

# 2018 Legislative Session Highlights



**Florida Department of Law Enforcement**

The 2018 Legislature set the state's FY 18-19 budget at \$88.7 billion, with the department receiving \$13.4 million in new funding and 15 new full-time equivalent (FTE) positions. The new budget includes a seven percent salary increase for sworn members at the Special Agent Supervisor or Law Enforcement Lieutenant level and below and an additional three percent increase for those members with at least 10 years of state service as a law enforcement officer. The department's new funding initiatives and key substantive legislation passed during the session are summarized below.

## **New Funding**

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**Repairs and Maintenance for Tampa Bay Regional Operations Center – \$500,000 General Revenue.** Acquire architectural and design services to develop a plan to address deficiencies and code compliance issues at the Tampa Bay Regional Operational Center. This is the first year of a multi-year project.

**Improve Sexual Offender and Predator Registry – \$2,220,680 Operating Trust Fund.** Implement a new Sexual Offender/Predator Registry. Funds will be used to procure hardware and software for improvements to the core functionality of the registry. This is the second year of a multi-year project.

**Replace Computerized Criminal History System – \$5,697,995 Operating Trust Fund (1 FTE).** Completion of 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 final year of a multi-year project.

**Replace Hazardous Device/Emergency Ordinance Disposal Vehicles - \$98,000 Operating Trust Fund.** Purchase two new diesel trucks, which would meet the requirements to pull the 12,500 pound trailers utilized during critical incident responses.

**Prepare for National Incident-Based Reporting System (NIBRS) - \$1,750,000 General Revenue (9 FTE).** Begin transition to incident-based crime reporting and collecting and submitting crime statistics that meet the FBI's NIBRS requirements. (Funds provided in SB 1932.)

**School Safety - \$1,050,000 General Revenue (5 FTE).** Launch a statewide mobile suspicious activity reporting tool (FortifyFL) and support the Marjory Douglas High School Public Safety Commission. (Funds provided in SB 7026.)

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

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### **Sale of Firearms – CS/HB 55**

Requires the department to provide additional payment options to licensed firearm dealers, importers, and manufacturers when paying for criminal history record checks. Currently, the only payment methods authorized by administrative rule are personal checks, money orders or cashier's checks. The bill requires FDLE to establish, by rule, procedures that permit electronic payment or transmittal by debit cards, credit cards or electronic funds transfers, but the payment methods are not limited solely to those options. The bill also expands how firearms dealers may submit requests to FDLE for criminal history record checks. Currently, the law allows a licensed importer, manufacturer or dealer to submit requests by a toll-free telephone call. The bill allows a licensed importer, manufacturer or dealer to submit requests to FDLE by electronic means. Approved by the Governor 04-06-2018, Chapter No. 2018-144. These provisions take effect October 1, 2018.

### **Special Operations Forces Exemptions for Minimum Officer Qualifications – CS/HB 333**

Directs the Criminal Justice Standards and Training Commission (CJSTC) to adopt rules that establish the criteria and procedures to determine if an applicant who served in the special operations forces of the U.S. military is exempt from completing CJSTC-approved law enforcement, corrections or correctional probation basic recruit training programs. The Commission may require additional training based on the applicant's prior training and experience. To qualify, an applicant must have served in the special operations forces for a minimum of five years and must apply for the program within four years of separating from the special operations forces.

The applicant must also meet the minimum officer qualifications prescribed in s. 943.13, F.S., such as passing a physical examination and having good moral character. Additionally, an applicant must demonstrate proficiency in high-liability areas, pass the state officer certification examination within one year of receiving the approval to attend the program and complete any additional training required by CJSTC on the applicant's prior training and experience.

The standard training program for a law enforcement, correctional and correctional probation officer requires 770, 420, and 482 hours, respectively. To establish a training program that meets the requirements of this bill, FDLE convened a meeting of subject matter experts, which compared the training and experience of special operations forces members to current CJSTC basic recruit training programs. Should the Commission accept the recommendations of these subject matter experts, qualified special operations forces members may be eligible to complete the training for certification in law enforcement, corrections, or correctional probation in 490, 214 and 344 hours, respectively.

The bill defines "special operations forces" to include service members of the Army Special Forces and Army 75th Ranger Regiment; the Navy SEALs and Special Warfare Combatant-Craft Crewmen; the Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists; the Marine Corps Critical Skills Operators; and any other component of the U.S. Special Operations Command approved by the Commission.

Approved by the Governor March 21, 2018, Chapter No. 2018-046, these provisions take effect July 1, 2018.

### **Missing Persons – CS/CS/HB 591**

Removes the scheduled October 1, 2018 repeal of the citizen support organization for Florida Missing Children's Day. The bill expands "Project Leo" (project) statewide to all Centers for Autism and Related Disabilities (CARD) that opt to join the project to aid search-and-rescue efforts for persons with special needs in case of elopement. Additionally, the bill:

- Makes each CARD program responsible for developing eligibility criteria for the selection of participants based on the specific needs of each center's service area counties specified in law.
- Removes obsolete reporting requirements related to program implementation and operation.
- Extends the project from June 30, 2018, to June 30, 2019.

Approved by the Governor 03-21-2018, Chapter No. 2018-054. These provisions will take effect July 1, 2018.

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

Changes the deadline for the annual submission of reports concerning seized or forfeited property by law enforcement agencies pursuant to the Florida Contraband Forfeiture Act from October 10 to December 1. Approved by the Governor 03-23-2018, Chapter No. 2018-092. These provisions take effect July 1, 2018.

### **Subpoenas in Investigations of Sexual Offenses – CS/HB 581**

Addresses use of a subpoena in an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes. In an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes, an investigative or law enforcement officer may use a subpoena to obtain records, documents, or other tangible objects, and testimony to authenticate such materials or objects. The bill specifies requirements for this subpoena.

In investigations involving allegations of sexual abuse of a child, an investigative or law enforcement officer may:

- Without notice to the subscriber or customer of a provider of an electronic communication service or remote computing service, use a subpoena to obtain basic subscriber or customer information, but not including content; and
- With prior notice or delayed notice, use a subpoena to obtain contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days.

An investigative or law enforcement officer may prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena or delay required notification for 180 days, if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result. Limited disclosure is authorized. A court may grant extensions of the nondisclosure period or delay of notification if certain findings are made. The bill specifies requirements for providing notification to the customer or subscriber upon expiration of the delay of notification.

An investigative or law enforcement officer who uses a subpoena to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

The bill also authorizes a petition to modify or set aside a subpoena or disclosure prohibition, specifies what subscriber or customer notification is required upon expiration of the delay of notification, specifies procedures for retention of records, provides for compensation of a subpoenaed witness and others, provides legal protections for subpoena compliance, and authorizes a court to compel compliance with a subpoena and to sanction refusal to comply. Approved by the Governor 03-23-2018, Chapter No. 2018-093. These provisions take effect October 1, 2018.

### **Expunction of Criminal History Records – CS/HB 1065**

Allows a person to expunge his/her criminal history record, if the charges related to the petition resulted in a judgment of acquittal or a not guilty verdict, if the person is otherwise eligible for a record expungement. (Previously the record in such cases would first have to be sealed for at least 10 years.) Additionally, the bill clarifies that FDLE may not issue a certificate of eligibility to seal to a person who was found guilty, or pled guilty or nolo contendere to certain listed offenses or who, as a minor, was

found to have committed, or pled guilty or nolo contendere to committing certain listed offenses. Approved by the Governor 03-23-2018, Chapter No. 2018-101. These provisions take effect October 1, 2018.

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

Modifies definitions of the terms “permanent residence,” “temporary residence,” and “transient residence,” which are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from five days to three days, the time period in which a person must abide, lodge or reside at a place in order to meet any of the definitions for reporting purposes.

The bill also requires a court to impose the following mandatory terms of community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws, if the court does not impose a prison sentence:

- For a first offense, a mandatory minimum term of six months;
- For a second offense, a mandatory minimum term of one year; and
- For a third or subsequent offense, a mandatory minimum term of two years.

The bill excludes mandatory community control with electronic monitoring for an offense relating to harboring a sexual predator or sexual offender who is in noncompliance with registration requirements. Approved by the Governor 03-23-2018, Chapter No. 2018-105. These provisions take effect July 1, 2018.

### **Data Transparency/NIBRS – CS/CS/SB 1392**

Appropriates general revenue to the department and nine FTEs to begin transitioning to incident-based crime reporting and collecting and submitting crime statistics that meet the FBI’s National Incident Based Reporting System (see New Funding Issues on page 2 for additional funding specifics).

The bill creates a model of uniform criminal justice data collection. Specifically, the bill:

- Defines terms used in the bill as they relate to data collection;
- Requires the clerks of court, state attorneys, public defenders, county detention facility administrators, and the Department of Corrections to collect specified data on a biweekly basis and report it to FDLE on a monthly basis;
- Requires the FDLE to publish the data collected on the FDLE’s website and make it searchable and accessible to the public;
- Provides that any clerk of the court or county detention facility that does not comply with the required data collection is ineligible to receive funding from the General Appropriations Act, any state grant program administered by the FDLE, or any other state agency for five years after the date of noncompliance;
- Requires additional information to be reported in the annual report for pretrial release programs;
- Digitizes the Criminal Punishment Code sentencing scoresheet; and
- Authorizes a pilot project in the Sixth Judicial Circuit for the purpose of improving criminal justice data transparency.

The bill provides for the establishment of civil citation or similar prearrest diversion programs for adults and juveniles. The bill permits local communities and public or private educational institutions to adopt a

model prearrest diversion program for adults and provides guidelines for the establishment of such programs. The bill requires a civil citation or similar prearrest diversion program for juveniles to be established in each judicial circuit in the state and outlines criteria that each civil citation or similar prearrest diversion program must specify in developing such program.

The bill expands the criteria for the expunction of a nonjudicial record of the arrest of a minor who has successfully completed a diversion program to include all misdemeanors. The bill also requires each diversion program to submit data that identifies each minor participating in the diversion program to the Department of Juvenile Justice, which must compile and publish the data on the department's website. Approved by the Governor 03/30/2018; Chapter No. 2018-127. These provisions take effect July 1, 2018.

### **Public Records and Public Meetings/School Safety – SB 1940**

Creates three new public records exemptions related to the Marjory Stoneman Douglas High School Public Safety Act:

- Makes confidential and exempt from public records disclosure the identity of a reporting party received through the mobile suspicious activity reporting tool which is held by FDLE, law enforcement agencies, or school officials. Without the exemption, a person may be fearful of reporting suspicious activity which could otherwise be used by law enforcement as a lead in preventing an incident of mass violence;
- Makes exempt from public records disclosure any other information received through the mobile suspicious activity reporting tool through the School Safety Awareness Program and held by the FDLE, law enforcement agencies, or school officials;
- Makes exempt from public records disclosure information held by a law enforcement agency, school district, or charter school which would identify whether a particular individual has been appointed as a safe-school officer. The exemption is needed to maximize the effectiveness of safe-school officers, including adequately responding to an active assailant situation; and
- Makes exempt from public records disclosure a portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission (commission) at which exempt or confidential and exempt information is discussed. In investigating failures in the shooting and other mass violence incidents in the state, the commission will have for its review sensitive information that may already be protected from public records disclosure. Without the exemption provided in this bill, existing public records exemptions would be negated.

Each of these exemptions is subject to the Open Government Sunset Review and stands repealed October 2, 2023, unless the Legislature reviews the exemptions and saves them from repeal before that date. Approved by the Governor 03-09-2018, Chapter No. 2018-001. These provisions took effect March 9, 2018.

### **Marjory Stoneman Douglas High School Public Safety Act – CS/SB7026**

Comprehensively addresses the crisis of gun violence on school campuses by providing law enforcement and the courts the tools to enhance public safety.

In the area of mental health, the bill:

- Authorizes a law enforcement officer who is taking a person into custody for an involuntary examination under the Baker Act to seize and hold a firearm or ammunition in the person's

possession and to seek the voluntary surrender of other firearms or ammunition kept in the residence.

- Provides that the firearms or ammunition seized or voluntarily surrendered must be available for return no longer than 24 hours after the person taken into custody can document that he or she is no longer subject to involuntary examination and has been released or discharged or discharged from any inpatient or involuntary outpatient treatment provided or ordered and does not have a risk protection order against them or is the subject of a firearm disability.
- Prohibits a person who has been adjudicated mentally defective or who has been committed to a mental institution from owning or possessing a firearm until a court orders otherwise.
- Creates a process for a law enforcement officer or law enforcement agency to petition a court for a risk protection order to temporarily prevent persons who are at high risk of harming themselves or others from possessing firearms or ammunition when a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.
- Allows a court to issue a risk protection order for up to 12 months and requires the surrender of all firearms and ammunition if a risk protection order is issued.
- Law enforcement is required to enter the order into FCIC/NCIC.
- The Sheriff is responsible for serving risk protection orders and taking custody of firearms and ammunition.
- Provides a process for a risk protection order to be vacated or extended by the court.

In the area of gun safety, the bill:

- Requires a waiting period before delivery of any firearm by a firearms dealer (previously only applied to handguns). The waiting period is now three days or until the background check is completed, whichever is later. Concealed weapons permit holders are exempt from the waiting period requirement. Individuals buying a rifle or shotgun are exempt from the waiting period if they:
  - Have completed a 16-hour hunter safety course and possess a hunter safety certification card; or
  - Are exempt from the hunter safety course requirements and hold a valid Florida hunting license; or
  - Are a law enforcement officer, correctional officer or military service member.
- Prohibits a person under 21 years of age from purchasing a firearm. Also prohibits a licensed firearm dealer, importer, or manufacturer from selling a firearm to a person under 21 years of age, except in the case of a member of the military, or a law enforcement or correctional officer, when purchasing a rifle or shotgun. Violation is a 3<sup>rd</sup> degree felony.
- Prohibits possession of a bump-fire stock. Also prohibits bump fire stocks from being imported, transferred, distributed, sold, kept for sale, offered for sale, , or for giving away within the state beginning October 1, 2018. Violation is a 3<sup>rd</sup> degree felony.

In the area of school safety, the bill:

- Codifies the Office of Safe Schools within the Florida Department of Education (DOE) which will serve as a central repository for the best practices, training standards and compliance regarding school safety and security.
- Permits a sheriff to establish a Coach Aaron Feis Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises. The bill allows school districts to

decide whether to participate in the school guardian program if it is available in their county. A school guardian must complete 132 hours of comprehensive firearm safety and proficiency training, 12 hours of diversity training, pass a psychological evaluation and initial drug test and subsequent random drug tests. No teacher will be required to participate. In fact, the legislation provides that personnel that are strictly classroom teachers with no other responsibilities cannot participate, with specified exceptions.

- Requires each district school board and school district superintendent to cooperate with law enforcement agencies to assign one or more safe-school officers at each school facility.
- Requires DOE to contract for the development of a Florida Safe School Assessment Tool to be used by each school district and public school in conducting security assessments to identify threats and vulnerabilities.
- Requires DOE to establish evidence-based youth mental health awareness and assistance training program to help school personnel identify and understand the signs of emotional disturbance, mental illness and substance use disorders and provide such personnel with the skills to help a person who is experiencing or developing an emotional disturbance, mental health, or substance abuse problem
- Creates the mental health assistance allocation within the Florida Education Finance Program to provide funding to assist school districts in establishing or expanding school-based mental health care.
- Clarifies that the cost per student station does not include specified costs related to improving school safety.
- Requires each district school board to:
  - Designate a school administrator who completes the required training within the specified timeframe as the school safety specialist for the district to serve as the district's primary point of public contact for public school safety functions.
  - Designate a threat assessment team at each school, and requires the team to operate under the district school safety specialist's direction. The bill requires the threat assessment team to consult with law enforcement when a student exhibits a pattern of behavior, based upon previous acts or the severity of an act that would pose a threat to school safety.
  - Formulate and prescribe policies and procedures, in consultation with the appropriate public safety agencies, for emergency drills for hostage and active shooter situations and incorporate procedures to address active shooter situations in the model emergency management and emergency preparedness procedures.
- Requires each school safety specialist to coordinate with appropriate public safety agencies that are designated as the first responders to a school's campus to tour such campus once every three years and provide recommendations related to school safety.

Finally, the bill also:

- Prohibits a person from making, posting, or transmitting a threat to conduct a mass shooting or an act of terrorism.
- Requires the Department of Children and Families (DCF) to contract for community action treatment teams to provide behavioral health and support services.
- Requires DOE to coordinate with FDLE to provide a centralized integrated data repository and data analytics resources to improve access to timely, complete and accurate information

integrating data from social media, DCF, FDLE, the Department of Juvenile Justice and local law enforcement.

- Appropriates general revenue to FDLE to procure a mobile app that would allow students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities or threats. The students of Marjory Stoneman Douglas High School recommended that the program be named “FortifyFL” (see New Funding Issues on page 2 for additional funding specifics).
- Appropriates general revenue and five FTEs to FDLE to establish the Marjory Stoneman Douglas High School Public Safety Commission to investigate system failures in the Parkland school shooting and prior mass violence incidents and develop recommendations for system improvements. An initial report from the commission is due to the Governor and the Legislature by January 1, 2019 (see New Funding Issues on page 2 for additional funding specifics).

Approved by the Governor 03-09-2018; Chapter No. 2018-003. These provisions took effect on March 9, 2018, unless otherwise noted.

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

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### **Controlled Substances – CS/CS/HB 21**

Amends various sections of law to increase the regulation, training, and reporting required when controlled substances are prescribed and dispensed:

- Requires all prescribing practitioners who are authorized to prescribe controlled substances to complete a two-hour training course prior to biennial licensure renewal on the safe and effective prescribing of controlled substances, unless such practitioner is already required to take such a course by his or her practice act.
- Defines “acute pain” as the normal, predicted, physiological and time-limited response to an adverse chemical, thermal or mechanical stimulus associated with surgery, trauma or acute illness.
- Provides restrictions on certain prescriptions written to treat acute pain.
- Requires clinics that are exempt from the requirement to register as a pain management clinic to obtain and maintain a certificate of exemption from the Department of Health (DOH). These provisions take effect January 1, 2019.
- Conforms an exemption allowing health care practitioners to dispense controlled substances in connection with a surgical procedure to the limits on prescribing established for Schedule II opioid medications.
- Creates an exemption to allow a physician to dispense Schedule II and III controlled substances approved by the United States Food and Drug Administration for the medication-assisted treatment of his or her own patients.
- Explicitly authorizes electronic prescriptions for controlled substances.
- Adds and reschedules substances to the various schedules of controlled substances.
- Substantially rewords the Prescription Drug Monitoring Program (PDMP) with changes including, but not limited to:
  - Including Schedule V controlled substances in the list of drugs that must be reported to the PDMP;

- Requiring prescribing practitioners to consult the PDMP before prescribing controlled substances with certain exceptions;
- Allowing DOH to coordinate and share Florida's PDMP data with other states' PDMPs and to enter into contracts to establish secure connections between the PDMP and prescribing or dispensing health care practitioner's electronic health records; and
- Allowing prescribers and dispensers with Veterans' Affairs, the military, and the Indian Health Services, and Florida medical examiners access to data in the PDMP.
- Increases the penalty from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony for a patient or health care practitioner who knowingly obtains or provides a controlled substance that is not medically necessary.
- Creates a new 3<sup>rd</sup> degree felony for unlawfully possessing and using tableting or encapsulation machines.

Approved by the Governor 03-19-2018; Chapter No. 2018-013. These provisions take effect July 1, 2018.

### **Motor Vehicle Registration Applications – CS/HB 135**

Requires the Department of Highway Safety and Motor Vehicles to include language on the motor vehicle registration application form that allows a deaf or hard of hearing applicant to indicate voluntarily that he or she is deaf or hard of hearing. This notation will be included through the Driver and Vehicle Information Database and available through the Florida Crime Information Center. The bill enables a law enforcement officer to access this information upon searching a license plate prior to approaching the motor vehicle during a traffic stop. The bill also updates the name of an organization to receive a voluntary \$1 contribution per applicant on the motor vehicle registration application form, from Prevent Blindness Florida to Preserve Vision Florida, to correctly reference the organization's name change. Finally, the bill makes a cross-reference change to conform to changes made by the bill. Approved by the Governor 03-21-2018, Chapter No. 2018-042. These provisions take effect October 1, 2018.

### **Transportation – CS/CS/HB 141**

Exempts law enforcement officers operating an official vehicle (marked or unmarked) while on official law enforcement business from payment of tolls for the use of toll facilities. Approved by the Governor 04-06-2018, Chapter No. 2018-145. These provisions take effect July 1, 2018.

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

Provides that, under certain circumstances, posttraumatic stress disorder suffered by a first responder is an occupational disease compensable by workers' compensation benefits; specifying that benefits do not require a physical injury and are not subject to certain apportionment or limitations, etc. Approved by the Governor 03-27-2018, Chapter No. 2018-124. These provisions take effect October 1, 2018.

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

Exempts from public records disclosure the address of a victim of an incident of mass violence. An incident of mass violence is defined as an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate violent act. A victim is defined as a person killed or injured during the incident of mass violence. Without the exemption, the media or others could invade the privacy of the victim or the victim's family and subject them to harassment and additional pain and suffering.

In the Open Government Sunset Review, the bill provides that the public records exemption stands repealed on October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that date. Approved by the Governor 03-09-2018, Chapter No. 2018-002. These provisions took effect March 9, 2018.