



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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MARCH 2019 LEGISLATIVE UPDATE

SB 76 – Use of Wireless Communications Devices While Driving

“Florida Ban on Wireless Communications Devices Texting While Driving Law.”

Introducer(s): Senators Wilton Simpson; Kathleen Passidomo; Ed Hooper; Debbie Mayfield; Lauren Book; Darryl Rouson; Lori Berman; & Keith Perry

Last Action: In Judiciary as of 3/8/19 (Favorable vote in Infrastructure and Security (9-0))

Related Bills: HB 107 (Chair Drake refusing to place on Transportation and Infrastructure agenda)

Effective Date: 10/1/19

Prohibits a person from operating a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data or listening or talking on such a device for the purpose of non-voice or voice interpersonal communications, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging.

“Wireless communications device” means any handheld device used or capable of being used in a handheld manner which, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in F.S. 812.15 and which that allows text and voice communications.

It is not a violation if the motor vehicle operator is:

- performing official duties as an operator of an authorized emergency vehicle as a law enforcement or fire service professional, or emergency medical services professional;
- reporting an emergency or criminal or suspicious activity to law enforcement authorities;
- receiving messages that are: a) related to the operation or navigation of the motor vehicle; b) safety-related information, including emergency, traffic, or weather alerts; data used primarily by the motor vehicle; or radio broadcasts; or
- using a device or system for navigation purposes.

SB 96 – Police, Fire, Search and Rescue Dogs

Introducer(s): Senator Aaron Bean

Last Action: In Rules as of 3/12/19 (Passed Criminal Justice (4-0) & Judiciary (6-0))

Related Bills: HB 67

Effective Date: 10/1/19

Bill increases the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines, fire canines, or search and rescue canines from a 3rd degree felony to a 2nd degree felony. However, it is still a 3rd degree felony as it relates to a police horse.

SB 102 – Recovery Residences (“Sober Houses”)

Introducer(s): Senator Lauren Book

Last Action: In Health Policy as of 2/19/19 (Passed Children, Families, & Elder Affairs 6-0)

Related Bills: HB 103

Effective Date: 10/1/19

Bill amends F.S. 397.487 by removing the voluntary certification process. The bill would require recovery residences in operation before 10/1/19 to obtain certification no later than 4/1/20. Recovery residences established on or after 10/1/19 must obtain certification before commencing operation. Operating a recovery residence without a certificate is a 1st degree misdemeanor.

SB 116 – Motor Vehicle Racing

Introducer(s): Senator Linda Stewart

Last Action: On Judiciary agenda 3/18/18 (Passed Criminal Justice (5-0) and Infrastructure and Security (8-0))

Related Bills: HB 611

Effective Date: 10/1/19

Bill amends F.S. 316.191, by increasing the penalty for a misdemeanor to a third degree felony.

SB 132 – Drones

Introducer(s): Senator Darryl Rouson

Last Action: Passed Criminal Justice 5-0 on 2/11/19

Related Bills: SB 766 & HB 75

Effective Date: 7/1/19

Bill amends F.S. 934.50 by permitting law enforcement’s use of drones to prepare for or monitor safety and security at a large-scale event and the drone use is limited to legitimate public safety purposes, including, but not limited to, evaluating crowd size, density, or movement; assessing public safety vulnerabilities or weaknesses; determining appropriate staffing levels for law enforcement or other public safety personnel; or identifying possible criminal activity.

However, if a law enforcement agency is using a drone for the stated purpose the drone cannot fire a projectile or be equipped with tear gas canisters, stun gun technology, or any other dangerous or deadly weapon.

A “large-scale event” means a public or private event attended by more than 100 persons at a sports or entertainment arena, a stadium, a convention hall, a special event center, an amusement facility, an outdoor concert venue, a special event area licensed or permitted for use under the authority of a unit of local government, or an event open to the public that takes place on a public way or on government-owned property.

** 2/11/19 amendment changed the definition of large scale event from requiring 10 to 100 people in attendance.

** SB 766 amends F.S. 934.50, by adding to the permitted uses of a drone to assist law enforcement in crowd control, traffic management, and evidence collection at a crime scene or traffic crash scene. Bill also permits a state agency or political subdivision to use a drone for the assessment of damage due to a

flood, wildfire, natural disaster, or for land management. Bill was sponsored by Senator Joe Gruters and has been referred to Criminal Justice, Infrastructure and Security, and Rules.

SB 182 – Safe Medical Use of Marijuana

Introducer(s): Senator Jeff Brandes

Last Action: Presented to Governor on 3/13/19

Related Bills: SB 372 & HB 7015

Effective Date: Upon becoming law

Bill amends F.S. 381.986 (Medical Use of Marijuana), by permitting, with the exception of low THC cannabis, the ingestion of medical marijuana by smoking. However, the Bill prohibits the smoking of medical marijuana in an enclosed indoor workplace, as defined by F.S. 386.203(5). The Bill also permits the distribution (purchase) of delivery devices intended for the medical use of marijuana by smoking in locations other than a treatment center.

SB 186 – Public Records/Victim of Mass Violence

Introducer(s): Senators Tom Lee & Lauren Book

Last Action: Favorable Vote in Criminal Justice; Governmental Oversight and Accountability; & Rules

Related Bills: HB 7017 & HB 577

Effective date: Upon Becoming Law

Bill exempts from public disclosure any photograph, video, or audio recording which depicts or records the killing of a victim of mass violence.

A “Killing of a victim of mass violence” means all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person.

SB 204 – Detention Facilities

Introducer(s): Senators Jeff Brandes & Keith Perry

Last Action: In rules as of 3/5/19. (Passed Criminal Justice (5-0) & Judiciary (6-0))

Related Bills: HB 1029 Introduced to House on 3/5/19

Effective Date: 1/1/20

A custodial interrogation at a place of detention, including the giving of a required warning, the advisement of the rights of the individual being questioned, and the waiver of any rights by the individual, must be electronically recorded in its entirety, if the interrogation is related to the following offenses: Arson, Sexual Battery, Robbery, Kidnapping, Aggravated Child Abuse, Aggravated Abuse of an Elderly Person or Disabled Adult, Aggravated Assault with a Deadly Weapon, Murder, Manslaughter, Aggravated Manslaughter of an Elderly Person or Disabled Adult, Aggravated Manslaughter of a Child, The Unlawful Throwing, Placing, or Discharging of a Destructive Device or Bomb, Armed Burglary, Aggravated Battery, Aggravated Stalking, Home-invasion Robbery, and Carjacking.

If a law enforcement officer conducts a custodial interrogation at a place of detention without electronically recording the interrogation, the officer must prepare a written report explaining the reason why he or she did not record the interrogation. If a law enforcement officer conducts a custodial interrogation at a place other than a place of detention they shall, as soon as possible, prepare a written report explaining the circumstances of the interrogation at the place of interrogation and summarize the custodial interrogation process and the individual’s statements.

Exceptions to the recording requirement are:

- an unforeseen equipment malfunction prevents recording the custodial interrogation in its entirety;
- a suspect refuses to participate in a custodial interrogation if his or her statements are to be electronically recorded;
- an equipment operator error prevents recording the custodial interrogation in its entirety;
- the statement is made spontaneously and not in response to a custodial interrogation;
- the statement is made during the processing of the arrest of a suspect;
- the custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed an enumerated offense;
- the law enforcement officer conducting the custodial interrogation reasonably believes that making an electronic recording would jeopardize the safety of the officer, the individual being interrogated, or others; or
- the custodial interrogation is conducted outside of this state.

Unless a court finds that one or more of the above-listed extenuating circumstances exist, the court must consider the failure to record the interrogation in determining the admissibility of the statement and if, the statement is deemed admissible the court must, on request, give the jury an admonition stating that the statement was not recorded as required by law.

If a law enforcement agency has adopted policies mandating adherence to this law, the agency is not civilly liable for damages arising from the failure to record.

SB 210 – Searches of Cellular Phones and Other Electronic Devices

Introducer(s): Senator Jeff Brandes

Last Action: Passed Criminal Justice (5-0). In Judiciary as of 2/13/19

Related Bills: N/A

Effective Date: 7/1/19

Bill amends F.S. 934.42 by requiring the issuance of a search warrant for installing and using a real time mobile tracking device, real time cell site location data, real time GPS tracking, and historical location data.

An exception to the warrant requirement exists when any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney reasonably determines that an emergency exists which:

- involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and
- requires real-time location tracking before a warrant authorizing such tracking can, with due diligence, be obtained; and
- there are grounds upon which a warrant could be issued to authorize such tracking,

However, within 48 hours after the tracking has occurred or begins to occur, a warrant approving the tracking must be issued or in the absence of an authorizing warrant, such tracking must immediately terminate when the information sought is obtained, when the application for the warrant is denied, or when 48 hours have lapsed since the tracking began, whichever is earlier.

Bill also amends F.S. 934.03 (Interception and disclosure of wire, oral, or electronic communications), by requiring a search warrant for obtaining such information.

SB 248 – Public Records/Civilian Police Personnel

Introducer(s): Senators Ed Hooper; Dennis Baxley; Wilton Simpson; Keith Perry; & Lauren Book

Last Action: Passed Criminal Justice; Governmental Oversight and Accountability; & Rules

Related Bills: SB 7004, HB 7009, & HB 203

Effective Date: 7/1/19

Bill clarifies the public records exemption for civilian law enforcement personnel. “Home address” is defined as the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

SB 384 – Medical Use Of Marijuana in Schools

Introducer: Senator Bill Montford

Last Action: Referred to Health Policy; Education; & Rules on 2/1/19

Related Bills: N/A

Effective Date: 7/1/19

Bill amends F.S. 381.986, by permitting a caregiver of a student, who is qualified patient, to designate a county designated caregiver to assist the student with the medical use of marijuana during the school day. The Bill also provides for a process by which a parent or caregiver can request that medical marijuana be administered to a student by a county designated caregiver. Additionally, a school is prohibited from obstructing a qualified student from accessing medical marijuana during the school day.

SB 406 – Theft

Introducers: Senators Jeff Brandes, Jason Pizzo, & Keith Perry

Last Action: In Appropriations as of 3/8/19. Passed Criminal Justice (5-0) & Appropriations Subcommittee on Criminal and Civil Justice (7-1)

Related Bills: HB 589

Effective Date: 10/1/19

Bill amends F.S. 812.014, by:

- raising the threshold to a Grand Theft to \$1,500;
- reducing the theft of a fire extinguisher, will, codicil, or other testamentary instrument, property taken from a construction site, and a stop sign to a misdemeanor offense, unless their value is over \$1500;
- increasing the threshold for a first degree misdemeanor theft from \$100 to \$500
- adds additional conditions regarding the prior convictions for a felony petit theft (must be adult convictions and the new offense occurred within three years of the expiration of the sentence of the most recent conviction);
- requires that the valuation of property shall be determined by the fair market value of the property at the time of the taking; and
- requires that the thresholds be revisited every five years to adjust pursuant to the Consumer Price Index.
- Changes requirements for a Felony Petit Theft by requiring that the third or subsequent petit theft occur within three years after the expiration of the most recent conviction and sentence.

SB 408 – Drug Offenses

Introducers: Senators Jeff Brandes & Keith Perry

Last Action: In Judiciary as of 2/22/19. Passed Criminal Justice (5-0)

Related Bills: SB 1334

Effective Date: 10/1/19

Bill creates F.S. 893.066 (Unlawful possession of pill press), which prohibits the possession of a pill press or other similar mechanical device which is capable of compressing powder into pills, tablets, or capsules of uniform size and weight, with the intent to unlawfully manufacture a pill, tablet, or capsule containing a controlled substance (third degree felony).

Bill also creates the offense of Trafficking in Pharmaceuticals (F.S. 893.135(1)(o)). Specifically, it is unlawful for any person to knowingly sell, purchase, deliver, or bring into this state, or who is knowingly in actual or constructive possession of, 120 or more dosage units containing a pharmaceutical controlled substance commits a felony of the first degree. The Bill also provides minimum mandatory sentences and increased fines depending on the dosage units being trafficked.

A pharmaceutical controlled substance (“dosage unit”) is defined as an individual tablet, capsule, pill, transdermal patch, unit of sublingual gelatin, or other visually distinctive form, with a clear manufacturer marking on each unit, of a commercial drug product approved by the federal Food and Drug Administration and manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.

SB 466 – Assault Weapons and Large Capacity Magazines

Introducer: Senator Gary Farmer

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

Related Bills: SB 500, HB 553, & HB 455

Effective Date: 10/1/19

Bill creates F.S. 790.301, which prohibits the possession, sale, or transfer of an assault weapon or large-capacity ammunition magazine (holding more than 10 rounds). The unlawful sale or transfer is a second degree felony carrying a six year minimum mandatory sentence. Simple possession is a third degree felony. The Bill also creates exemption for persons already in possession of an assault weapon or high capacity magazine by a specified date, as long as they are eligible to obtain a certificate of possession.

SB 530 – Alcohol or Drug Overdose Protection

Introducer(s): Senators Jeff Brandes & Linda Stewart

Last Action: In Rules as of 3/5/19 Passed Criminal Justice (5-0) & Judiciary (6-0)

Related Bills: SB 1334 & HB 595

Effective Date: 7/1/19

Bill amends F.S. 562.11 (Selling, Giving, or Serving Alcohol to a Minor) by providing immunity to a person who gives alcohol to a minor if, acting in good faith, they seek medical assistance for the minor who is experiencing, or believed to be experiencing, an alcohol-related overdose, if the evidence for such offense was obtained as a result of the person’s seeking medical assistance. In order to take advantage of the immunity the person must remain at the scene until emergency medical services personnel arrive and must cooperate with the emergency medical services personnel and law enforcement officers at the scene.

Bill also provided immunity from prosecution for a minor who experiences, or has a good faith belief that they are experiencing, an alcohol-related overdose and is in need of medical assistance.

SB 536 – 911 Services

Introducers: Senators Jeff Brandes & Keith Perry

Last Action: In Infrastructure and Security as of 3/14/19 (Passed Innovation, Industry, and Tech (9-0))

Related Bills: HB 441

Effective Date: 7/1/19

Bill amends F.S. 365.172(15) [TEXT-TO-911 SERVICE], by requiring each county to develop a countywide implementation plan for text-to-911 services and, by to have in place by January 1, 2022, a system to receive E911 text messages from providers.

Bill also created F.S. 365.177, [Transfer of E911 calls between systems], which requires the Department of Management Services to develop and implement a plan, by January 1, 2020, to require that a 911 public safety telecommunicator, when deemed prudent and requested by a caller or when deemed necessary, be able to transfer an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in this state.

SB 598 – Firearms/Religious Institutions

Introducer(s): Senator(s): Ben Albritton

Last Action: In Criminal Justice as of 2/22/19. (Passed Judiciary (4-2))

Related Bills: N/A

Effective Date: 7/1/19

Bill amends F.S. 790.115 (Possessing or Discharging Weapons or Firearms at school sponsored events or on School Property), by authorizing a concealed weapon license holder to possess a firearm, or other weapon during school sponsored events if authorized to do so in support of the school activity.

Bill also permits the concealed weapon permit holder to carry, in a concealed manner, a firearm or other weapon upon the property of a religious institution, if the property also contains a school. However, said weapon may not be carried during school hours or when curricular or extracurricular school sponsored events are taking place, or where prohibited by federal law.

SB 642 – Criminal Justice (“Florida First Step Act”)

Introducer(s): Senator(s) Jeff Brandes; Joe Gruters; Ervin Rouson; Keith Perry; & Doug Broxson

Last Action: In Appropriations as of 3/7/19. (Passed Criminal Justice (5-0))

Related Bills: SB 1334, SB 400, HB 963, HB 953, HB 859, & HB 705

Effective Date: 7/1/19

Bill Amends F.S. 893.135 (Drug Trafficking) by requiring the sentencing court to a sentence pursuant to the Criminal Punishment Code without regard to any statutory minimum sentence, if the court finds, after the state attorney has been afforded the opportunity to make a recommendation, all of the following: (a) the defendant has not previously been convicted of a dangerous crime as defined in F.S. 907.041, or a violation specified as a predicate offense for registration as a sexual predator or sexual offender; (b) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon, or induce another participant to do so, in connection with the offense; (c) the offense did not result in death or serious bodily injury to any person; (d) the defendant was not engaged in a continuing criminal enterprise, as defined in F.S.893.20; by the time of the sentencing hearing, the defendant has truthfully provided to the state all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan. The fact that the defendant has no other relevant or useful information to provide or that the state is already aware of the

information does not preclude a determination by the court that the defendant has complied with this requirement.

SB 722 – Carrying of Firearms by Tactical Medical Professionals (SWAT Medics)

Introducer: Senator Ed Hooper

Last Action: In Infrastructure and Security as of 3/13/19. (Passed Judiciary (6-0))

Related Bills: HB 487 (On Criminal Justice agenda for 3/19/19)

Effective Date: 7/1/19

Bill amends F.S. 790.25, by permitting a tactical medical professional who are actively operating in direct support of a tactical operation by a law enforcement agency to carry a firearm (openly or concealed) provided that (a) the tactical medical professional is lawfully able to possess firearms and has an active concealed weapons permit; (b) is appointed to a law enforcement tactical team of a law enforcement agency by the head of the law enforcement agency; (c) the law enforcement agency has an established policy providing for the appointment, training, and deployment of the tactical medical professional; (d) the tactical medical professional successfully completes a firearms safety training and tactical training as established or designated by the appointing law enforcement agency; and (e) the law enforcement agency provides and the tactical medical professional participates in annual firearm training and tactical training. Additionally, the Bill affords tactical medical professionals the same immunities and privileges as a law enforcement officer, with the exception of arrest powers.

A “tactical medical professional” is defined as a paramedic, physician, or osteopathic physician, who is appointed to provide direct support to a tactical law enforcement unit by providing medical services at high-risk incidents, including, but not limited to, hostages incidents, narcotics raids, hazardous surveillance, sniper incidents, armed suicidal persons, barricaded suspects, high risk felony warrant service, fugitives refusing to surrender, and active shooter incidents.

SB 776 – Sexual Misconduct Reporting in Health Care

Introducer(s): Senator(s) Dennis Baxley & Randolph Bracy

Last Action: In Appropriations Subcommittee on Health and Human Services as of 3/13/19.

Passed Criminal Justice (4-0)

Related Bills: HB 665

Effective Date: 10/1/19

Bill requires any licensed health care facility to enact a policy that requires any employee, contractor, volunteer, or intern who witnesses sexual misconduct involving a patient in the care of the facility or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct involving a patient in the care of the facility, to immediately report the sexual misconduct to the facility, the statewide toll-free complaint telephone number, and the appropriate local law enforcement agency.

Any facility employee, contractor, volunteer, or intern who fails to report such sexual misconduct or fails to accurately or truthfully report such conduct commits a first degree misdemeanor. Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a felony of the third degree.

SB 800 – Duty to Assist

Introducer(s): Senator(s) Jason Pizzo

Last Action: In Judiciary as of 3/11/19. (Passed Criminal Justice (4-1))

Related Bills: HB 147

Effective Date: 10/1/19

Bill amends F.S. 768.13 (Good Samaritan Act) by requiring a person who is at the scene of an emergency and who knows that another person is exposed to or has suffered serious bodily injury to the extent that they can do so without causing danger or peril to oneself or others, provide reasonable assistance to the exposed or injured person. Reasonable assistance includes contacting, obtaining, or attempting to contact or obtain aid from law enforcement or medical personnel. A person who fails to provide assistance commits a second degree misdemeanor.

SB 822 – Assault or Battery on Specified Persons

Introducer(s): Senator(s) Jason Pizzo

Last Action: In Appropriations Subcommittee on Criminal and Civil Justice as of 3/7/19.
(Passed Criminal Justice (4-0))

Related Bills: HB 113

Effective Date: 10/1/19

Bill amends F.S. 787.07, by adding code enforcement officers, park employees and lifeguards to the enhancement penalties.

SB 1766 – Crime Stoppers Programs

Introducer(s): Senator(s) Joe Gruters & Jason Pizzo

Last Action: In Appropriations Subcommittee on Criminal and Civil Justice as of 3/18/19
(Passed Criminal Justice (4-0))

Related Bills: HB 1315

Effective Date: 7/1/19

Bill creates F.S. 90.595, which codifies that any person who receives information via a crime stoppers organization may not be required: (a) to disclose, by way of testimony or any other means, a privileged communication or protected information unless such failure to disclose would infringe on the constitutional rights of an accused person; (b) to produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication or protected information: 1) in connection with a criminal case, criminal proceeding, or any administrative hearing; or 2) by way of any discovery procedure.

“Privileged communication” is the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.

“Protected information” includes the identity of a person who engages in privileged communication 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 their staff, or a law enforcement agency in connection with such privileged communication.

A person charged with a criminal offense may petition the court for inspection in camera of the protected information. The petition must allege that the protected information meets all of the following criteria: 1) provides favorable evidence; 2) is specifically related to the determination of the innocence or guilt of the petitioner; 3) is such that, if it is not disclosed, will cause a deprivation of a constitutional right of the petitioner.

Any disclosure of privileged communication or protected information without a court order is a third degree felony.