

# 2021 Legislative Session Highlights



**Florida Department of Law Enforcement**

On April 30, the Legislature adjourned its 2021 regular session after voting to approve a \$101.5 billion FY 21-22 budget. On June 2, the Governor vetoed \$1.5 billion in spending and signed the budget. The FY 21-22 budget adds \$31.8 million in new project funding and cuts \$3.9 million in current funding and 19 vacant positions for the department. It also includes \$1,000 one-time bonuses for all sworn law enforcement officers and raised the minimum wage for state workers to \$13 per hour. The new funding initiatives and key substantive legislation passed during the session are summarized on the following pages.

## **New Funding Initiatives**

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**Pensacola Regional Operations Center Facility - \$1,400,000 Operating Trust Fund.** Funding to secure necessary space for the Pensacola Regional Operations Center.

**Firearm Eligibility Bureau Workload – \$683,126 Operating Trust Fund.** Funding to address workload demands and keep processing times within acceptable limits.

**Criminal Justice Data Transparency – \$4,340,785 Operating Trust Fund.** Funding to continue implementation of s. 900.05, FS, which requires uniform collection and public reporting of criminal justice data.

**Florida Incident-Based Reporting System - \$11,451,301 General Revenue.** Funding to continue transition from uniform crime reporting to incident-based crime reporting.

**Uniform Arrest Affidavit - \$9,277,832 General Revenue.** Funding for maintenance of the uniform arrest affidavit process across Florida’s criminal justice community.

**Repair Tampa Bay Regional Operations Center - \$4,451,201 General Revenue.** Funding to continue necessary repairs and maintenance to correct deficiencies and code compliance within the facility.

**Criminal Justice Officer Training Funding - \$39,000 General Revenue.** Funding to maintain the \$80 per officer training dollar distributions.

## **Legislation Impacting the Department**

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### **Drones – CS/CS/SB 44**

Provides additional exceptions in s. 934.50(4), FS, for law enforcement agencies, fire departments, state agencies and political subdivisions to use drones. The new exceptions allow law enforcement use of drones to gain an aerial perspective of a crowd of 50 or more persons, assist with traffic management (excluding traffic infractions) and facilitate evidence collection at a crime scene or traffic crash. Requires agencies utilizing drones for an aerial perspective of a crowd of 50 or more people have policies and procedures governing such use. Limits the purchase, acquisition or use of a drone by a governmental agency to those on Department of Management Services’ approved list of manufacturers. Requires by January 1, 2023, all governmental agencies discontinue the use of drones not produced by an approved manufacturer. If approved by the Governor, these provisions take effect July 1, 2021.

### **Purple Alert – CS/CS/SB 184**

Requires the department, in cooperation with the Departments of Transportation, Highway Safety and Motor Vehicles and Lottery and local law enforcement agencies, to establish and implement the Purple Alert program to assist in finding a missing adult:

- Who has a mental or cognitive disability that is not Alzheimer’s disease or a dementia related disorder; an intellectual disability or a developmental disability; a brain injury; another physical, mental or emotional disability that is not related to substance abuse; or a combination of any of these;

- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local law enforcement agency;
- Who cannot be returned to safety without law enforcement intervention; and
- Who does not meet the criteria for activation of a Silver Alert.

The department was appropriated two FTE positions and \$199,901 in Operating Trust Fund authority for implementation. Approved by the Governor, June 16, 2021, Chapter No. 2021-93. These provisions take effect July 1, 2022 except where otherwise stated.

#### **Registration of Sexual Predators and Sexual Offenders – CS/CS/SB 234**

Amends s. 943.0435, FS, to clarify release from conviction sanctions for sexual offender registration and reporting purposes. Currently, a person convicted of a qualifying sexual offense must register as a sexual offender upon release from a court-imposed sanction. In State v. James, 298 So.3d 90 (Fla. 2d DCA 2020), the Florida 2<sup>nd</sup> District Court of Appeal interpreted the word “sanction” to include any court-imposed fines. As a result of this opinion, a person otherwise required to register as a sexual offender, may forgo registration by refusing to pay any court imposed fine. The bill provides legislative findings that the opinion in State v. James interpreting the word “sanction” is contrary to legislative intent and that a person’s failure to pay a fine does not relieve him or her of the requirement to register as a sexual offender pursuant to s. 943.0435, FS. The bill also specifies the Legislature intends that a person must register as a sexual offender pursuant to s. 943.0435, FS, when he or she has been convicted of a qualifying offense and, on or after October 1, 1997, has no sanction imposed upon conviction or been released from a sanction imposed upon conviction. Approved by the Governor, June 22, 2021, Chapter No. 2021-156. These provisions took effect upon becoming law.

#### **Juvenile Diversion Program Expunction – SB 274**

Amends s. 943.0582, FS, to permit a juvenile who completed a diversion program for any offense, including felony offenses, to apply to have the nonjudicial arrest record expunged. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense. Additionally, the bill amends s. 985.126, FS, to permit a juvenile who completes a diversion program for any offense, including a felony or subsequent offense, to lawfully deny or fail to acknowledge his or her participation in the program and the expunction of the nonjudicial arrest record. This expands the current law, which only permits a juvenile who completes diversion for a first-time misdemeanor offense to lawfully deny or fail to acknowledge his or her participation in the program and the expunction. If approved by the Governor, these provisions take effect July 1, 2021.

#### **Use of Electronic Databases – CS/CS/SB 890**

Amends s. 119.0712, FS, to provide that any person who uses or releases information contained in the Driver and Vehicle Information Database for a purpose not specifically authorized by law commits a noncriminal infraction, punishable by a fine not exceeding \$2,000. Amends s. 943.125, FS, to provide that law enforcement accreditation must address access to and use of personal identification information, as defined in s. 817.568(1)(f), FS, contained in electronic databases. Creates ss. 943.1719 and 943.17191, FS, to require the Criminal Justice Standards and Training Commission provide training on the authorized access to and use of personal identification information contained in electronic databases used by a law enforcement officer in his or her official capacity. This training must be part of the curriculum required for initial certification of a law enforcement officer and as part of the 40 hours of required instruction for continued employment or appointment as an officer. It must, at minimum, include the proper use and limitations on use of electronic databases in a law enforcement officer’s official capacity and penalties associated with the misuse of such electronic databases. Approved by the Governor, June 21, 2021, Chapter No. 2021-129. These provisions take effect October 1, 2021.

#### **DNA Evidence Collected in Sexual Offense Investigations – CS/CS/HB 673**

Amends s. 943.326, FS, to require the department create and maintain a statewide database to track the location, processing status and storage of sexual assault evidence kits (SAKs) no later than July 1, 2023. FDLE is required to ensure each alleged victim or his or her representative is notified of the existence of the database and provided

with instruction on how to access and utilize the database. If there is a DNA match between the SAK evidence and a person whose DNA is stored in a local, state or federal database and who may be a suspect or person of interest in the case, the alleged victim will be notified of the match, but not the person's genetic or other identifying information. Notification of a match may be delayed for up to 180 days if notification would, in the opinion of the investigators, negatively affect the investigation. Law enforcement agencies, medical facilities, crime laboratories and any other facilities in the chain of custody of the SAKs must fully participate in the statewide database no later than one year after its creation. If approved by the Governor, these provisions take effect July 1, 2021, except where otherwise stated.

#### **Victims of Sexual Offenses – CS/CS/HB 1189**

Provides that Sexual Assault Response Teams (SARTs) will be coordinated by the certified rape crisis center serving the county or region. If no county SART exists, the certified rape crisis center serving the county may coordinate with community partners to establish a county-specific or regional team. Requires all county health departments or the department's designee to participate in the county or regional SART if one exists. Each SART must meet at least quarterly and must create written protocols to govern the SARTs response to sexual assault to include those subjects specified in the bill. Requires each SART to promote and support the use of sexual assault forensic examiners who have received a minimum of 40 hours of specialized training in the provision of trauma-informed medical care and in the collection of evidence for sexual assault victims. Requires the Criminal Justice Standards and Training Commission, in consultation with the Florida Council Against Sexual Violence, to establish minimum standards for basic and continued education training programs for law enforcement officers that include a culturally responsive, trauma-informed response to sexual assault by July 1, 2022. The programs must include training on interviewing sexual assault victims and investigating incidents of sexual assault and officers must successfully complete the training by July 1, 2024. If approved by the Governor, these provisions take effect July 1, 2021, except where otherwise stated.

#### **Cybersecurity – CS/CS/HB 1297**

Expands the duties and responsibilities of the Florida Digital Service (FDS) relating to the state's cybersecurity governance framework. The bill defines "cybersecurity" to mean the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity and availability of data, information and information technology (IT) resources. Requires inclusion of a cybersecurity audit plan in agency inspectors' general long-term and annual audit plans. Specifies the Department of Management Services (DMS), acting through FDS, is the lead entity responsible for assessing state agency cybersecurity risks and determining appropriate security measures to combat such risks. Expands the responsibilities of each state agency head in relation to cybersecurity. Creates the Florida Cybersecurity Advisory Council within DMS to assist the state in protecting the state's IT resources from cyber threats and incidents and assist FDS in implementing best cybersecurity practices. The Council membership will include representatives from FDLE's computer crime center and fusion center, both appointed by the Commissioner. Beginning June 30, 2022, and annually thereafter, the council is required to submit a report to the Governor, the President of the Senate and Speaker of the House of Representatives outlining any recommendations addressing cybersecurity. If approved by the Governor, these provisions take effect July 1, 2021.

#### **Law Enforcement and Correctional Officer Practices – HB 7051**

Makes several changes to operations and standards of law enforcement and correctional agencies and training for law enforcement officers, correctional officers and correctional probation officers. An applicant for employment as a law enforcement officer, correctional officer or a correctional probation officer must disclose by affidavit if the applicant is the subject of any pending investigation by a local, state or federal agency or entity for criminal, civil or administrative wrongdoing and whether the applicant separated or resigned from previous criminal justice employment while under investigation. As part of the pre-employment background investigation of the applicant, a law enforcement or correctional agency must include the facts and reasons for any of the applicant's previous separations from private or public employment or appointment, as the applicant understands them. Also requires

each employing agency to maintain an officer's employment information for a minimum of five years following his or her termination, resignation or retirement.

Defines "excessive use of force" as a use of force that exceeds the degree of force permitted by law, policy or the observing officer's employing agency. The Criminal Justice Standards and Training Commission must establish standards for the instruction of officers regarding use of force and each employing agency must develop use of force policies to include:

- Instruction on proportional use of force;
- Alternatives to use of force, including de-escalation techniques;
- If the agency authorizes use of chokeholds, limits on such use to circumstances where the officer perceives an immediate threat of serious bodily injury or death to the officer or another person;
- The duty of an on-duty officer who observes another officer engaging or attempting to engage in excessive use of force to intervene to end the excessive use of force or attempted excessive use of force when such intervention is reasonable based on the totality of the circumstances and the observing officer may intervene without jeopardizing the officer's own health or safety;
- The duty to render medical assistance following use of force when an officer knows, or when it is otherwise evident, that a person who is detained or in custody is injured or requires medical attention and the action is reasonable based on the totality of the circumstances and the officer may do so without jeopardizing the officer's safety; and
- Instruction on the recognition of the evident symptoms and characteristics of a person with a substance abuse disorder or mental illness and appropriate responses to such person.

Beginning July 1, 2023, these standards must be included in every basic skills course required for a law enforcement officer, correctional officer or correctional probation officer to obtain initial certification. The bill also requires each law enforcement agency to develop and maintain policies regarding use of force investigations when a law enforcement officer's use of force results in the death of any person or the intentional discharge of a firearm that results in injury or death to any person. At a minimum, these policies must incorporate an independent review of the use of force by:

- A law enforcement agency that did not employ the law enforcement officer under investigation at the time of the use of force;
- A law enforcement officer who is not employed by the same employing agency as the law enforcement officer under investigation; or
- The state attorney of the judicial circuit in which the use of force occurred.

Beginning July 1, 2022, law enforcement agencies are required to quarterly report data regarding use of force investigations to FDLE.

This bill also prohibits a child younger than seven years of age from being arrested, charged or adjudicated delinquent for a delinquent act or violation of law, unless the violation of law is a forcible felony as defined in s. 776.08, FS. If approved by the Governor, these provisions take effect July 1, 2021, except where otherwise stated.

## **Other Legislation of Interest**

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### **Combating Public Disorder – CS/HB 1**

Addresses acts of public disorder and responses to public disorder by:

- Codifying the common law elements of the first-degree misdemeanor offense of affray, which a person commits if he or she engages, by mutual consent, in fighting with another person in a public place to the terror of the people;
- Creating the second-degree felony offense of aggravated rioting;
- Defining the third-degree felony offense of inciting a riot, which a person commits when he or she willfully incites another person to participate in a riot, resulting in a riot or imminent danger of a riot;

- Creating the second-degree felony offense of aggravated inciting a riot;
- Specifying public disorder offenses do not prohibit constitutionally protected activity such as peaceful protest;
- Requiring a person to be held in jail until he or she appears for a first appearance hearing and a court determines bond if the person was arrested for mob intimidation, riot, aggravated riot, inciting a riot, aggravated inciting a riot, unlawful assembly, theft or burglary committed during a riot or an aggravated riot and theft committed within a county that is subject to a state of emergency;
- Authorizing the state attorney for the judicial circuit in which a municipality is located, or a member of the governing body of that municipality, to appeal to the Administration Commission a reduction in the operating budget of the municipal law enforcement agency, similar to the budget reduction appeals process available to sheriffs;
- Revising s. 316.2045, FS, relating to obstruction of roadways, to remove language that federal courts found unconstitutional, modify the pedestrian violation for willful obstruction of roadways to add the element of remaining in the roadway but remove the element of approaching motor vehicles on the roadway, and specify that this pedestrian violation does not prohibit a local governmental entity from issuing a lawful special event permit;
- Providing that a municipality is civilly liable for specified damages proximately caused by the municipality's breach of a duty to allow the municipal law enforcement agency to respond appropriately to protect persons and property during a riot or an unlawful assembly (as specified in the bill), and providing that statutory sovereign immunity recovery limits do not apply to such action;
- Increasing penalties for assault and battery and offense severity level rankings for aggravated assault and aggravated battery, when committed in furtherance of a riot or an aggravated riot;
- Repealing s. 870.03, FS, which punishes committing specific types of damage during an unlawful assembly, since this type of public disorder would be punished by the offense of riot (as defined by the bill);
- Creating the first-degree misdemeanor offense of mob intimidation;
- Providing for a six-month mandatory minimum sentence for battery on a law enforcement officer if the offense was committed in furtherance of a riot or an aggravated riot;
- Increasing the offense severity level rankings for an assault or battery on a law enforcement officer or other specified official when the offense was committed in furtherance of a riot or an aggravated riot;
- Amending s. 806.13, FS, relating to criminal mischief, to provide that it is a third-degree felony for any person, without the consent of the owner of a memorial or historic property, to willfully and maliciously deface, injure or otherwise damage the memorial or historic property if the value of the damage is greater than \$200, and requiring restitution of the full cost of repair or replacement of the memorial or historic property;
- Creating the second-degree felony offense of willfully and maliciously destroying, demolishing or pulling down any memorial or historic property unless authorized by the owner and requiring restitution of the full cost of repair or replacement of the property;
- Reclassifying the degree, and increasing the offense severity level ranking, of specified burglary and theft offenses committed during a riot or an aggravated riot when facilitated by conditions arising from the riot;
- Creating the first-degree misdemeanor offense of cyber-intimidation by publication;
- Creating an affirmative defense in a civil action for damages for personal injury, wrongful death or property damage that such action arose from an injury or damage sustained by a participant acting in furtherance of a riot;
- Increasing the offense severity ranking level of offenses involving willfully injuring or removing a tomb or monument; and
- Ranking battery during a riot or an aggravated riot and several other public disorder offenses in the offense severity level ranking chart of the Criminal Punishment Code.

Approved by the Governor, April 19, 2021, Chapter No. 2021-06. These provisions took effect upon becoming law.

### **Safety of Religious Institutions – CS/CS/HB 259**

Allows a person who has a concealed weapon or firearm license to carry a concealed weapon or firearm on the property of a religious institution regardless of whether the property is also used as a school. The bill further states that it “does not limit the private property rights of a church, synagogue or other religious institution to exercise control over property that the church, synagogue or other religious institution owns, rents, leases, borrows or lawfully uses.” Accordingly, religious institutions and owners of property borrowed or used by a religious institution may continue to regulate and prohibit firearms on their own property. If approved by the Governor, these provisions take effect upon becoming law.

### **School Safety – CS/SB 590**

Revises parental notification requirements for public and charter schools relating to initiating involuntary examinations (Baker Act) of students and school safety threats and incidents. Prior to initiating a Baker Act, requires school personnel or law enforcement to make a reasonable attempt to contact a mental health professional and use de-escalation and crisis intervention techniques and prior to the student’s removal for transport to a Baker Act receiving facility, requires the school principal to make a reasonable attempt to notify the student’s parent. The bill revises Baker Act reporting data requirements to include the number of students at school, on school transportation or at a school-sponsored activity, for whom a Baker Act is initiated and the number removed from school for Baker Act examination. The bill adds reporting requirements for school districts and requires the Department of Education to share this data with the Department of Children and Families for inclusion and analysis in its biannual report on Baker Acts of minors. Requires traditional public and charter schools to provide timely parental notification for certain threats and significant emergencies that occur on school grounds, school transportation or school-sponsored activities. Parental notification is also required for unlawful acts including weapons possession or use when there is intent to harm another person, death of a student or personnel, sex offenses and natural and man-made emergencies. The bill revises requirements for certified law enforcement personnel working on school grounds by requiring crisis intervention training for school safety officers. For public school students in grades 6 through 12, identification cards issued to those students must include the telephone numbers for national or statewide crisis and suicide hotlines. Clarifies what acts require a school to refer a student to law enforcement for civil citation or prearrest diversion or assign a student to a school-based intervention program. If approved by the Governor, these provisions take effect July 1, 2021.

### **Unlawful Use of DNA – CS/HB 833**

Creates the "Protecting DNA Privacy Act," prohibiting a person from willfully, and without express consent:

- Collecting or retaining another person’s DNA sample with intent to analyze such sample, as a first-degree misdemeanor;
- Submitting another person’s DNA sample for analysis or conducting or procuring the conducting of such analysis, as a third-degree felony;
- Disclosing another person’s DNA analysis results to a third party, unless such results were previously voluntarily disclosed by the person whose DNA was analyzed, as a third-degree felony; and
- Selling or otherwise transferring another person’s DNA sample or analysis results to a third party, as a second-degree felony.

Clarifies current law by providing that a person’s DNA is his or her "exclusive property," meaning he or she has the right to exercise control over his or her DNA sample or analysis with regard to the collection, use, retention, maintenance, disclosure or destruction of such sample or analysis. Authorizes a separate criminal penalty for each instance of unlawful collection or retention, submission or analysis, disclosure or sale of a person’s DNA sample or analysis results. The bill does not apply to a DNA sample, analysis or analysis results when used for specified purposes such as criminal investigation or prosecution, determining paternity, complying with a court order or with federal law, conducting specified research or other healthcare purposes. If approved by the Governor, these provisions take effect October 1, 2021.

**Electronic Threats – CS/HB 921**

Prohibits a person from sending, posting, transmitting or procuring the sending, posting or transmitting of a writing or other record, including an electronic record, in a manner in which it may be viewed by another person, when in such writing or record the person makes a threat to kill, do bodily harm to another person or conduct a mass shooting or act of terrorism. Expands the scope of current law to criminalize publicly posting a threat online, even if it is not specifically sent to or received by the person who is the subject of the threat. The bill defines an "electronic record" as any record created, modified, archived, received or distributed electronically which contains any combination of text, graphics, video, audio or pictorial represented in digital form, but does not include a telephone call. The bill also provides that a person commits cyberstalking if he or she engages in a course of conduct that communicates, or causes to be communicated, directly or indirectly, words, images or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person that causes that person substantial emotional distress and serves no legitimate purpose. The bill clarifies social media posts and communications to third parties can serve as the basis for a cyberstalking conviction or injunction. If approved by the Governor, these provisions take effect October 1, 2021.