



Broward County Chiefs of Police Association, Inc.

## ***Legal Update***

### **Legal Advisor Committee**

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### **MARCH 2018 LEGISLATIVE UPDATE**

#### **HB 21 – Controlled Substances**

Last Action: Signed by Officers and presented to Governor on 3/14/18

Effective Date: 7/1/18

Bill requiring certain boards to require certain registered practitioners to complete a specified board-approved continuing education course to obtain authorization to prescribe controlled substances as part of biennial license renewal and requiring applicable boards to adopt rules establishing certain guidelines for prescribing controlled substances for acute pain.

Bill also prohibits pharmacists from dispensing controlled substances to persons not known to them without requiring the production of a valid photographic identification and authorizes a pharmacist to dispense controlled substances upon receipt of an electronic prescription if certain conditions are met.

Additionally, the 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.

#### **SB 90 & HB 33 – Texting While Driving**

Last Action: Died in Committee

Proposed Bill amended 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.

#### **HB 55 - Sale of Firearms**

Last Action: Ordered enrolled on 3-9-18

Effective Date: 10/1/18

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.

#### **HB 141 – Transportation**

Effective Date: 7/1/18

Bill amends F.S. 338.155 by exempting a law enforcement officer operating an official vehicle from paying tolls when on official business. [Previously the exemption only applied to marked official vehicle]

### **SB 376 – Workers’ Compensation for First Responders**

Last Action: Signed by Officers and presented to Governor on 3/12/18

Effective Date: 10/1/18

Bill amends F.S. 112.1815 by including a post-traumatic stress disorder suffered by a first responder as compensable by worker’s compensation benefits. For the disorder to be compensable the first responder must have occurred while the first responder was acting within the course of his or her employment and the disorder must be the result of one of the following events: seeing for oneself a deceased minor; directly witnessing the death of a minor; directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department; participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department; manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department; seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience; directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience; directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence; directly witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

It should be noted that the Bill does not change the burden of proof; which remains clear and convincing.

### **HB 539 – Alarm Confirmation**

Last Action: Signed by Officers and presented to the Governor on 3/14/18

Effective Date: 7/1/18

Bill amends F.S. 489.529, by requiring residential and commercial alarm monitoring companies to attempt to confirm the alarm signal by contacting the property owner or designee by call, text message, or other electronic before contacting a law enforcement agency. If the first contact attempt is unsuccessful, the monitoring company must make a second attempt before calling a law enforcement agency.

### **HB 547 – Reports Concerning Seized or Forfeited Property**

Last Action: Ordered enrolled on 3/8/18

Effective Date: 7/1/18

Bill amends F.S. 932.7061, by changing the date the Florida Contraband Forfeiture Act annual reports are due to December 1. [Previously October 1]

### **SB 566 – Unlawful Detention by a Transient Occupant**

Last Action: Signed by Officers and presented to Governor on 3/16/18

Effective Date: 7/1/18

Bill amends F.S. 82.045, by removing the factor regarding whether the person receives mail at the residence. The Bill also adds the factor of whether the person can produce documentation, correspondence, or identification cards sent or issued by a government agency, including, but not limited to, DHSMV or the

supervisor of elections, which show that the person used the property address as an address of record with the agency within the previous 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.

Additionally, the Bill requires that the property owner or other person entitled to possession of the property permit the former transient occupant to recover his or her personal property at reasonable times and under reasonable conditions.

### **HB SB 581 – Subpoenas in Investigations of Sexual Offenses**

Last Action: Enrolled on 3/9/18

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.

### **HB 1059 – Exploitation of a Vulnerable Adult**

Last Action: Enrolled on 3/8/18

Effective Date: 7/1/18

Bill creates F.S. 825.1035, by creating an Injunction for Protection of a Vulnerable Adult. This cause of action may be sought in an adversary proceeding by: a vulnerable adult in imminent danger of being exploited; the guardian of a vulnerable adult in imminent danger of being exploited; a person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; a person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.

### **HB 1301 – Sexual Offenders and Predators**

Last Action: Engrossed on 3/9/18

Effective Date: 7/1/18

Bill amends the Florida Sexual Predators Act by reducing the aggregate and consecutive number of days used to determine residency for purposes of sexual predator or sexual offender registration. The bill also provides for a mandatory sentence of community control with electronic monitoring for certain offenses committed by sexual predators & sexual offenders, if court does not impose prison sentence.

### **SB 1392 – Criminal Justice**

Last Action: Signed by Officers and presented to Governor on 3/16/18

Effective Date: 7/1/18

Bill requires the Department of Corrections to include information in its annual report on inmate admission based on offense type and recidivism rate. Bill also encourages local communities and public or private educational institutions to implement pre-arrest diversion programs for certain offenders. Additionally, the Bill requires each pretrial release program to include in its annual report the types of criminal charges of defendants accepted into a pretrial release program, the number of defendants accepted into a pretrial release

program who paid a bail or bond, the number of defendants accepted into a pretrial release program with no prior criminal conviction, and the number of defendants for whom a pretrial risk assessment tool was used or not.

### **SB 1552 – Juvenile Justice**

Last Action: Signed by Officers and presented to Governor on 3/16/18

Effective Date: 7/1/18

Bill amends F.S. 985.26 by requiring 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.

### **SB 7026 – Public Safety [Marjory Stoneman Douglas High School Public Safety Act]**

Last action: Approved by Governor on 3/9/18

Effective Date: Upon becoming law

Bill creates the “Marjory Stoneman Douglas High School Public Safety Act” by:

- Amending F.S. 16.555, to authorize Crime Stopper grants to be awarded to fund a student crime watch program.
- Creating the Office of Safe Schools within the Department of Education. The office is fully accountable to the Commissioner of Education. The office shall serve as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning.
  - The office shall:
    - establish and update as necessary a school security risk assessment tool for use by school districts and make the security risk assessment tool available for use by charter schools;
    - provide ongoing professional development opportunities to school district personnel;
    - provide a coordinated and interdisciplinary approach to providing technical assistance and guidance to school districts on safety and security and recommendations to address findings identified;
    - develop and implement a School Safety Specialist Training Program for appointed school safety specialists;
    - review and provide recommendations on the security risk assessments; and
    - coordinate with the Department of Law Enforcement to provide a centralized integrated data repository and data analytics resources to improve access to timely, complete and accurate information integrating data from, at a minimum, but not limited to, the following data sources by December 1, 2018: social media; Department of Children and Families; Department of Law Enforcement; Department of Juvenile Justice; and local law enforcement.
- Amending F.S. 30.15, to require the Sheriff, if he/she so chooses, to create the Coach Aaron Feis Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises. A school guardian has no authority to act in any law enforcement capacity, including

effecting arrests, except to the extent necessary to prevent or abate an active assailant incident on school premises. Those excluded from participating in the Guardian Program are individuals who exclusively perform classroom duties as classroom teachers as defined by Florida law. However, classroom teachers of a Junior Reserve Officers' Training Corps program, a current servicemember, or a current or former law enforcement officer may participate in the Guardian Program.

- The guardians shall be school employee who volunteer and who:
    - hold a valid concealed weapon license issued under F.S. 790.06;
    - complete 132 hours of comprehensive firearm safety and proficiency training based on the CJSTC Law Enforcement Academy training model;
    - pass a psychological evaluation administered by a licensed psychologist and designated by FDLE, who shall submit the results to the sheriff's office;
    - submit to and pass an initial drug test and subsequent random tests;
    - successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis; and
    - successfully complete at least 12 hours of a certified nationally recognized diversity training program.
  - The Sheriff shall issue school guardian certificates to qualified individuals and maintain documentation of weapon and equipment inspections, as well as the training certification, inspection, and qualification records.
- Amends F.S. 121.091, by permitting a retired law enforcement officer to be reemployed as a school resource officer by an employer that participates in the Florida Retirement System and receive compensation from that employer and retirement benefits after meeting the definition of termination in F.S. 121.021, but may not receive both a salary from the employer and retirement benefits for 6 calendar months immediately subsequent to the date of retirement. However, the reemployed retired law enforcement officer may not renew membership in the Florida Retirement System, except as provided in F.S. 121.122.
- Amends F.S. 394.463(2), by permitting a law enforcement officer who is serving an ex parte involuntary examination order to use reasonable physical force, as necessary, to gain entry into the premises and take custody of the individual who is the subject of the ex parte order. However, when practicable, the assigned law enforcement officer should have CIT training. Additionally, a law enforcement officer taking custody of an individual pursuant to an ex parte involuntary examination order may seize and hold a firearm or any ammunition the person possesses at the time of taking him or her into custody if the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person.
- If the law enforcement officer takes custody of the person at the person's residence and the officer has determined that the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person the law enforcement officer may seek the voluntary surrender of firearms or ammunition kept in the residence which have not already been seized. If such firearms or ammunition are not voluntarily surrendered, or if the person has other firearms or ammunition that were not seized or voluntarily surrendered when he or she was taken into custody, a law enforcement officer may petition the appropriate court under F.S. 790.401 for a risk protection order against the person.
  - Firearms or ammunition seized or voluntarily surrendered must be made available for return no later than 24 hours after the person taken into custody can document that he or she is no

longer is subject to involuntary examination and has been released or discharged from any inpatient or involuntary outpatient treatment provided or ordered, unless a risk protection order has been entered which directs the law enforcement agency to hold the firearms or ammunition for a longer period or the person is subject to a firearm purchase disability under F.S. 790.065(2), or a firearm possession and firearm ownership disability under F.S. 790.064.

- The process for the actual return of firearms or ammunition seized or voluntarily surrendered may not take longer than 7 days.
  - Law enforcement agencies must develop policies and procedures relating to the seizure, storage, and return of firearms or ammunition held pursuant to this Section.
- Creates F.S. 790.064, which prohibits a person who has been adjudicated mentally defective or has been committed to a mental institution from owning or possessing a firearm until relief from the firearm ownership or possession disability is obtained. A person seeking relief from the firearm disability must petition the court that originally adjudicated the person mentally defective and/or committed.
- Creates F.S. 790.65, which prohibits the sale or transfer of a firearm by a licensed importer, manufacturer, or dealer to any person younger than 21 years of age. Any person who violates this provision commits a 3<sup>rd</sup> degree felony. This prohibition does not apply to the purchase of a rifle or shotgun to a law enforcement or correctional officer who is under the age of 21.
- Amends F.S. 790.0655, by requiring a 3 day waiting period for the purchase, from a retailer, of all firearms, including rifles and shotguns. However, the waiting period does not apply when the firearm is purchased by a concealed weapons license holder, to the purchase of a rifle or shotgun to a person who has successfully completed a minimum of a 16 hours hunter safety course, or a rifle or shotgun purchased by a law enforcement officer, correctional officer, or servicemember. The waiting period expires after the third day or upon the completion of a records check required pursuant to F.S. 790.065, whichever occurs later. A violation of this Section is a 3<sup>rd</sup> degree felony.
- Creates F.S. 790.222, which prohibits the import into the State, transfer, distribution, sale, keep for sale, offer for sale, possess, or give to another a bump-fire stock. A 'bump-fire stock is defined as a conversion kit, tool, accessory, or 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 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. A violation of this Section is a 3<sup>rd</sup> degree felony.
- Creates F.S. 790.401, by creating a process for obtaining a Risk Protection Order. The amendment permits a law enforcement officer or agency to petition a court for a risk protection order when an individual poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition. One an order is obtained law enforcement may remove all firearms and ammunition owned or possessed by the subject of the order and maintain the firearms and ammunition until the order is vacated. The amendment also creates criminal penalties for purchases, possession or receiving firearms or ammunition when the person is the subject of a risk protection order [3<sup>rd</sup> degree felony]. Lastly, the Bill exempts the imposition of civil or criminal liability relating to obtaining a risk protection order, except for situations regarding the return of firearms and ammunition after an order is vacated or terminated, notification of return to members of the subject's family and household, and the making of a false statement during the risk protection order process.

- Amends F.S. 836.10 [Written Threats to do Bodily Harm], by adding the threat of a mass shooting or an act of terrorism to the prohibited conduct.
- Creates F.S. 943.082 [School Safety Awareness Program], by requiring FDLE, in collaboration with the Department of Legal Affairs, to procure a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials. As recommended by students of Marjory Stoneman Douglas High School, the program shall be named “FortifyFL.”
- Creates F.S. 943.6876, which creates within FDLE the Marjory Stoneman Douglas High School Public Safety Commission. The commission shall investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in this state and develop recommendations for system improvements. At a minimum, the commission shall analyze information and evidence from the Marjory Stoneman Douglas High School shooting and other mass violence incidents in this state.
- Amend F.S. 1006.12, which requires each districts’ school board to partner with law enforcement agencies to establish or assign one or more safe-school officers at each school facility within the district by implementing any combination of the following options which best meets the needs of the school district:
  - establish school resource officer programs, through a cooperative agreement with law enforcement agencies;
  - commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers; or
  - at the school district’s discretion, participate in the school marshal program if such program is established pursuant to F.S. 30.15, to meet the requirement of establishing a safe-school officer.
- Amend F.S. 1006.13, by requiring that the school’s threat assessment team consult with law enforcement when a student exhibits a pattern of behavior, based upon previous acts or the severity of an act, which would pose a threat to school safety. Additionally, while the school’s “zero tolerance” policy does not require the reporting of petty acts of misconduct and misdemeanors to law enforcement, if a student commits more than one misdemeanor, the threat assessment team must consult with law enforcement to determine if the act should be reported to law enforcement.
- Amended F.S. 1006.1493, by creating the Florida Safe Schools Assessment Tool [FSSAT]. The bill requires the Office of Safe Schools to contract with a security consulting firm that specializes in the development of risk assessment software solutions and has experience in conducting security assessments of public facilities to develop, update, and implement a risk assessment tool, which shall be known as the Florida Safe Schools Assessment Tool (FSSAT). The FSSAT must be used by school officials at each school district and public school site in the State in conducting security assessments for use by school officials at each school district and public school site in the State.

**SB 7024 – Public Records/Victim of an Incident of Mass Violence**

Last Action: Approved by Governor on 3/9/18

Effective Date: Upon becoming law

Bill amends F.S. 119.071, by declaring the address of a victim of an incident of mass violence as exempt from public disclosure. The term “incident of mass violence” means an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. The term “victim” means a person killed or injured during an incident of mass violence, not including the perpetrator.