

# LAW ENFORCEMENT NEWSLETTER

SEPTEMBER 2017

## A MESSAGE FROM BILL CERVONE STATE ATTORNEY

As always, the Fall issue of the Legal Bulletin focuses primarily on legislative enactments from the 2017 session. What you will find is a short synopsis of new or amended statutes along with the bill number so that you can look up the full text. Alternatively, call the SAO and we will get that to you. Always remember that the devil is in the details - if something about one of these summaries is of interest or concern to you please make sure you read the entire bill.

Approaching the end of the year brings us right into next year's legislative session, which will start in January because 2018 is an election year. That means that there is little time to prepare for what might happen in 2018. In fact, most of the preliminary work will be over with before the holidays even begin. Hot topics for next year will likely include more efforts at so-called juvenile reform as well as mandatory sentencing, especially for drug offenses, where the tone of the legislature over the last few years has become

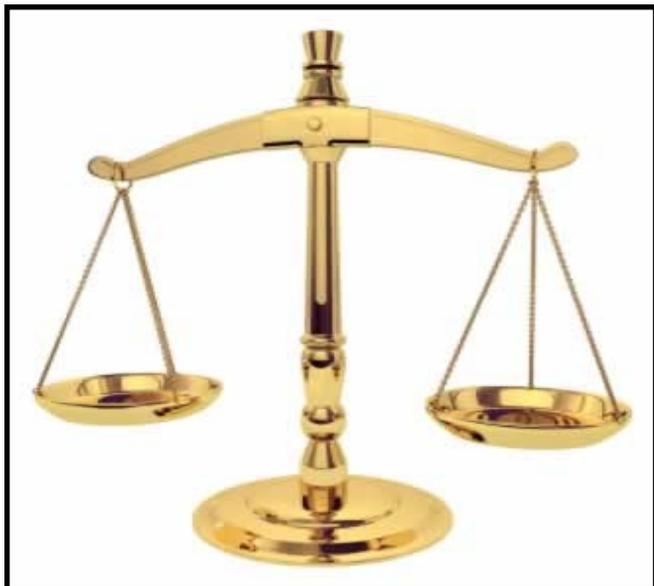
increasingly skeptical.

The legislature's skepticism towards many criminal justice initiatives continues to be amazing and in many ways the success of law enforcement in using the many tools such as mandatory sentencing to curb the most serious of offenders has had the ironic effect of allowing some to think that our crime problem has been solved. You and I know better, and understand that vigilance remains important. Otherwise, all that we have accomplished over the last few years can quickly unravel. It behooves all of us to pay attention to what could be short sighted reactions to falling crime rates so that those do not start turning in the other direction. No one should think that it's time to stop doing what has worked and been responsible for where we are now.



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The Law Enforcement Newsletter is now available on-line, including old issues beginning with calendar year 2000. To access the Law Enforcement Newsletter go to the SAO website at <[www.sao8.org](http://www.sao8.org)> and click on the "Law Enforcement Newsletter" box.

## SAO STAFF CHANGES

ASA John Kelly resigned on June 30th to enter private practice in Gainesville, and ASA Dylan Smith also resigned on July 14th to return to school and pursue a post-graduate degree.

The vacancy created in Bradford County was filled by Harlan McGuire, who returns to the SAO after spending the last year plus working with the Statewide Prosecutor's Office.

ASA Michael Alvarez resigned on August 31st, and ASA Jessica Zissimopoulos resigned effective September 8th, both also to enter private practice in Gainesville.

## In Memorium

Florida Highway Patrol Master Sgt. William Trampas Bishop was killed on June 17th while working a traffic accident on I-75 in Alachua County. He was a 30+ year veteran of FHP and is remembered as a dedicated and diligent Trooper who demonstrated remarkable leadership skills. His death serves as a reminder for all that even the most routine of law enforcement functions can be dangerous and even deadly.

Former Lawtey Police Chief M.M. "Butch" Jordan passed away on August 26th. Chief Jordan served the City of Lawtey as the elected Chief of Police for over 52 years before his retirement in 2014, an unsurpassed tenure.



### The SAO Is Now On Twitter

The SAO has established a Twitter feed to better disseminate information to the media and others such as law enforcement agencies. Like us at #8THCIRCUITSAO. For more information contact Deputy Chief Investigator Darry Lloyd at 352-374-3670.



**Any changes in agency email addresses should be reported to our office at [clendenin@sao8.org](mailto:clendenin@sao8.org).**

**For a copy of the complete text of any of the cases mentioned in this or an earlier issue of the Legal Bulletin, please call Chief Investigator Paul Clendenin at the SAO at 352-374-3670.**

## Congratulations To...

It is with great pleasure that the Gainesville Police Department announced the following promotions:

Promoted to the rank of **Captain**:

Michael Schentrup

Jaime Kurnick

Promoted to the rank of **Lieutenant**:

Robert Fanelli

Michael West

Promoted to the rank of **Sergeant**:

Renee Guyan

Ariel Lugo

Matthew Walters



The Baker County Sheriff's Office presented its annual awards at May's Law Enforcement Memorial Service. Corp. Mark Heath and Sgt. Patrick McGauley were recognized with the Joey Burtner Award, and Dep. Mitchell White was honored with the Morris Fish Award as the Deputy of the Year.

Assistant State Attorney Jessica Zissimopoulos, who was appointed to the Florida Supreme Court's Juvenile Rules Committee. Jessica has also been Board certified by the Florida Bar in juvenile law, a designation that covers both delinquency and dependency. This is a new area of Board specialization and Jessica is among the first in the state to achieve it.

ASA Rebecca Shinholster, who was recognized in July with the 2017 Fierce Award for her work with the 2017 Taste of Gainesville event, a fundraiser benefitting local programs including the PACE Center For Girls and the Child Advocacy Center.

GPD Chief Tony Jones and SAO Deputy Chief Investigator Darry Lloyd, who received the Richard Baxter Hall of Fame Award in May for their contributions to Gainesville's Reichert House after school program for at risk boys.

ASA Stephanie Hines, who delivered her first child, a healthy baby girl, Isabel, on July 4th, and ASA Jon Ramsey, who became a first time dad to baby Sabrina on August 16th.

ASA Lenora Floyd, who was married to Zeria Folston on July 15th.

## Florida Department of Law Enforcement Crime Laboratory Safety Notice

In an effort to protect the safety of personnel handling seized drug evidence during the investigative, analytical, and judicial process, FDLE laboratories will be incorporating the use of a “Fentanyl Compound Indicated” label.

If the analysis of seized drugs indicates or confirms the presence of fentanyl compounds, whether verifiable or not, the crime laboratory analyst will seal the original packaging as normal and will then place the entire exhibit into a clear plastic zip lock bag. This bag is being used as a safety container only and therefore will not be sealed with evidence tape. The laboratory will affix a “Fentanyl Compound Indicated” label as a safety precaution for personnel who may come into contact with the evidence as the case makes its way through the criminal justice system.

This label should not be considered laboratory results for an item of evidence. The results of the analysis will be in the FDLE Laboratory Report.

Please contact your regional FDLE Crime Laboratory for further information on this new safety initiative.



Deputy Chief Investigator Darryl Lloyd is currently on leave attending the FBI Academy. He will return in the fall.

## Disrupting Normal School Functions (With Thanks To The 15th Circuit State Attorney's Office)

H.N.B. and another student were involved in an ongoing feud. Before the morning of the fight at issue in this case, an assistant principal had warned the students at least twice "about not bringing this kind of trouble on the school campus." On the morning of the fight at issue, H.N.B. exited his school bus and saw the other student and his sister standing nearby, waiting for school to start. The two boys looked at each other and began arguing. The boys then removed their backpacks, started fighting, and fell on the ground, when a third student came and broke it up. The fight was very short in duration. No school staff member was around when the fight occurred. After the third student broke up the fight, the boys continued arguing. N.N.B. took off his shirt and tried to provoke the other student to continue the fight. However, the boys ultimately walked away from each other. The other student and his sister walked towards the nearby cafeteria where breakfast was being served. *The fight had not stopped students from unloading off the busses or going to the cafeteria.*

While the two were fighting a student contacted the school's resource officer, who was on the other side of the bus loop. The resource officer located H.N.B. walking away while not wearing a shirt. The resource officer immediately escorted H.N.B. to the assistant principal's office during which he did not act out. i.e. did not scream, curse or wave his arms. However, the juvenile did attract other students' attention because he was shirtless and walking with the resource officer.

An assistant principal saw the resource officer leading the shirtless H.N.B. away from

the crowd. He testified that although some gathering of students had occurred near the gate which led to the cafeteria, *the fight had not disrupted bus service or the serving of breakfast.*

H.N.B. was charged as a juvenile and found guilty of disrupting an educational institution in violation of 877.13, F.S. On appeal he argued the State did not present sufficient evidence of: (1) a specific intent to disrupt school activities; or (2) any material disruption resulting from his conduct. The 4th D.C.A. agreed and reversed the conviction.

### **Issue:**

Did the facts support a finding that the juvenile committed disruption of an educational institution as charged? **No.**

### **Disruption of an Educational Institution:**

It is unlawful for any person to knowingly disrupt or interfere with the lawful administration or functions of any educational institution, school board, or activity on school board property; or to knowingly advise, counsel, or instruct any school pupil or school employee to disrupt any school or school board function, activity on school board property, or classroom; or to knowingly interfere with the attendance of any other school pupil or school employee in a school or classroom. F.S. 877.13.

The statute seeks to prohibit acts which are specifically and intentionally designed to stop or temporarily impede the progress of any normal school function or activity occurring on

## Disrupting Normal School Functions (Continued)

the school's property. The statute seeks to ensure that educational institutions and their administrators are free to perform their responsibilities without needless interference or disruption from others.

Further, the offense of disrupting a school function contains a *specific-intent* element that requires conduct specifically and intentionally designed to stop or temporarily interfere with the progress of any normal school function or activity occurring on the school's property. As the 5th D.C.A. explained in *A.M.P. v. State*, (5DCA 2006), "A number of courts, including this court, have recognized that this statute seeks to prohibit acts which are 'specifically and intentionally designed to stop or temporarily impede the progress of any normal school function or activity occurring on the school's property.' A broad interpretation of the statute would turn virtually every infraction of school rules into a criminal act to the extent that the infraction occurred on school grounds, during school hours, and required the attention of school officials." "The statute's requirement that one must 'knowingly' disrupt the functioning of an educational institution suggests that the prohibited conduct requires some sort of purposeful interference with school activities."

### **Court's Ruling:**

Given the statute's articulated requirement that the charged behavior disrupt a school function, and the total lack of such evidence in this case, the 4th D.C.A. found H.N.B.'s actions constituted an affray but not a violation of sec. 877.13.

"Viewing the evidence in the light most favorable to the State, no evidence existed that the juvenile knowingly disrupted or interfered with the school's administration or functions. The fight itself did not disrupt the school's administration or functions. The fight itself did not disrupt the school's administration or functions. The fight broke up before most other students even reacted. What ultimately got the other students' attention was the shirtless juvenile being calmly escorted to the principal's office by the resource officer. But even that event did not disrupt the school's administration or functions. The assistant principal testified that although some crowding occurred near the gate which led to the cafeteria, the fight had not disrupted bus service or the serving of breakfast."

"In sum, not every school fight, and not every event which draws other students' attention, amounts to disrupting an educational institution in violation of section 877.13(1)(a). While another charge against the juvenile may have been appropriate under the facts of this case, the charge of disruption of an educational institution was not proven here. See, *M.S.G. v State*, (1DCA 2008)(where 'child was involved in a fight on the school ground but *there was no evidence that he acted with the deliberate intent to disrupt a school function,*' the evidence was insufficient to support the disruption charge, but was sufficient to support an affray charge)."

### **Lessons Learned:**

An issue considered in other cases in the proper interpretation of this statute, §877.13, concerns behavior **after** the school day. A juvenile whose conduct resulted in dis-

## Disrupting Normal School Functions (Continued)

ruption of bus transportation could be found guilty of disruption of a school function. Although the juvenile's conduct took place after school, the safe transportation of students to and from school was integral to the administration of an educational institution. See, *M.M. v State*, (5DCA 2008).

Similarly, a non-student juvenile who engaged in a fight with students waiting for the school bus to take them home from school at the end of the school day could properly be found guilty of violating § 887.13. See, *A.C. v. State*, (3DCA 1985). Court ruled on the basis that he had interfered with the administration of an educational institution, regardless of the fact that the school day had ended, because the administrative duties of the school authorities included supervising and administering the orderly and safe transportation of students to and from school.

**H.N.B v. State**  
**4th D.C.A. (July 19, 2017)**



## Electronic Eavesdropping Of Public Employees

Everyone is familiar with the general perimeters of Chapter 934, the electronic eavesdropping statute. In a day and age when illegal surreptitious recording is easier than ever since virtually everyone has a cell phone with recording capability, the prospect of being recorded without one's knowledge is more real than ever. Unfortunately, a federal 11th Circuit case issued in early July may have emasculated Chapter 934, at least in many situations applicable to law enforcement and other public officials.

The case, McDonough v Fernandez-Rundle, originated in Dade County. McDonough had made complaints about police misconduct in the Homestead Police Department that ultimately led the Chief of Police to invite him to a meeting to discuss his concerns. McDonough attended, along with another civilian, and the Chief had a command staff member present as well. Afterwards, there was a dispute as to what happened at the meeting, and McDonough posted a recording that he had taken of the meeting on YouTube to support his version of what had happened. While the Chief acknowledged that he had indeed see McDonough's cell-phone sitting on a desk or table during the meeting he had been unaware that a recording was being made and had not consented to that.

As a result, McDonough forwarded a complaint for a violation of Chapter 934 to the Miami-Dade State Attorney, Katherine Fernandez-Rundle. Rather than file formal charges, Fernandez-Rundle wrote McDonough a letter telling him that the recording he had made was criminal in nature and a felony and that if he did so again he would be prosecuted. In response, McDonough sued Fernandez-Rundle in federal court, essentially seeking to have her enjoined from prosecuting him.

Although the lower level federal district court ruled in favor of Fernandez-Rundle, the 11th Circuit Court of Appeals reversed that ruling and essentially found in favor of McDonough, ruling that he had not violated Chapter 934 regardless of the Chief's lack of affirmative knowledge or his [McDonough] not having affirmatively told the Chief that he was recording the meeting.

In reaching this conclusion, the 11th Circuit found that the definitional language of FS 934.02, which describes an oral communication subject to the statute as one "uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation..." precluded any violation. The reason for this is the court's conclusion that the word "exhibiting" in this definition means to show, display or demonstrate, and thus requires some affirmative statement or warning that recording is not permitted.

As if this requirement for an affirmative expression of an expectation as to the privacy of communications isn't damaging enough to Chapter 934, the court went further and suggested that in the context of a public official meeting with people to discuss public business it is difficult to say that there could ever be a true expectation of privacy. That a meeting is in a public building, includes public employees, and concerns public business "undermines and objective expectation of privacy" that the public officials might otherwise claim.

In other words and to summarize, before any oral communication can be subject to the prohibition against recording in Chapter 934 there must be some affirmative admonishment against doing so, and even then if the context is governmental it might not matter. Nowhere, other than in this new federal interpretation of Florida statute and law, does this restriction apply.

Where we go from here is unknown. A legislative fix, if it is to happen, is obviously not going to happen quickly. Prominently displayed signage warning that no recording is permitted may or may not save the day but may be advisable. Whether signage can overcome the 11th Circuit's ruling in the context of a public official is unknown. All that can be said for sure is that the viability of much of Chapter 934 is now in question.



**2017 LEGISLATIVE UPDATE**  
**Monica M. Hofheinz**  
**Assistant State Attorney/Executive Director**  
**17<sup>th</sup> Judicial Circuit**

**Murder and Mayhem**

SB 0280                    Relating to Sentencing for Capital Felonies

Amends sections 921.141 and 921.142 requiring jury unanimity rather than a certain number of jurors for a sentencing recommendation of death. If a unanimous jury does not determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole. Effective Date: 3/13/17  
Approved by Governor; Chapter No. 2017-001

SB 0128                    Relating to Self-defense Immunity

Amends section 776.032 to require in a criminal prosecution, once a prima facie claim of self-defense immunity has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution under certain circumstances. Effective Date: June 9, 2017. Approved by Governor; Chapter No. 2017-072

SB 1052                    Relating to Justifiable Use of Force

Amends section 776.013(3) to address the inconsistency in law caused by the 2014 amendment to the Stand Your Ground legislation. SB 1052 clarifies that there is no requirement that a person be 'attacked' in his or her dwelling, residence or vehicle before they had the right to use defensive force. The right to use force or threaten to use force in his or her dwelling, residence or vehicle in self-defense begins when a person 'reasonably believes' that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force. The second clarification eliminates the cross-reference that implied a person in a dwelling, residence or vehicle who is engaged in criminal activity' might have a duty to retreat. A person who is in a dwelling, residence or their vehicle in which he or she has a right to be does not have a duty to retreat and has the right to stand his or her ground under certain circumstances, etc. Effective Date: 7/1/2017. Approved by Governor; Chapter No. 2017-077

SB 0312 Relating to Eyewitness Identification

Creates section 92.70 named the "Eyewitness Identification Reform Act". This statute will apply to live line-ups as well as photo line-ups; requiring state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures including the use of an independent line-up administrator. There are alternatives to this in a photo line-up but the intent is to achieve a neutral administration of the line-up. The Criminal Justice Standards and Training Commission, in consultation with FDLE, must create educational materials and provide training programs on how to conduct lineups, under this act. Effective Date: 10/1/2017. Approved by Governor; Chapter No. 2017-091

HB 0111 Relating to Public Records Identity of Witness to a Murder

Amends sections of Chapter 119 to provide that criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, is confidential and exempt from public record for 2 years after the date on which the murder is observed by the witness. There are exceptions for criminal justice agencies and discovery duties. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-011

## **Bail Bonds and Sentencing**

HB 0361 Relating to Bail Bonds

Amends multiple sections of Chapter 903 to relieve bail bond agents of 'breach of the bond' obligations and limits their responsibility to assure the appearance of the defendant. Now only when there has been a failure of the defendant to appear as required, will the court declare the bond forfeited after appropriate notice to the surety agent. Provides surety agent an additional 60 days after failure to appear based on specific circumstances such as confinement to institution, hospital or other jail. Defendant's confinement may have occurred AFTER required court appearance but within 60 days to avoid forfeiture of the bond. The surety agent can also avoid forfeiture when the state is unwilling to seek extradition of the fugitive within 30 days after request of the surety agent to do so, contingent upon the surety agents consent to pay all costs and expenses in returning defendant to jurisdiction up to the penal amount of the bond. Adds the placement in any court-ordered program, including a residential mental health facility, to the list of circumstances in which an original bond is not considered to guarantee the appearance of the defendant. Effective Date: July 1, 2017. Approved by Governor; Chapter No. 2017-168

HB 7091 Relating to Probation and Community Control

Amends numerous sections of Chapter 948. Revises offenses that render offender ineligible for administrative probation; effective for an offense committed on or after October 1, 2017, a person is ineligible for placement on administrative probation if the person is sentenced to or is serving a term of probation or community control, regardless of the conviction or adjudication, for committing, or attempting, conspiring, or soliciting to commit, any of the felony offense described in section 775.21(4)(a) 1.a, (4)(a)1.b. or 943.0435(1)(h)1.a; deletes language referencing 'parole'. Creates a 'home confinement' option developed by Department of Corrections under community control programs with very specific limitation. Amends section 948.06 to address the recent decision in *Mobley v. State*, 197 So.3<sup>rd</sup> 572(4<sup>th</sup> DCA 2016), in which the court held that, under current statute, an offender's probationary term was not tolled when the trial court issued an arrest warrant for technical violations of probation. This bill removes the requirement for an arrest warrant to be issued for the commission of a new crime. As a result, any warrant for a VOP, including a technical violation, will result in the offender's probationary term being tolled. Requires, rather than authorizes, DOC to electronically monitor offenders sentenced to community control. Unless otherwise noted Effective Date: July 1, 2017. Approved by Governor; Chapter No. 2017-115

HB 1201 Relating to Department of Corrections

Amends section 943.04 authorizing FDLE access to certain confidential inmate health records for investigation of inmate injury or death; revises membership of DOC's safety & security review committee & duties of committee members; requires DOC staff to adopt & enforce safety & security standards & policies; authorizes DOC to receive information electronically when accepting an inmate; amends section 958.11 relating to the assignment & housing certain youthful offenders in institutions and programs to align with the Federal Prison Rape Elimination Act (PREA) guidelines regarding age groups for youthful offenders. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-031

## Substance Abuse/Controlled Substances

### HB 0477 Relating to Controlled Substances

Amends sections of Chapter 893 to create and enhance penalties for unlawful acts related to opioids, synthetic cannabinoids and other controlled substances. Adds to Schedule I certain fentanyl derivatives and other substances that have emerged in the illegal drug market. Creates a first degree felony for possession of 10 grams or more of certain schedule II substances including fentanyl and other synthetic opioids. Adds codeine and certain phenethylamines and phencyclidines to trafficking statutes. Creates trafficking for fentanyl, synthetic cannabinoids and n-benzyl phenethylamines with mandatory minimum terms. Amends section 782.04 murder statutes to add fentanyl and other synthetic opioid analgesics to list of controlled substances where distribution is proven to be proximate cause of user's death. Provides that certain crime laboratory personnel may possess, store, & administer emergency opioid antagonists. Effective Date: October 1, 2017. Approved by Governor; Chapter No. 2017-107

### HB 0505 Relating to Florida Comprehensive Drug Abuse Prevention and Control Act

Amends Section 893.03(2) to remove ioflupane I 123 from Schedule II controlled substances as it is not subject to abuse and now has a valid medical purpose in the treatment of Parkinson disease; provides that reference to Chapter 893, F.S., or to any section or portion thereof, includes all subsequent amendments. Effective Date: July 1, 2017. Approved by Governor; Chapter No. 2017-110

### HB 0557 Relating to Controlled Substance Prescribing

Amends 893.055 Prescription drug monitoring program; to revise requirements for reporting to the Department of Health the dispensing of controlled substances to individuals from not more than 7 days to no later than the close of the next business day. This shall take effect January 1, 2018; limits exception to reporting requirements for certain facilities dispensing controlled substances; authorizes certain employees of U.S. Department of Veterans Affairs to access certain information in program's database. Unless otherwise noted Effective Date: July 1, 2017. Approved by Governor; Chapter No. 2017-169

### HB 0807 Relating to Practices of Substance Abuse Service Providers

Major 'Sober Homes' legislation. Amends section 16.56 to authorize Office of Statewide Prosecution to investigate & prosecute patient brokering offenses. Amends multiple sections of Chapter 397 to increase penalties for operating without license; requires DCF to conduct background screening for owners, directors, CFOs, & clinical supervisors of substance abuse service providers; revises limitations on referrals to recovery residences; authorizes court to approve application for disclosure of substance abuse treatment records; provides fines & enhanced penalties. Amends sections of Chapter 501, Licensure of commercial telephone sellers to include entities providing substance abuse marketing services. Amends sections of Chapter 817 to create felony offenses for fraudulent marketing practices with the intent to induce another person to seek treatment with that service provider. Amends section 895.02 to include patient brokering in definition of racketeering activity. Amends Chapter 921 CPC Severity Ranking chart moving Patient Brokering from level 3 to levels 5, 6 & 8 based on amount of patients illegally brokered. Effective Date: July 1, 2017. Approved by Governor; Chapter No. 2017-173

### SB 0886 Relating to Public Records/Substance Abuse Impaired Persons

Providing an exemption from public records requirements for petitions for involuntary assessment and stabilization, court orders, related records, and personal identifying information regarding substance abuse impaired persons; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. Effective Date: 7/1/2017, Approved by Governor; Chapter No. 2017-025

### HB 0249 Relating to Drug Overdoses

Permitting certain entities to report controlled substance overdoses to the Department of Health; providing immunity for persons who make reports in good faith; requiring a hospital with an emergency department to develop a best practices policy to promote the prevention of unintentional drug overdoses, etc. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-054

## Law Enforcement

### HB 0305 Relating to Law Enforcement Body Cameras

Amends section 943.1718 to require law enforcement agencies add to their established body camera policies & procedures a provision that permits an officer using a body camera to review recorded footage of incident before writing report or providing statement regarding any event arising within the scope of his or her official duties; provides exception for officer's inherent duty to immediately disclose information necessary to secure an active crime scene or identify suspects or witnesses. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-015

### HB 0039 Relating to Autism Awareness Training for Law Enforcement Officers

Creates section 943.1727 to require FDLE establish continued employment training component relating to autism spectrum disorder; specifies instruction to include recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and appropriate responses to an individual exhibiting such symptoms and characteristics; provides that completion of training may count toward continued employment instruction requirements. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-043

## Domestic Violence and Sex Offenders

### HB 1385 Relating to Domestic Violence

Amends section 741.281 to specify that a person must attend and complete batterers' intervention program ordered as condition of probation. Amends section 741.283(1)(a) if a person is adjudicated guilty of a crime of domestic violence and intentionally caused bodily harm to another, the person must serve 10 days in a county jail for a first offense, 15 days for a second offense and 20 days for a third or subsequent offense. Creates section 741.283(1) (b) if a person is adjudicated guilty of a crime of domestic violence and intentionally caused bodily harm to another and the act takes place in the presence of a child under 16 who is a family or household member of the victim or perpetrator, the offender must serve 15 days for a first offense, 20 days for a second offense and 30 days for a third or subsequent offense. Amends section 775.08435 creating a prohibition against withholding adjudication for a third degree felony that is a crime of domestic violence unless: 1.) The State Attorney requests in writing that adjudication be withheld or 2.) The Court makes written findings that withholding of adjudication is reasonably justified based on facts and circumstances in accord with section 921.0026 (mitigating circumstances under the criminal punishment code). Prohibits award of attorney fees in specified domestic violence proceedings. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-156

### HB 0239 Relating to Public Records/Protective Injunction Petitions

Amends Chapter 119 to create a public records exemption for a petition for an injunction filed on or after July 1, 2017 for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking or cyberstalking, & contents thereof that is dismissed without a hearing, dismissed at an ex parte hearing for failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued. For petitions filed prior to July 1, 2017, the respondent must request the exemption in writing and deliver to Clerk of Court. The Legislature stated that its intent is to protect the reputation of individuals named in these petitions from unverified allegations that may be defamatory to the respondent's reputation. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-014

### HB 7087 Relating to Public Records/Protective Injunctions for Certain Types of Violence

Amends sections 741.30 and 784.06 to extend repeal dates for exemptions from public record requirements for personal identifying & location information of petitioner requesting notification of service of injunction for protection against domestic violence, repeat violence, sexual violence, & dating violence & other court actions related to injunction held by clerks & law enforcement agencies. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-065

### SB 1694 Relating to Support for Parental Victims of Child Domestic Violence

Requiring the Department of Juvenile Justice and the Florida Coalition Against Domestic Violence to collaborate to develop and maintain updated information and materials regarding specified services and resources; requiring domestic violence training for law enforcement officers to include training concerning child-to-parent cases, etc. Effective Date: 7/1/2017. Approved by Governor; Chapter No. 2017-123

**HB 0397** Relating to Public Records/Victim of Alleged Sexual Harassment/Identifying Information

Amends section 119.071 to create an exemption from public records requirements for personal identifying information of alleged victim in allegation of sexual harassment; authorizes disclosure of such information to governmental entities in furtherance of their statutory duties; provides for future legislative review & repeal of exemption; provides statement of public necessity. Effective Date: June 14, 2017. Approved by Governor; Chapter No. 2017-103

**HB 0699** Relating to Internet Identifiers

Amends section 775.21 to revise definition of term 'Internet identifier' to mean any designation, moniker, screen name, user name, or other name used for self-identification to send or receive social Internet communication. Defines 'social Internet communication' to mean any communication through a commercial social networking website or application software with exceptions. Requires sexual predators & sexual offenders to register each Internet identifier's corresponding website homepage or application software name with FDLE through sheriff's office; requires sexual predators & sexual offenders to report any change to certain information after initial in-person registration in specified manner. Effective Date: June 26, 2017. Approved by Governor; Chapter No. 2017-170

## **Minors, Child Protection and Juveniles**

**HB 0151** Relating to Proceedings Involving Minors or Certain Other Persons

Amends section 92.55 to provide that judges may allow use of certain service animals, therapy animals, or facility dogs in proceedings involving abuse, abandonment, or neglect. Creates definitions for the terms 'facility dog' and 'therapy animal'. Allows such animals to be used when taking testimony of certain other persons. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-013

**SB 0852** Relating to Human Trafficking

Amends section 409.016(1) to create a definition of 'commercial sexual exploitation'. Amends multiple statutes to include the term 'commercial sexual exploitation'. Amends section 92.565 admissibility of confession in sexual abuse cases to include offense of human trafficking involving commercial sexual activity. Requiring the Department of Children and Families or a sheriff's office to conduct a multidisciplinary staffing on child victims of commercial sexual exploitation to determine the child's service and placement needs; revising the continuing medical education course requirements for certain re-licenses or recertifications to include a course in human trafficking; adding human trafficking to the list of crimes requiring pretrial detention of the defendant, etc. Effective Date: 10/1/2017, Approved by Governor; Chapter No. 2017-023

**HB 7059** Relating to Juvenile Justice

Amends sections of Chapter 985 relating to detention to provide that a child meeting specified criteria shall be placed in detention care until child's detention hearing; provides criteria for determining whether child is prolific juvenile offender; provides for placement of prolific juvenile offender in detention care in certain circumstances; requires secure detention for all children awaiting placement in commitment program until placement or commitment is accomplished; specifies time period for adjudicatory hearing for prolific juvenile offender; requires DOH to waive fees for birth certificate issued to certain juvenile offenders. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-164

**HB 1269** Relating to Child Protection

Revises entities responsible for screening, employing, & terminating child protection team medical directors; revises terms; revises subdivision of state from districts to circuits for purpose of child protection teams; revises required board certifications for certain entities; revises timeframe in which child protection team medical directors must obtain certification; requires Children's Medical Services to convene task force to develop protocol for forensic interviewing of children suspected of having been abused; revises provisions regarding expert testimony provided by certain entities. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-153

**HB 1121** Relating to Child Welfare

This legislation combines 4 bills that passed through the legislative process. Although it appears to deal with the pediatric cardiac care advisory panels it also addresses DCF issues and dependency actions. If your office handles Dependency actions for DCF you should review the changes out-lined in the section related to dependency court procedures. Provides that confidential records held by the department concerning reports of child abandonment, abuse, or neglect may be accessed for employment screening of residential group home caregivers; requires court to inquire as to identity & location of child's legal father at shel-

ter hearing; requires court to consider maltreatment allegations against parent in evidentiary hearing relating to dependency petition; requires court to conduct under oath inquiry to determine identity or location of unknown parent after filing of termination of parental rights petition. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-151

**HB 1239** Relating to School Bus Safety

Amends section 316.027 Crash involving death or personal injuries, to provide that in addition to civil and criminal penalties a person who fails to stop for a school bus causing death or serious bodily injury to another must serve 120 hours in a trauma center, participate in a victim impact panel, attend driver improvement school and pay a \$1,500 fine with a 1 year license suspension. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-189

## **Criminal Offenses**

**HB 0107** Relating to Criminal Offenses Involving Tombs and Memorials

Amends section 872.02 to provide an exemption from criminal penalties for a cemetery that removes or relocates a tomb if they obtain written authorization from a legally authorized person, or doesn't receive an objection after publishing specific public notice. Also clarifies that the second degree felony of disturbing the contents of a tomb includes conduct such as excavation, exposure, movement or removal of contents; authorizing an owner, officer, employee, or agent of specified cemeteries to relocate the contents of a grave or tomb, subject to certain conditions, etc. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-040

**SB 0118** Relating to Criminal History Records

Creates a new law that prohibits a person or entity engaged in publishing or disseminating arrest booking photographs (often referred to as 'mugshot' companies) from soliciting or accepting a fee or other payment to remove a photograph; authorizing a person whose arrest booking photograph is published to request in writing that it be removed. Effective Date: July 1, 2018. Approved by Governor; Chapter No. 2017-130

**HB 0343** Relating to Payment Card Offenses

Amends section 817.625 revises elements of offenses of using scanning device or re-encoder with intent to defraud to include prohibiting the use of a skimming device; prohibits possession, sale, or delivery of skimming device; creates definitions; creates second and third degree felonies ranked in CPC severity levels 4 and 5. Effective Date: October 1, 2017; Approved by Governor; Chapter No. 2017-081

**HB 0457** Relating to Terrorism and Terrorist Activities

Provides that violation of specified provisions in furtherance of certain objectives is crime of terrorism; prohibits person from using military-type training from designated foreign terrorist organizations; prohibits providing material support or resources to or engaging in other specified actions in connection with designated foreign terrorist organizations; provides penalties for person who willfully becomes member of designated foreign terrorist organization & serves with intent to further illegal acts; provides penalties for intentionally disseminating or spreading contagious, communicable, or infectious disease among crops, poultry, livestock, or other animals. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-037

**HB 0065** Relating to Civil Remedies for Terrorism

Creates cause of action relating to terrorism; specifies measure of damages; prohibits claims by specified individuals; provides for attorney fees & court costs; provides construction. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-044

**HB 0879** Relating to Unlawful Acquisition of Utility Services

Amends section 812.14 to revise elements that constitute theft of utilities; specifies circumstances that constitute prima facie evidence of violations; specifies types of damages that may be recovered for damaging property of utility or for theft of electricity services; specifies methods & bases used to determine & assess damages for damaging property of utility or for theft of electricity services. This legislation is targeting the theft of utility services by 'Grow Houses'. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-145

**SB 0884** Relating to Shark Fins

Creates section 379.2426 which prohibits persons from possessing separated shark fins except under certain conditions; although first and second offenses are both misdemeanors of the second degree, the fines are pretty hefty - \$4,500 and \$9,500. A third offense is a misdemeanor of the first degree; prohibiting persons with suspended or revoked saltwater license privileges from engaging in certain activities, etc. Effective Date: 10/1/2017, Approved by Governor; Chapter No. 2017-024

**HB 1027** Relating to Unmanned Aircraft

Creates section 330.41 citing this act as the "Unmanned Aircraft Systems Act"; providing that the authority to regulate the ownership or operation of unmanned aircraft systems (commonly known as drones) is vested in the state; prohibiting certain operation of an unmanned aircraft in relation to certain critical infrastructure facilities with criminal penalties; prohibiting possession or operation of an unmanned aircraft or unmanned aircraft system with certain attached weapons or devices; amends section 316.003 to define and regulate a 'personal delivery device;. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-150

**HB 1031** Relating to Marine Turtle Protection

Amends section 921.0022 to rank & revise description of criminal violations of Marine Turtle Protection Act in offense severity ranking chart of Criminal Punishment Code. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-180

**HB 1347** Relating to Application of the Florida Deceptive and Unfair Trade Practices Act to Credit Unions

Exempts credit unions from regulation under Florida Deceptive & Unfair Trade Practices Act. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-190

## **Odds and Ends**

**HB 0441** Relating to Court Records

Provides exemption from liability for release of certain information by clerk of court. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-133

**HB 0455** Relating to Tax Exemptions for First Responders and Surviving Spouses

Provides exemption from ad valorem taxation for certain first responders under specified conditions & surviving spouses of first responders who have died; specifies documentation required to receive exemption; provides criminal penalty for knowingly or willingly giving false information; specifies deadlines for applying for exemption for 2017 tax year. Effective Date: June 14, 2017. Approved by Governor; Chapter No. 2017-105

**HB 0467** Relating to Department of Agriculture and Consumer Services

In addition to the revisions relating to agriculture and consumer services the final pages of this legislation amends section 790.06 license to carry concealed weapon or firearm and revises requirements for obtaining & reducing fees for concealed weapon or firearm license. Effective Date: July 1, 2017. Approved by Governor; Chapter No. 2017-085

**SB 0494** Relating to Compensation of Victims of Wrongful Incarceration

Amends Chapter 961 to narrow the list of felony offenses that disqualify a person from receiving compensation under the Victims of Wrongful Incarceration Compensation Act from all felonies to violent felonies; specifying that a wrongfully incarcerated person who commits no more than one felony that is not a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is eligible for compensation, etc. Effective Date: 10/1/2017. Approved by Governor; Chapter No. 2017-120

**HB 0671** Relating to Reemployment Assistance Fraud

Amends section 322.142 to add the Department of Economic Opportunity as entity that may be issued reproductions from certain files or digital records for identification of fraudulent or false reemployment assistance claims. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-018

**HB 1007** Relating to Insurer Anti-Fraud Efforts

Creates section 626.9896 Dedicated Insurance Fraud Prosecutors, requires each State Attorney's office that receives an appropriation to fund attorneys and paralegals dedicated solely to the prosecution of insurance fraud cases to submit data to the Division of Investigative and Forensic Services on the last day of each calendar quarter beginning September 30, 2017 and quarterly thereafter. Data must be grouped by case type, including Division of Investigative and Forensic Services insurance fraud cases, other insurance fraud cases and cases not involving insurance fraud. Data must include number of cases filed; number of cases pending at pretrial or intake, number of cases in which the ASA is assisting in the investigations, number of cases closed or disposed of during the prior quarter, disposition of cases closed during the prior quarter and number of cases currently pending in a pretrial diversion program. Requires every insurer to designate at least one primary anti-fraud employee; requires certain insurers to adopt anti-fraud plan; revises insurer requirements in providing anti-fraud information to DFS; requires anti-fraud plans & statistics to be filed annually with department. Amends other sections of Chapter 626 relating to 'Viatical settlement contracts' procedures and prohibitions. Effective Date: September 1, 2017, Approved by Governor; Chapter No. 2017-178

HB 1009 Relating to Public Records/Insurance Fraud Information/DFS

Provides exemption from public records requirements for reports, documents, or other information relating to investigation & tracking of insurance fraud submitted by insurers to DFS; provides finding of public necessity. Effective Date: on the same date that CS/HB 1007 or similar legislation takes effect, September 1, 2017, Approved by Governor; Chapter No. 2017-179

HB 1379 Relating to Department of Legal Affairs

Authorizes Statewide Council on Human Trafficking to receive funding from additional sources for purpose of defraying costs of the annual statewide policy summit; requires DHSMV to assign highway patrol officers to AG; provides that AG has standing to assert certain rights in Charitable Trust proceedings; requires authorized trustee to provide certain notice to AG rather than state attorney; defines virtual currency & prohibits laundering of virtual currency; provides for crime victim assistance awards to surviving family members of first responders who, as result of crime, are killed answering call for service in line of duty. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-155

SB 2508 Relating to Division of State Group Insurance

Removing a requirement that a contract for dependent eligibility verification services for the state group insurance program be contingency-based; requiring the division to notify subscribers of dependent eligibility rules by a certain date; requiring the division to hold a subscriber harmless for past claims of ineligible dependents for a specified timeframe, etc. Effective Date: 7/1/2017. Approved by Governor; Chapter No. 2017-127

## **Additional Public Records Legislation**

SB 0080 Relating to Public Records

Amends section 119.12 revising the circumstances under which a court must assess and award the reasonable costs of enforcement, including reasonable attorney fees, against an agency in a civil action to enforce Chapter 119, F.S.; clarifies the 5 day written notice requirement; prohibiting the assessment and award of the reasonable costs of enforcement to a complainant who acted with an improper purpose; defining improper purpose as a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of the public record laws for a frivolous purpose; applies only to public record requests made on or after effective date of this act. Effective Date: Upon becoming a law May 23, 2017, Approved by Governor; Chapter No. 2017-021

HB 0243 Relating to Public Records/Nonsworn Investigative Personnel of OFR's Bureau of Financial Investigations

Provides exemption from public records requirements for personal identifying & location information of certain nonsworn investigative personnel of OFR & names & personal identifying & location information of spouses & children of such personnel; provides for future review & repeal of exemption; provides statement of public necessity. Effective Date: 6/2/17 Approved by Governor; Chapter No. 2017-053

HB 0981 Relating to Public Records/Department of Elderly Affairs

Provides exemption from public records requirements for certain identifying information of complainants & wards held by Department of Elderly Affairs; provides applicability; provides for future legislative review & repeal of exemption; provides statement of public necessity. Effective Date: July 1, 2017, approved by Governor; Chapter No. 2017-176

**HB 1107** Relating to Public Records/Workers' Compensation

Providing an exemption from public records requirements for the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services pursuant to the Workers' Compensation Law; providing a criminal penalty for willful and knowing disclosure of such information to an unauthorized person or entity; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. Effective Date: July 1, 2017, Approved by Governor; Chapter No. 2017-185

**SB 1108** Relating to Public Records/Firefighters and their Spouses and Children

Expanding an exemption from public records requirements for the personal identifying and location information of certain firefighters and their spouses and children to include the personal identifying and location information of former firefighters and their spouses and children; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. Effective Date: 10/1/2017. Approved by Governor; Chapter No. 2017-096

**HB 1203** Relating to Public Records/DOC/Health Information

Provides that certain protected health information held by DOC is confidential & exempt from public records requirements; authorizes release of protected health information & other records of an inmate to certain entities, subject to specified conditions and; provides statement of public necessity. Effective Date: July 1, 2017. Approved by Governor; Chapter No. 2017-114

**SB 2510** Relating to Public Records/Dependent Eligibility Verification Services

Creating an exemption from public records requirements for records collected for dependent eligibility verification services for the state group insurance program and held by the Department of Management Services; providing for future legislative review and repeal; providing a statement of public necessity, etc. Effective Date: July 1, 2017. Approved by Governor; Chapter No. 2017-128

**HB 7093** Relating to OGSR/Agency Personnel Information

Revises exemptions from public record requirements for certain personal identifying & location information of specified agency personnel & spouses & children thereof; removes scheduled repeal of certain exemptions; provides for retroactive application; provides for future legislative review & repeal of certain exemptions; provides statements of public necessity. Effective Date: October 1, 2017, Approved by Governor; Chapter No. 2017-066

**...and just because they almost missed it....**

**SB 0006AA** Relating to Public Records/Medical Marijuana Use Registry/Physician Certification for Marijuana and Dispensing

Exempting from public records requirements personal identifying information of patients, caregivers, and physicians held by the Department of Health in the medical marijuana use registry and personal identifying information related to the physician certification for marijuana and the dispensing thereof held by the department; Effective Date: 6/23/2017 Approved by Governor; Chapter No. 2017-231

**SB 0008AA** Relating to Medical Use of Marijuana

Providing an exemption from the state tax on sales, use, and other transactions for marijuana and marijuana delivery devices used for medical purposes; providing qualifying medical conditions for a patient to be eligible to receive marijuana or a marijuana delivery device; providing for the establishment of medical marijuana testing laboratories; establishing the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc., etc. APP: \$15,143,440.00 Effective Date: 6/23/2017, Approved by Governor; Chapter No. 2017-232

**Special thanks to Lobbytools and House & Senate staff analysis for assistance with summaries.**

**Copies of legislation may be downloaded from Online Sunshine at [www.leg.state.fl.us](http://www.leg.state.fl.us)**