (Passed 1st two committees)

Related Bills: SB 126, HB 227, & HB 629

Effective Date: 10/1/18

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 470 – Law Enforcement and Correctional Officers

Introducer(s): Senator Kelli Stargel

Last Action: On Appropriations calendar for 2nd reading on 2/20/18

Related Bills: HB 333

Effective Date: 7/1/18

Bill authorizes the exemption of former special operations forces members, who meet certain requirements from the Criminal Justice Standards and Training Commission-approved basic recruit training program. The Bill also requires an employing agency, training center, or criminal justice selection center to verify and document that special operations forces applicants meet certain requirements if the applicants seek an exemption from a basic recruit training program approved by the commission.

SB 484 – Sentencing

Introducer(s): Senators Rob Bradley & Jeff Brandes

Last Action: Favorable vote in Appropriations on 1/31/18

Related Bills: SB 1218, SB 1206, & HB 885

Effective Date: 10/1/18

Bill authorizes each county to create a supervised bond release program in conjunction with the Department of Corrections. The Bill also requires each county that establishes a supervised bond program to submit a report annually by a certain date to the Office of Program Policy Analysis and Government Accountability (OPPAGA). Furthermore, the Bill gives a court the authority to sentence offenders to a county jail sentence for up to 24 months under certain circumstances.

SB 566 – Unlawful Detention by a Transient Occupant

Introducer(s): Senator Dana Young

Last Action: Favorable vote in Rules. Placed on calendar for 2nd read. (2nd committee)

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: Favorable vote in Rules placed on calendar for 2nd reading (Favorable vote in Criminal Justice & Judiciary)
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 624 – Drones

Introducer(s): Senator Dana Young
Last Action: 2/7/18 in Rules (Favorable vote in Criminal Justice & Judiciary)
Related Bills: HB 471 (Passed all three committees)
Effective Date: 10/1/18

Bill amends F.S. 330.41 by permitting law enforcement’s use of a drone to facilitate the collection of evidence at a crime scene or traffic crash scene.

SB 706 – Crime Stoppers Organizations

Introducer(s): Senators Greg Steube & Denise Grimsley
Last Action: 2/15/18, in Rules (Passed Criminal Justice and Judiciary)
Related Bills: HB 957
Effective Date: 10/1/18

Bill creates F.S. 90.595, which prohibits a person who engages in privileged communication, a law enforcement crime stoppers coordinator or his or her staff, or an officer, a director, or an employee of a crime stoppers organization from being required to disclose or produce privileged communications or protected information.

The Bill defines “protected information” as the identity of a person who engages in privileged communication with a crime stoppers organization and any records, recordings, oral or written statements, papers, documents, or other tangible things provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.

Furthermore, the Bill requires a person charged with a criminal offense to petition the court to inspect the protected information under certain circumstances.

SB 860 – Criminal History Records

Introducer(s): Senator Randolph Bracy
Last Action: 2/1/18 in Judiciary
Related Bills: SB 862, SB 692, SB 690, HB 919 & HB 921
Effective Date: 7/1/18, but only if SB 862 or similar legislation takes effect

Bill creates F.S. 943.0586, which requires the Criminal Justice Information Program to administratively seal the criminal history records pertaining to an arrest or incident of alleged criminal activity of a 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 the court that all charges related to the arrest or incident of alleged criminal activity 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 and that all appeals by the prosecution have been exhausted or the time to file an appeal has expired. Additionally, a sealing granted under this section does not prevent a subsequent sealing under F.S.S. 943.0582, 943.0583, 943.0585, and 943.059, if the minor is otherwise eligible under those sections.

SB 862 renders information administratively sealed pursuant to the above process confidential and exempt from public dissemination.

SB 866 – Sentencing

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

Last Action: Favorable vote in Judiciary (Previously received favorable vote in Criminal Justice)

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): Senators Randolph Bracy & Darryl Rouson

Last Action: Favorable vote in Judiciary 1/25/18 (Previously received favorable vote in Criminal Justice)

Related Bills: HB 713

Effective Date: 10/1/18

Bill amends increases the perquisite threshold for theft from \$300 to \$1500. Bill also requires that a third theft conviction be within three years of the most recent conviction to re-classify the offense as a felony.

SB 1048 – Firearms

Introducer(s): Senators Dennis Baxley, Kelli Stargel, & Greg Steube

Last Action: Passed 2nd reading in Rules on 2/1/18

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 1142 – Expunction and Sealing of Criminal History Records

Introducer(s): Senator Greg Steube

Last Action: 2/15/18, in Rules (Favorable vote in Criminal Justice & Judiciary)

Related Bills: SB 298 & HB 1065

Effective Date: 7/1/18

Bill revises the eligibility requirements for expunction of criminal history records to include instances in which a judgment of acquittal or a verdict of not guilty was rendered.

Expunction and Sealing of Criminal History Records; Revising the eligibility requirements for expunction of criminal history records to include instances in which a judgment of acquittal or a verdict of not guilty was rendered; clarifying the circumstances under which the Department of Law Enforcement must issue a certificate of eligibility for the sealing of a criminal history record, etc.

SB 1178 – Public Records/Photographs or Video or Audio Recordings that Depict or Record the Killing of a Person

Introducer(s): Senator Randolph Bracy

Last Action: 2/20/18, in Governmental Oversight and Accountability (Favorable vote in Criminal Justice)

Related Bills: HB 653

Effective Date: 10/1/18

Bill amends F.S. 406.136, by including photographs, video, or audio recordings depicting the killing of any person as confidential and exempt from public disclosure.

SB 1220 – Custodial Interrogations

Introducer(s): Senator Jeff Brandes

Last Action: On Judiciary agenda for 2/20/18 (Favorable vote in Criminal Justice)

Related Bills: HB 929

Effective Date: 7/1/18

Bill requires that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses. If a law enforcement officer does not comply with the electronic recording requirement or conducts custodial interrogations at a place other than a place of detention to the officer is required to prepare a specified report identifying the reasons for their failure to record.

SB 1226 – Sentencing for Sexual Offenders and Sexual Predators

Introducer(s): Senators Lauren Book & Travis Hutson

Last Action: On Appropriations agenda for 2/22/18 (Favorable vote in Criminal Justice)

Related Bills: HB 1301

Effective Date: 7/1/18

Bill redefines the terms “permanent residence,” “temporary residence,” and “transient residence” by decreasing the amount of days a person abides, lodges, or resides in a certain place to qualify for that type of residency category. Bill also revises the existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations, if the court does not impose a prison sentence.

SB 1236 – School Safety

Introducer(s): Senators Dennis Baxley & Greg Steube

Last Action: On Judiciary agenda for 2/20/18

Related Bills: HB 621

Effective Date: 7/1/18

Bill provides an exception to the prohibition on possessing firearms or other specified devices on school property or other specified areas for authorized concealed weapon or firearm licensees who are designated by school principals or district school superintendents. The Bill also requires district school boards to formulate and prescribe policies and procedures for active shooter and hostage situations.

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: On Rules agenda for 2/22/18 (Favorable vote in Criminal Justice & Judiciary)

Related Bills: HB 1249

Effective Date: 7/1/18

Bill amends various statutes by requiring in criminal cases a court order or search warrant to obtain contents of electronic communications as provided in Ch. 934, F.S.

SB 1440 – Mental Illness Training for Law Enforcement

Introducer(s): Senator Bobby Powell

Last Action: 2/9/18, in Appropriations (Favorable vote in Criminal Justice)

Related Bills: HB 781

Effective Date: 10/1/18

Bill requires FLDE to establish a continued employment training component relating to mental illness. The training component shall include, but need not be limited to, instruction on the recognition of the symptoms and characteristics of an individual with a mental illness and appropriate responses to an individual exhibiting such symptoms and characteristics. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer.

SB 1552 – Juvenile Justice

Introducer(s): Senator Randolph Bracy

Last Action: On Appropriations agenda for 2/22/18. (Favorable vote in Criminal Justice & Appropriations Subcommittee on Criminal and Civil Justice)

Related Bills: SB 1298, SB 936, SB 392, SB 288, HB 1417, HB 509, & HB 195

Effective Date: 7/1/18

Bill requires that a prolific juvenile offender be held in secure detention until a detention hearing is held if the juvenile violated the conditions of non-secure detention. The Bill also requires a court to receive and consider a predisposition report before committing a child, if the court determines that adjudication and commitment to the Department of Juvenile Justice is appropriate.

Additionally, the 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.