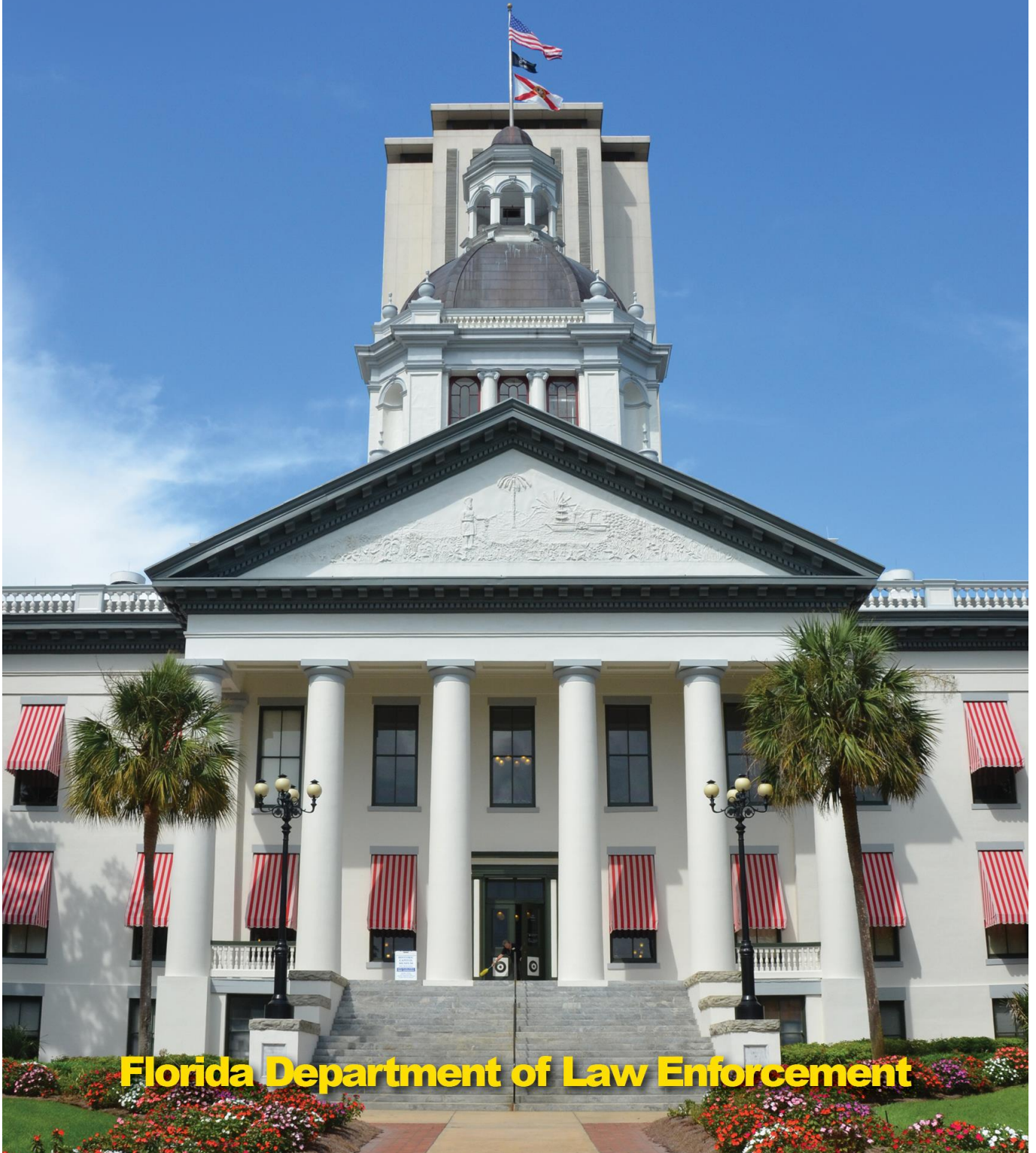


2017 Legislative Session Highlights



Florida Department of Law Enforcement

The 2017 regular legislative session ended Monday, May 8, 2017 and the Governor convened a special legislative session that ran June 7-9, 2017. Following the special session, the FY 17-18 state budget was set at just over \$82 billion. The department received \$17 million in new funding and 60 new full-time equivalent (FTE) positions for FY 17-18, which begins July 1, 2017.

The new budget is highlighted by well-deserved pay increases for members. Law enforcement officers below ASAC/Chief rank will receive a five percent increase. Non-sworn members whose annual salary is less than \$40,000 will receive a \$1,400 increase; sworn members of ASAC/Chief rank and above and non-sworn members exceeding \$40,000 will receive a \$1,000 increase. In addition, there were no increases to employee health insurance premiums this year, although proposed changes to the State Group Insurance Program were passed and set to begin being implemented in future years (additional information regarding SB 7022 provided on pages 8-9).

The department's new funding initiatives and key substantive legislation passed during the session are summarized below.

New Funding

Enhance Counterterrorism Resources – \$5,862,636 – Operating Trust Fund (46 FTE). Create counterterrorism squads in each region. These squads will enhance domestic security prevention efforts via increased investigative activities and intelligence to include FDLE agents assigned to Joint Terrorism Task Forces.

Enhance Missing Children Response and Investigations – \$653,108 Operating Trust Fund (9 FTE). Increase staffing to establish 24/7 shift coverage in MEPIC for response to and coordination of AMBER, Missing Child and Silver alerts. Increase staffing to enhance analytical capabilities for the Office of Enforcement and Apprehension.

Improve Sexual Offender and Predator Registry – \$1,938,180 Operating Trust Fund. Implement a new Sexual Offender/Predator Registry. Funds will be used to rebuild the infrastructure and begin development of the core functionality of the registry. This is the first year of a multi-year project.

Replace Computerized Criminal History System – \$4,957,059 Operating Trust Fund. Continue Computerized Criminal History System modernization to increase functionality for criminal justice agencies and improve the quality of Florida's criminal history records. This is the fourth year of funding.

Increase Funding for Law Enforcement and Correctional Officer Training – \$1,200,000 Operating Trust Fund / \$998,748 – Criminal Justice Standards and Training Trust Fund. Increase training dollars allocated per officer from \$67 to \$80 beginning in FY 17-18.

Sexual Assault Kit Backlog Reduction Plan – \$792,350 General Revenue (5 FTE). Increase staffing to manage the growing workload in Biology sections statewide.

Unsolved Cases Website – \$207,160 General Revenue. Develop a public website for law enforcement agencies to share information regarding unsolved cases.

Domestic Security Grant Programs – \$ 1,758,108 Federal Grants Trust Fund. Continue critical domestic security activities and complete disbursements on existing and ongoing subgrants under the federal Homeland Security Grant Program.

District Attorney of New York (DANY) Sexual Assault Kit Grant – \$355,000 Grants and Donations Trust Fund. Work previously unprocessed sexual assault kits in the 4th Judicial Circuit.

Bills that passed of particular relevance to the department are summarized below.

Autism Awareness Training for Law Enforcement Officers – CS/CS/HB 39

Requires FDLE to establish continued employment training relating to autism spectrum disorder. Instruction must include, but is not limited to, recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and idiosyncrasies. Completion of the training may count toward the 40 hours of required instruction for continued employment or appointment as a law enforcement officer. Approved by the Governor 06-02-2017, Chapter No. 2017-043. These provisions take effect October 1, 2017.

Eyewitness Identification – CS/SB 312

Creates s. 92.70, F.S., setting forth specific procedures that state, county, municipal or other law enforcement agencies must implement when conducting lineups, as follows:

- Prior to the lineup, officers are required to give the eyewitness specified instructions. The lineup must be conducted by an independent administrator. This approach is sometimes referred to as “blind” administration. The independent administrator does not know the identity of the suspect.
- In the case of photo lineups, the bill provides that an alternative method may be used in lieu of an independent administrator. Two required features of any alternative method are: achieving neutral administration and preventing the administrator from knowing which photograph is being presented to the eyewitness. The alternative photo lineup procedures should help eliminate staffing issues that otherwise could arise in smaller agencies if using an independent administrator were the only statutorily approved procedure.

Also provides judicial remedies should the requirements of the lineup procedure not be followed and requires the Criminal Justice Standards and Training Commission, in consultation with the department, to develop educational materials and provide training programs. Approved by the Governor 06-14-2017, Chapter No. 2017-091. These provisions take effect October 1, 2017.

Terrorism and Terrorist Activities – CS/HB 457

Criminalizes certain terrorism-related activities, providing Florida’s law enforcement authorities with a series of tools to hopefully prevent future terrorist activities. Essentially, this bill:

- Creates a statutory crime for the offense of terrorism;
- Criminalizes use of military-style training against other persons or critical infrastructure if that training was provided by a designated foreign terrorist organization;
- Criminalizes material support to terrorism/designated foreign terrorist organizations;
- Criminalizes active membership in a designated foreign terrorist organization; and
- Creates a statutory crime for agroterrorism for the intentional spreading of a contagious, communicable or infectious disease among crops, poultry, livestock or other animals.

In summary, it gives Florida the power to pursue what can now only be pursued federally. The bill also aims to be constitutionally sound and ensure a balance between providing greater capabilities to law enforcement with protecting the constitutional rights of citizens. For this reason, the proposed statutory language calls for the department and the Office of the Attorney General to create guidelines for material support investigations to guarantee a uniform practice is established. Approved by the Governor 05-25-17, Chapter No. 2017-037. These provisions take effect October 1, 2017.

Controlled Substances – CS/HB 477

Addresses scheduling for controlled substances and punishment for controlled substance offenses. Specifically, the bill:

- Provides that a person 18 years of age or older commits felony murder if he or she unlawfully distributes any specified controlled substance, including a specified fentanyl related substance, and the distribution is proven to be the proximate cause of death of the user;
- Includes in Schedule I of the controlled substance schedules a class of fentanyl derivatives and five substances that were originally developed for legitimate research but that have now emerged in the illicit drug market;
- Provides that it is a first degree felony to unlawfully possess 10 grams or more of certain Schedule II substances, including certain fentanyl-related substances;
- Adds codeine, an isomer of hydrocodone, to a current provision punishing trafficking in hydrocodone, and adds additional phenethylamines and phencyclidines to current provisions punishing trafficking in phencyclidine and phenethylamine;
- Punishes trafficking in fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines, including mandatory minimum terms of imprisonment and mandatory fines;
- Ranks new trafficking offenses (first degree felonies) in the offense severity ranking chart of the Criminal Punishment Code;
- Authorizes certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses; and
- Provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (Chapter 893, F.S.), or any portion thereof, include all subsequent amendments to the act.

Approved by the Governor 06-14-2017, Chapter No. 2017-107. These provisions take effect October 1, 2017.

Internet Identifiers – CS/CS/HB 699

Revises provisions requiring registered sexual predators and sexual offenders to report Internet identifiers, including modifying the definition of the term “Internet identifier” and defining the connected terms “social Internet communication” and “application software.” “Internet identifier” is defined as any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. This definition does not include a date of birth, social security number, personal identification number, or password. A sexual offender or sexual predator waives this disclosure exemption if he or she uses an Internet identifier that discloses any of this excluded information or other information that would reveal his or her identity.

The bill also requires a sexual predator and sexual offender to report each Internet identifier’s corresponding website homepage or application software name. Finally, the bill expands third degree

felony offenses involving failure to report certain information to include failure to report each Internet identifier's corresponding website homepage or application software name. Approved by the Governor 06-26-17, Chapter No. 2017-170. These provisions took effect upon becoming law.

Department of Corrections – CS/CS/HB 1201/1203

Authorizes FDLE, when conducting an investigation or assisting in the investigation of an injury to or death of an inmate under the custody or control of the Florida Department of Corrections (FDC), to serve a demand for production of the inmate's protected health information, medical records, or mental health records on FDC. HB 1201 approved by the Governor 05-23-17, Chapter No. 2017-031 and HB 1203 was approved by the Governor 06-14-2017, Chapter No. 2017-114. These provisions take effect July 1, 2017.

Other bills that passed which may assist law enforcement in implementing public safety initiatives or may be of interest to members are summarized below.

Medical Use of Marijuana – SB 8A

Implements provisions of Art. X, s. 29, of the State Constitution. The bill builds on the existing compassionate use of low-THC and medical cannabis program with additional provisions to implement the Constitutional Amendment passed by Florida voters in the 2016 General Election. Key provisions in the bill relating to patients:

- Exempts marijuana and marijuana delivery devices from sales and use tax that would otherwise be imposed under Chapter 212, F.S.
- Establishes procedures for physicians to issue physician certifications to patients who have qualifying medical conditions. The bill includes all debilitating medical conditions listed in the State Constitution as a qualifying medical condition: cancer, epilepsy, glaucoma, HIV, AIDS, PTSD, ALS, Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical condition of the same kind or class as or comparable to those enumerated. The bill also includes as a qualifying medical condition:
 - Chronic nonmalignant pain, which is defined as pain that is caused by or that originates from a qualifying medical condition and persists beyond the usual course of the qualifying medical condition.
 - A terminal condition.
- Eliminates the 90-day waiting period before the qualified physician may register a patient a qualified to receive low-THC cannabis or medical marijuana.
- Ensures qualified patients can receive low-THC cannabis as well as full-THC marijuana.
- Allows marijuana edibles and vaping, but prohibit the smoking of marijuana.
- Establishes residency requirements for patients to be issued a Medical Marijuana Use Registry Identification Card (ID card). The bill specifies documentation that must be provided to document residency, including documentation required for a seasonal resident.
- Grandfathers in existing patients from the low-THC and "right to try" programs registered in the compassionate use registry so that they may continue receiving their medication ordered through those programs.

Key provisions in the bill relating to caregivers:

- Establishes qualifications to become a caregiver, which include:
 - Being at least 21 years of age and a resident of this state.

- Agreeing in writing to assist the qualified patient and serve as the patient’s caregiver.
- Passing a 2-hour caregiver course that is administered by the Department of Health (DOH).
- Passing a background screening unless the patient is a close relative of the caregiver.
- Limits the number of caregivers each patient may have and the number of patients each caregiver may assist.
- Requires a caregiver to be registered on the medical marijuana use registry and possess a caregiver identification card. The caregiver must be in immediate possession of his or her medical marijuana use registry ID card when in possession of marijuana or a marijuana delivery device and present the ID card upon the request of a law enforcement officer.
- Requires a caregiver to purchase or administer marijuana for medical use by a qualified patient who is younger than 18 years of age.
- Prohibits a caregiver from receiving compensation, other than the actual expenses incurred, for any services provided to the qualified patient.

Key provisions in the bill relating to qualified physicians:

- Requires a physician to complete a 2-hour course and examination relating to the requirements of this law for approval as a qualified physician. A qualified physician must also comply with a 2-hour continuing education requirement for licensure renewal.
- Prohibits a qualified physician from being employed by, or having a direct or indirect economic interest in, a medical marijuana treatment center or marijuana testing laboratory.
- Establishes standards for a qualified physician to issue a physician certification.
- Limits certifications to no more than three 70-day supply limits of marijuana.
- Requires a qualified physician to evaluate an existing qualified patient at least once every 30 weeks before issuing a new physician certification for that patient.

Key provisions in the bill relating to Medical Marijuana Treatment Centers (MMTCs):

- Requires DOH to license the seven existing dispensing organizations as MMTCs, which may begin dispensing marijuana pursuant to this law on July 3, 2017.
- Requires DOH to license as MMTCs 10 applicants by October 3, 2017.
- Requires DOH to license four additional MMTCs within six months after the medical marijuana use registry contains 100,000 active qualified patients and upon each additional 100,000 active qualified patient registrations.
- Limits MMTCs to 25 dispensing facilities statewide until the medical marijuana use registry contains 100,000 active qualified patients. When that occurs, an additional five dispensing facilities are authorized for each licensed MMTC.
- Details requirements for MMTC applicants and standards that each MMTC must meet to obtain and maintain licensure.
- Requires an MMTC to perform all functions of cultivating, processing, transporting and dispensing marijuana for medical use.
- Requires MMTC processing facilities to pass a Food Safety Good Manufacturing Practices inspection by a nationally recognized certifying body.
- Requires laboratory testing of MMTC products and create a certification program for medical marijuana testing laboratories.
- Establishes standards for advertising and requirements for a professional appearance and operation of dispensing facilities.

- Requires background screening of MMTC owners, officers, board members, managers, and employees, and of medical marijuana testing laboratory owners and managers.
- Authorizes local governments to ban MMTC dispensing facilities within their borders. However, if a local government does not ban dispensing facilities, it may not place any restrictions on the number of dispensing facilities allowed within its jurisdiction. Also, it may not adopt any regulations or fees for dispensing facilities that are more restrictive than its ordinances regulating pharmacies.

Other key provisions in the bill:

- Requires FDLE to develop initial training and continuing education for law enforcement agencies relating to activities governed by this law and criminal laws governing marijuana.
- Establishes administrative, disciplinary or criminal penalties for prohibited acts by physicians, patients, caregivers, MMTCs, medical marijuana testing laboratories and other persons.
- Authorizes DOH to pursue certain enforcement action for violations of this law.
- Specifies that this act does not limit an employer's ability regarding a drug-free workplace program or policy, does not require an employer to accommodate the medical use of marijuana in the workplace or an employee working while under the influence of marijuana, does not create a cause of action against an employer for wrongful discharge or discrimination and that marijuana is not reimbursable under Chapter 440, F.S., relating to workers' compensation.
- Requires DOH and the Department of Highway Safety and Motor Vehicles to establish public educational campaigns related to the medical use of marijuana.
- Creates the Coalition for Medicinal Cannabis Research and Education (Coalition) to conduct rigorous scientific research, provide education, disseminate research and guide policy development for the adoption of a statewide policy on ordering and dosing practices.
- Includes rulemaking and other provisions to aid DOH in adopting rules and implementing the provisions of Amendment 2 within the time frame specified in the amendment.
- Requires each district school board to adopt a policy and procedure for allowing a student who is a qualified patient to use marijuana obtained pursuant to this law.
- Renames the Office of Compassionate Use in DOH, the Office of Medical Marijuana Use.
- Renames the compassionate use registry, the medical marijuana use registry.
- Provides a severability clause so that if any provision of the act or its application is held invalid, the invalidity does not affect other provisions or applications which can still be given effect.
- Includes FY 17-18 appropriations for DOH, education programs and the Coalition.

Approved by the Governor 06-23-17, Chapter No. 2017-232. These provisions took effect upon becoming law.

Public Records – CS/CS/SB 80

Requires a court to award attorney fees and costs to a plaintiff who sues an agency to enforce a public records request if the court determines that the agency unlawfully refused access to a public record and the plaintiff provided written notice identifying the public records request to the agency's records custodian at least five business days before filing the lawsuit. The plaintiff is not required to provide written notice if the agency does not post the records custodian's contact information in the agency's primary administrative building and on the agency's website. A court must also determine if a plaintiff requested records or otherwise participated in an enforcement action for an improper purpose. An improper purpose is one in which a person requests records primarily to cause a violation of the public

records law or for a frivolous purpose. If the court finds that a plaintiff requested records for an improper purpose, the court will require the plaintiff to pay the agency's attorney fees and costs. The bill clarifies that it does not create a private right of action, and a court may only require an agency to pay attorney fees and costs directly related to the public records enforcement action. Provisions in the bill apply only to public records requests made on or after the effective date of the act. Approved by the Governor 05-23-2017, Chapter No. 2017-021. These provisions took effect upon becoming law.

Relating to Public Records/Identity of a Witness to a Murder– CS/CS/HB 111

Designates "criminal intelligence or investigative information that reveals the personal identifying information of a witness to a murder" as confidential and exempt from the disclosure requirements under the public records laws. Therefore, if a person submits a public records request for records containing this information to a state agency, the agency may not provide access to or disclose the information. This confidentiality survives the information entering a court file. The confidential and exempt status of these records applies for a period of two years following the commission of the murder observed by the witness. This means that even if the state provided a witness' identity to the defendant during discovery, the information would not be public for a two-year window from the date the witness observed the murder. As exceptions to the general prohibition on disclosing these murder witness records, a state agency may disclose these records:

- In the furtherance of its official duties and responsibilities;
- To assist in locating or identifying the witness if the witness is believed to be missing or endangered;
- To another governmental agency for use in the performance of its official duties and responsibilities; or
- To the parties in a pending criminal prosecution as required by law.

Approved by the Governor 05-09-2017, Chapter No. 2017-011. These provisions will take effect July 1, 2017.

Criminal History Records – CS/CS/CS SB 118

Requires the publisher of an on-line arrest booking photograph to remove the photograph within 10 days after receiving a written request from the person in the photograph or his or her legal representative. The request must be sent by registered mail to the registered agent of the publisher and must include sufficient proof of identification of the person whose photograph is to be removed and information identifying the relevant photograph. The publisher may not solicit or accept a fee to remove the photograph.

If the publisher does not comply with the request for removal, the person in the photograph may file a civil action for an injunction. The court may award reasonable attorney fees and costs related to the issuance and enforcement of the injunction. A civil penalty of up to \$1,000 a day may be imposed for the failure to comply with an injunction, and this penalty will be deposited into the General Revenue Fund. Additionally, a publisher that fails to remove the photograph after a written request commits an unfair or deceptive trade practice, subjecting the publisher to additional penalties under the Florida Deceptive and Unfair Trade Practices Act. Approved by the Governor 06-14-2017, Chapter No. 2017-130. These provisions take effect July 1, 2018.

Body Cameras – CS/HB 305

Requires law enforcement agencies that use body cameras to specify in their body camera policies and procedures the instances in which a law enforcement officer may review the body camera footage. Section 943.1718, F.S., currently requires a law enforcement agency using body cameras to record an incident to establish policies and procedures on their use. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about a recorded incident.

Authorizes a law enforcement officer using a body camera to review the body camera footage before writing a report or providing a statement regarding an event arising within the scope of his or her official duties. However, the authorization to review body camera footage does not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses. Approved by the Governor 05-09-2017, Chapter No. 2017-015. These provisions take effect July 1, 2017.

Public Records/ Substance Abuse Impaired Persons – CS/CS/SB 886

Creates a public record exemption for petitions for involuntary assessment and stabilization of a substance abuse impaired person filed pursuant to s. 397.6815, F.S. The bill provides for a retroactive application of the public records exemption. The bill aligns the protection of court documents under the Marchman Act (involuntary assessment for substance abuse) with the Baker Act (involuntary assessment for mental health disorders). The bill provides legislative findings that making such petitions, orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personal information which could damage their and their families' reputations, and that protecting such information is a public necessity. This exemption does not preclude the clerk of the court from submitting the information required by s. 790.065, F.S. to the department. Approved by the Governor 05-23-2017, Chapter No. 2017-025. These provisions take effect July 1, 2017

Justifiable Use of Force – CS/CS/SB 1052

Addresses errors or inconsistencies in s. 776.013(3), F.S., on the right to act in self-defense, that govern the use of defensive force in a dwelling against a person who has not unlawfully or forcibly entered a dwelling or residence, such as a co-occupant or guest. In these circumstances, the bill provides that the general standard for using or threatening to use deadly or nondeadly force outside a dwelling or residence applies. Additionally, a person who is in a dwelling or residence in which he or she has a right to be has no duty to retreat before using lawful defensive force. Approved by the Governor 06-09-2017, Chapter No. 2017-077. These provisions take effect July 1, 2017.

Public Employees – SB 7022

Comprehensive benefits package for state employees and includes pay raises, modifications to the Florida Retirement System (FRS) and changes to the State Group Insurance Program.

Provides state employees with a \$1,400 increase if their current salary is below \$40,000 a year, or \$1,000 if their salary is above \$40,000 a year. Additionally, law enforcement officers below the rank of chief/assistant special agent in charge will receive a five percent increase in salary, most correctional officers will receive a \$2,500 increase in salary, judges and elected state attorneys and public defenders will receive a 10 percent increase in salary. Other attorneys working for the guardian ad litem program

or the Department of Legal Affairs will receive increases, along with certified nursing assistants working at the Department of Veterans Affairs.

Makes several changes to the FRS. It permits renewed membership in the investment plan or one of the optional annuity retirement plans for certain former participants of those plans. The bill expands the survivor benefit for investment plan members killed in the line of duty, including Special Risk Class, by making it retroactive to 2002. The bill closes the Senior Management Service Optional Annuity Program to new hires. The bill changes the default from the pension plan to the investment plan for non-special risk members of the FRS initially enrolled after January 1, 2018. The bill also extends the initial election period from six to eight months after being hired. Additionally, the bill provides adjustments to the contribution rates that fund the FRS's normal costs and unfunded actuarial liability.

Beginning with plan year 2018, the bill authorizes offering of new types of health care products and services, including an online cost comparison for health care services and providers and inclusive services for surgery and other medical procedures. Enrollees may access these services and share in any savings to the state. The bill requires competitive procurement of an independent benefits consultant to assist in developing a plan for implementation of the new benefit levels. The implementation plan must be produced by January 1, 2019, and must include recommended contribution policies and employee education strategies regarding the coverage levels and other benefit alternatives.

Beginning with plan year 2019, the bill requires the Department of Management Services to determine and recommend premiums for enrollees that reflect the differences in costs to the program for each of the health maintenance organizations and the preferred provider organization plan options. The bill provides that the premium rate for the employers used in this report will be the premiums established in the general appropriations act for FY 18-19.

Beginning with plan year 2020, the bill provides employees in the State Group Insurance Program with a choice of health insurance coverage levels of at least a certain actuarial value: Platinum – 90 percent, Gold – 80 percent, Silver – 70 percent and Bronze – 60 percent. If the state's contribution is more than the premium cost of the health plan selected by the employee, the employee will be permitted to allocate unused state health insurance contributions to other benefits or as salary.

Approved by the Governor 06-14-2017, Chapter No. 2017-088. These provisions take effect July 1, 2017, except as otherwise provided in the bill.