

**Law Enforcement & Public Safety Committee
Regular Meeting Minutes**

DATE & TIME: October 3, 2019 – 5:00 PM
LOCATION: KL Binder Library, 6th Floor, County Office Building
PRESIDING OFFICER: Deputy Chair Kenneth J. Ronk, Jr.
LEGISLATIVE STAFF: Jay Mahler, Deputy Clerk
PRESENT: Legislators Eckert (arrived at 5:17 PM), Haynes & Heppner
ABSENT: Legislator Collins
QUORUM PRESENT: Yes

OTHER ATTENDEES: Legislators Donaldson & Rodriguez, Sheriff Figueroa & Under Sheriff Benjamin – UC Sheriff's Office, Deputy Mario Tagliaferro, PBA President, & Detective Tom Sharon, PBA Vice President – UC Sheriff's PBA, Director Nancy Schmidt & Deputy Director Valerie Naccarato – UC Probation, Director Steve Peterson – UC Emergency Management/Emergency Communications, Deputy County Executive Marc Rider – UC Executive's Office

Deputy Chair Ronk called the meeting to order at 5: 05 PM.

Motion No. 1: Moved to **APPROVE** the Minutes of the September 10, 2019 meeting

Motion By: Legislator Heppner
Motion Seconded By: Legislator Haynes

Discussion: None

Voting In Favor: Legislators Haynes, Heppner & Ronk
Voting Against: None
Votes in Favor: 3
Votes Against: 0
Disposition: Minutes **APPROVED**

Resolutions for the October 15, 2019 Session of the Legislature

Deputy Chair Ronk advised the members that he would be taking some Resolutions out of order to accommodate Sheriff Figueroa who had another meeting to attend.

Resolution No. 418: Approving The Execution Of A Contract Amendment Causing The Aggregate Amendment Amount To Be In Excess Of \$50,000.00 Entered Into By The County – Tyler Technologies, Inc. – Ulster County Sheriff

Resolution Summary: This resolution approves the execution of a contract amendment in the amount of \$24,120 with Tyler Technologies, Inc. to update the types and number of software licenses purchased and maintained as part of the Public Safety Enterprise software package and extend the term of agreement through July 31, 2020.

Motion No. 2: **Motion ADOPT Resolution No. 418**
Motion By: Legislator Haynes
Motion Seconded By: Legislator Heppner

Discussion: None

Voting In Favor: Legislators Haynes, Heppner & Ronk
Voting Against: None
Votes in Favor: 3
Votes Against: 0
Disposition: **Resolution ADOPTED**

Resolution No. 425: Authorizing The Acceptance Of A Donation Of A Trailer Vehicle To Be Used By The Opioid Response As County Law Enforcement (ORACLE) Program – Ulster County Sheriff

Resolution Summary: This resolution authorizes the county to accept a donation of a 2010 Cougar trailer from the Ulster County Sheriff’s Foundation for use for education and outreach as part of the Sheriff’s Office Opioid Response As County Law Enforcement (ORACLE) Program.

Motion No. 3: **Motion ADOPT Resolution No. 425**
Motion By: Legislator Heppner
Motion Seconded By: Legislator Haynes

Discussion:
Deputy Chair Ronk recognized Sheriff Figueroa to offer information on the ORACLE program. Sheriff Figueroa explained that the trailer is part of Phase 1 of the ORACLE program which focuses on opioid awareness, education and outreach. He informed the members that the trailer has already been used for education and NARCAN training at the Ulster County Fair, Apple Festival and the RYAN Festival. He added that it has been a big success and alerts individuals to signs of drug use.

Deputy Chair Ronk asked the members if they had any questions. Legislator Haynes encouraged Sheriff Figueroa to continue to visit and partner with School Districts in the county. She added that vaping is on the rise and emphasized the importance of early intervention. Sheriff Figueroa thanked her for the suggestion. Legislator Heppner agreed that early intervention in schools was key to addressing the current rise in vaping in adolescents.

Voting In Favor: Legislators Haynes, Heppner & Ronk
Voting Against: None
Votes in Favor: 3
Votes Against: 0
Disposition: **Resolutions ADOPTED**

Resolution No. 426: Authorizing The Chair Of The Ulster County Legislature To Accept An Award For A Department Of Homeland Security Preparedness Grant For The Port Security Grant Program – Ulster County Sheriff

Resolution Summary: This resolution authorizes the Chair of the Legislature to accept a Port Security Preparedness Grant in the amount of \$350,691 from the Department of Homeland Security to be used to offset a portion of the cost of replacing a boat for the Sheriff's Navigation Division.

Motion No. 4: **Motion ADOPT Resolution No. 426**
Motion By: Legislator Haynes
Motion Seconded By: Legislator Heppner

Discussion:

Sheriff Figueroa advised the members that the grant will cover the majority of the cost of the new boat. He added that they are creating a task force with the Coast Guard for a water rescue team. Deputy Chair Ronk informed the members that the new dive van was dedicated in honor of Deputy Kerry Winters. Legislator Haynes commented that Deputy Winters was indeed deserving of the dedication.

Voting In Favor: Legislators Haynes, Heppner & Ronk
Voting Against: None
Votes in Favor: 3
Votes Against: 0
Disposition: **Resolutions ADOPTED**

Resolution No. 427: Approving The Memorandum Of Agreement Between The County Of Ulster And The Ulster County Deputy Sheriff's Police Benevolent Association, Inc. For The Years 2018 And 2019

Resolution Summary: This resolution approves the Memorandum of Agreement covering the period January 1, 2018 through December 31, 2019, between the County of Ulster and the Ulster County Deputy Sheriff's Police Benevolent Association, Inc.

Motion No. 5: **Motion ADOPT Resolution No. 427**
Motion By: Legislator Heppner
Motion Seconded By: Legislator Haynes

Discussion:

Deputy Chair Ronk advised the members that the President and Vice President of the Sheriff's PBA were in attendance, and asked if the members had any questions. He stated that he appreciated the work that both the PBA and Executive's Office put in to negotiating the contract, adding that he felt the agreement was fair.

Voting In Favor: Legislators Haynes, Heppner & Ronk
Voting Against: None
Votes in Favor: 3
Votes Against: 0
Disposition: **Resolutions ADOPTED**

Deputy Chair Ronk advised the members that he followed up with Sheriff Figueroa on the committee's discussion at the September meeting regarding public disclosure on Facebook of names of individuals arrested. Sheriff Figueroa advised the members that his office recognizes that individuals are innocent until proven guilty, but will disclose names of individuals arrested who may pose a risk to public safety, were arrested for a violent crime, or whose posting could alert the public to potential involvement in other crimes. He advised the members that he believes that the posting of all names of arrestees contributes to negative perceptions of law enforcement. Legislator Heppner commented that the policy is similar to that of the NYS Police.

Deputy Chair Ronk asked if there were any more questions for the Sheriff. Legislator Donaldson informed the Sheriff that he has a Resolution before the committee to create a Criminal Justice Reform Task Force. He advised the members that the aim of the Task Force is to address and monitor the implementation of the various state measure such as Raise the Age legislation, bail reform, pre-trial notification, etc. He asked if the Sheriff would support the Resolution and participate in group. Sheriff Figueroa responded that he would be happy to participate. He advised the members that he would forward a copy of a recent NYS Sheriff's Association presentation which provided an overview and explanation of new state reforms (appended to these minutes.) The members briefly discussed various post-arrest scenarios and how they will be handled in light of the changes.

Deputy Chair Ronk asked if the members had any other questions for the Sheriff.

Resolution No. 410: Establishing The Ulster County Criminal Justice Reform Task Force

Resolution Summary: This resolution establishes the Ulster County Criminal Justice Reform Task Force for the purpose of evaluating county efforts and programs intended to serve individuals effected by NYS Raise the Age legislation and bail reform measures, and county restorative justice programming, for efficacy, efficiency, and compliance with state requirements to ensure the best and most cost-effective delivery of services, and to explore opportunities for program expansion to help the greatest number of county residents.

Motion No. 6: **Moved Resolution No. 410 FOR DISCUSSION**

Motion By: Legislator Heppner

Motion Seconded By: Legislator Eckert

Discussion:

Legislator Donaldson advised the members that he believes the county is behind the eight ball on criminal justice reform because of the new state regulations, change in County Executive and other factors. He stated that simply implementing state regulations is not enough to really reform the criminal justice system, adding that pre-trial notification, for example, should be improved.

Deputy Chair Ronk stated that the county is doing a number of things to implement criminal justice reforms, but commented that he agreed with Legislator Donaldson that the county will need work on creative solutions to criminal justice reforms and expressed his support for the creation of the task force. Legislator Heppner expressed his support for the creation of the task force, adding that he found serving on the UCAN task force incredibly informative and helpful to the Legislature. He suggested the requirement that the task force submit a report within six months be lengthened. Legislator Donaldson

recommended that the six-month timeframe remain with the understanding that it could be extended as needed. Deputy County Executive Rider stated that the Probation Department will see a drastic increase in responsibilities with the new regulations and suggested they be consulted as well. Deputy Chair Ronk stated that the Legislature does not have the authority to compel the participation of the Probation Department or Executive's Office, but stated that he was sure it would be welcome, and recommended the Resolution be amended to provide for that participation. Probation Director Schmidt echoed Deputy County Executive Rider's comments regarding the role of the Probation Department in implementing state regulations, supported the department's participation in the task force and recommended a couple of amendments to the Resolution to correct some factual information.

Motion No. 7: **Motion to AMEND Resolution No. 410 to correct factual data referenced in the third and fourth Whereas sections and to add a new Resolved section to allow for Executive Office participation in the Task Force**

Motion By: Legislator Heppner

Motion Seconded By: Legislator Eckert

Discussion: None

Voting In Favor: Legislators Eckert, Haynes, Heppner & Ronk

Voting Against: None

Votes in Favor: 4

Votes Against: 0

Disposition: **Amendments ADOPTED**

Motion No. 8: **Motion to ADOPT Resolution No. 410 AS AMENDED**

Motion By: Legislator Heppner

Motion Seconded By: Legislator Haynes

Discussion: None

Voting In Favor: Legislators Eckert, Haynes, Heppner & Ronk

Voting Against: None

Votes in Favor: 4

Votes Against: 0

Disposition: **Resolution ADOPTED AS AMENDED**

Resolution No. 428: Amending Capital Project 482 – Countywide Radio System –Department Of Emergency Communications / Emergency Management

Resolution Summary: This resolution amends the 2019 Capital Fund Budget in the amount of \$477,385 to reallocate unexpended Land Mobile Radio Systems grant funding to Capital Project 482 – County Wide Radio System.

Motion No. 9: **Motion ADOPT Resolution No. 428**

Motion By: Legislator Heppner

Motion Seconded By: Legislator Haynes

Discussion: None

Voting In Favor: Legislators Eckert, Haynes, Heppner & Ronk

Voting Against: None

Votes in Favor: 4

Votes Against: 0

Disposition: **Resolutions ADOPTED**

Resolution No. 430: Authorizing The Chair Of The Ulster County Legislature To Execute An Agreement With New York State Office Of Victim Services For Funding Under The Victim And Witness Assistance Grant Program – Department Of Probation

Resolution Summary: This resolution authorizes the Chair to execute an agreement with NYS OVS for the Victim and Witness Assistance Grant Program in the amount of \$2,239,929 for the period beginning October 1, 2019 and ending September 30, 2022.

Motion No. 10: **Motion ADOPT Resolution No. 430**

Motion By: Legislator Heppner

Motion Seconded By: Legislator Haynes

Discussion: None

Voting In Favor: Legislators Eckert, Haynes, Heppner & Ronk

Voting Against: None

Votes in Favor: 4

Votes Against: 0

Disposition: **Resolutions ADOPTED**

Resolution No. 431: Authorizing The Chair Of The Ulster County Legislature To Execute An Agreement With New York State Division Of Criminal Justice Services – Sexual Assault Crisis And Prevention Program – Department Of Probation

Resolution Summary: This resolution authorizes the Chair to execute an agreement with NYS DCJS in the amount of \$74,304.00, for the purpose of providing support services of the CVAP Sexual Assault Crisis and Prevention Program, for the period beginning October 1, 2019 and ending September 30, 2020.

Motion No. 11: **Motion ADOPT Resolution No. 431**

Motion By: Legislator Heppner

Motion Seconded By: Legislator Haynes

Discussion: None

Voting In Favor: Legislators Eckert, Haynes, Heppner & Ronk
Voting Against: None
Votes in Favor: 4
Votes Against: 0
Disposition: **Resolutions ADOPTED**

Resolution No. 432: Approving The Ulster County 2020 STOP DWI Program Plan And Authorizing The Chair Of The Ulster County Legislature To Execute All Intermunicipal Agreements Required Under The Plan – Department Of Probation (STOP-DWI Division)

Resolution Summary: This resolution approves the 2020 STOP DWI Program Plan as submitted and authorizes the Chair to enter into all necessary intermunicipal agreements.

Motion No. 12: **Motion ADOPT Resolution No. 432**
Motion By: Legislator Heppner
Motion Seconded By: Legislator Haynes

Discussion: None

Voting In Favor: Legislators Eckert, Haynes, Heppner & Ronk
Voting Against: None
Votes in Favor: 4
Votes Against: 0
Disposition: **Resolutions ADOPTED**

Deputy Chair Ronk advised the members that Probation Director Schmidt would be making a presentation at the next meeting regarding implementation of Raise the Age, bail reform and pre-trial services. Director Schmidt asked when the November meeting was scheduled for. Deputy Chair Ronk advised the members that they had no old business and led a discussion on scheduling a special meeting to consider proposed budgets of departments under the committee's purview. The members tentatively scheduled a meeting for October 29th. He advised the members that the next regular meeting was scheduled for the night before Election day. The members decided to wait until Resolutions were submitted to reschedule that meeting.

Deputy Chair Ronk asked if there was any other business, and hearing none;

Adjournment

Motion Made By: Legislator Heppner
Motion Seconded By: Legislator Haynes
No. of Votes in Favor: 3
No. of Votes Against: 0

TIME: 5:43 PM

Respectfully submitted: Jay Mahler, Deputy Clerk
Minutes Approved: November 13, 2019

2019 LEGISLATIVE OVERVIEW

Alex Wilson, Esq.

Associate Counsel

New York State Sheriffs' Association

Bail Reform

- Initially proposed in the Governor's Executive Budget in January, 2019.
- Subject of intense negotiations between the Executive, legislators, and public advocates, both for and against
- The Sheriffs' Association opposed the Governor's proposal, and the Senate and Assembly counter-proposals
- We eventually endorsed the Justice Task Force's recommendations for bail reform

Bail Reform (Continued)

- What does it do?
 - ▣ Prohibits police from detaining for arraignment, people arrested for misdemeanors and E felonies, with certain enumerated exceptions
 - ▣ Prohibits the application of cash bail against persons charged with misdemeanors and non-violent felonies, with certain enumerated exceptions
 - ▣ Allows judges to release defendants under “non-monetary” conditions, such as electronic monitoring or mandatory participation in a pre-trial services program

Bail Reform (Continued)

□ Appearance Ticket Mandate

▣ For misdemeanors and E felonies, police must issue an appearance ticket, unless:

- Arrest is being made pursuant to a warrant
- Arrest is for a crime for which the court could revoke or suspend a person's driver's license
- Arrest is for a DV misdemeanor or sex crime
- Arrestee fails to properly identify themselves
- Arrestee has a documented history of failing to appear for court
- Arresting officer determines that the arrestee is in immediate need of a physical or mental evaluation, or that an order of protection should be issued

Bail Reform (Continued)

□ Scenario 1:

- An individual is arrested for a petit larceny misdemeanor. The individual is visibly intoxicated at the time of arrest, but is lucid and relatively coherent, and does not appear to be in acute distress. The individual willingly submits to processing and completes it without incident. Can the individual be detained for arraignment?

Bail Reform (Continued)

- Answer: Can likely justifiably detain
 - ▣ If, in the professional judgement of the arresting officers, the individual, despite outward appearances, is in need of a physical evaluation due to his or her intoxicated state, then prolonged detention followed by arraignment would likely be justified.

Bail Reform (Continued)

- Scenario 2:
 - Officers respond to a report of a fire at a construction site. When they arrive, they find that a worker from a rival company has been detained by several civilians, after having been caught setting fire to the structure being built. The structure has been damaged, but nobody has been injured, aside from some minor smoke inhalation. Can the individual be detained for arraignment?

Bail Reform (Continued)

- Answer: No
 - ▣ Absent any other exigent circumstances, an arrest for the alleged crime, Arson 4th (an E felony), would require the issuance of an appearance ticket. This outcome could perhaps be different, if it is later discovered the arrestee has an outstanding warrant, or if the property owner desires an order of protection.

Bail Reform (Continued)

- Scenario 3:
 - Officers are engaged in a vehicle chase of a individual who refused to stop for a traffic violation. The chase ends when the individual loses control of the vehicle and hits a telephone pole, and in so doing, injure a bystander. The driver is found to be sober, and has no outstanding warrants. He is charged with Unlawful Fleeing of a Police Officer in a Motor Vehicle 2nd. Can the individual be detained for arraignment?

Bail Reform (Continued)

- Answer: Yes
 - ▣ Even though the alleged crime is a non-violent E felony, since a judge would be allowed to revoke or suspend the individual's driver's license either temporarily, pending disposition of the case, or pursuant to a conviction, police would subsequently be authorized to hold that individual for arraignment.

Bail Reform (Continued)

- Elimination of Bail for Certain Crimes
 - ▣ Courts will now be required to release individuals on their own recognizance unless they are charged with a “qualifying offense” and the arrainging judge makes an individualized determination that the defendant poses a flight risk. Local courts will retain the discretion to set bail, or remand without bail, should this circumstances allow for it.

Bail Reform (Continued)

- Elimination of Bail for Certain Crimes (Con't)
 - A qualifying offense is defined as:
 - Violent felonies, excluding Burglary in the 2nd Degree and Robbery in the 2nd Degree
 - A crime involving witness tampering or intimidation
 - A class A felony, excluding drug felonies defined under Article 220 of the Penal Law (with the exception of a person charged as an A-1 trafficker under PL 220.77)
 - A felony sex offense, a crime involving incest, or a misdemeanor sex offense
 - Criminal contempt in the 1st or 2nd degree where the underlying act is a violation of an order of protection where the protected party is a family member

Bail Reform (Continued)

- Release under non-monetary conditions
 - ▣ In cases where bail is inapplicable, a judge may still release a defendant under non-monetary conditions, such as:
 - Mandatory check-ins with a pre-trial services agency
 - NOTE: Every county will have to have a pre-trial services agency, approved by OCA. Most assume that probation will fill this role, but this is not a guarantee.
 - Requirement to abstain from travel, or consumption of alcohol
 - Mandatory participation in counseling or other therapy
 - Electronic monitoring

Bail Reform (Continued)

- When can bail be set for non-qualifying crimes?
 - ▣ There are 4 circumstances listed in the statute that would allow for a court to set bail on a non-qualifying offense. Each scenario involves at least an initial release upon recognizance or under non-monetary conditions, and would require a showing of clear and convincing evidence:
 - The defendant shows a persistent and willful failure to appear for court
 - Is charged with a misdemeanor and commits the crime of witness tampering or intimidation
 - Is charged with a felony and commits any other crime
 - The defendant is charged with Criminal Contempt 1st where the defendant violates an existing order of protection

Bail Reform (Continued)

□ Failure to Appear

- What will be considered clear and convincing evidence of persistent and willful failure to appear will likely be decided on a case by case basis.
- Even still, before court will be allowed to issue a bench warrant for failure to appear, they will be required to grant a 48 hour grace period for the defendant to voluntarily present him or herself.

Bail Reform (Continued)

- Effect on pre-trial detention:
 - DCJS analyzed all the arraignments conducted by town and village courts in 2018 and determined that, of the 347,884 total arraignments conducted that year, 307,307 would have been entitled to pre-trial release if the new bail statute had been in place.
 - Of the remaining arraignments, it is safe to assume that only a fraction of those would have been assessed bail at all.

Bail Reform (Continued)

□ Unresolved issues:

- Procedures upon arrest when appearance ticket is mandated...issuance of ticket at crime scene, or after fingerprinting and other processing?
 - State Police will reportedly be promulgating a new UTT that will have fields for collecting required contact information for court notifications
- Anticipated increase in rates of failure to appear for court and its potential deleterious effect on public safety and officer safety.
- Mass release of individuals currently in pre-trial detention. OCA reporting that they are leaving it to the individual administrative judges for each district to come up with a plan.
- No funding allocated for required pretrial services. Declining jail populations being cited as potential source of county savings sufficient to fund such services; this is highly speculative.

Discovery Reform

- Also initially proposed in the Governor's Executive Budget in January, 2019.
- Significantly alters the obligations of prosecutors with regards to providing inculpatory material to the defense.

Discovery Reform (Continued)

- Prosecutors must now provide the full range of discovery to the defense within 15 calendar days of arraignment on all indictments, superior court informations, felony complaints, misdemeanor complaints, prosecutor's information, information, and simplified information (including traffic tickets). This includes:
 - ▣ Names and contact information (excluding physical addresses) of all persons whom the prosecutor knows to have relevant information about the defendant's case—basically, all potential witnesses
 - ▣ The names and work affiliation of all LE personnel who have relevant information about the defendant's case
 - ▣ All other tangible evidence (recordings, written statements, test results, etc.)

Discovery Reform (Continued)

- The prosecution (and the defense) will have the ability to apply for a protective order to shield information from automatic discovery upon a showing of good cause. In determining good cause, a court can consider, among other things:
 - ▣ Witness safety and general risk of reprisal
 - ▣ Danger to integrity of physical evidence
 - ▣ Confidentiality of informants
 - ▣ Defendant's history of witness intimidation, if any

Discovery Reform (Continued)

- Questions over implementation abound:
 - ▣ The time and effort it will take to identify, edit, redact, and categorize all the material required to be turned over within the statutory time frame will be monumental.
 - ▣ Some counties are considering dedicating centralized computer servers that will serve as single repositories for all this information
 - ▣ Some DA's have contemplated changing their procedures when it come to when the commence arraignments.

Use of Force Reporting

- The law now requires that a use of force report be submitted to DCJS every time a peace or police officer:
 - ▣ Brandishes, uses or discharges a firearm at or in the direction of another person
 - ▣ Uses a chokehold
 - ▣ Displays, uses or deploys a chemical agent or electronic stun device
 - ▣ Brandishes, uses or deploys an impact weapon (club or baton)
 - ▣ Engages in any conduct which results in death or serious bodily injury to another person

Use of Force Reporting (Continued)

- DCJS will be required to publish an annual report for the public:
 - “Such reports shall not identify the names of the individuals involved, but for each event reported, shall list the date of the event, the location disaggregated by county and law enforcement agencies involved, the town or city, and any additional relevant location information, a description of the circumstances of the event, and the race, sex, ethnicity, age, or, if unknown, approximate age of all persons engaging in the use of force or suffering such injury.”

Use of Force Reporting (Continued)

- MPTC must promulgate a model policy for use of force. This policy must be wholly or substantially adopted by all law enforcement agencies. The following are specific criteria on what the MPTC policy must include:
 - ▣ Guidelines on when use of force is permitted
 - ▣ Requirements for documenting use of force
 - ▣ Procedures for investigating use of force
 - ▣ Guidelines regarding excessive use of force
 - ▣ Standards for failure to adhere to use of force guidelines
 - ▣ Training mandates on use of force

Use of Force Reporting (Continued)

- Unresolved issues:
 - The primary question involving this new mandate is what exactly does it mean to “brandish” or “deploy” a weapon, such that a use of force report is required?
 - There are no qualifying regulations or DCJS guidance to provide clarity.
 - Example of ambiguity: A CERT team enters a home with their weapons unslung, but the house turns out to be empty. Is a use of force report required?

“Greenlight” Law

- This law would allow individuals to provide alternate forms of documentation in order to prove age and identity for the purpose of obtaining a NYS driver’s license.
- An individual would be able to present a form of identification issued by a foreign government to prove age and identity, as well as sign an affidavit stating they do not possess a social security number
- The physical licenses issued to undocumented individuals will be visually indistinguishable from real-ID compliant licenses except for text that will state, “Not For Federal Purposes.”

“Greenlight” Law (Continued)

- The bill will directly impact law enforcement in a few ways:
 - ▣ In order to maintain direct access to DMV databases and records, law enforcement will have to certify to DMV that they will not use the information to aid in the enforcement of civil immigration violations or turn over any information to federal law enforcement agencies that are primarily responsible for enforcing civil immigration violations.
 - ▣ If you have direct access to DMV records, you would be required to track how you use every piece of data you obtain, for 5 years
 - ▣ There is a provision in the bill that states, should ICE provide DMV with a judicial warrant or subpoena for access to their records, DMV would be required by this legislation to notify the subject of the record that ICE is seeking information about them. This notification would have to take within 3 days of receiving the warrant or subpoena.

“Greenlight” Law (Continued)

- The law is currently being challenged in court in a suit brought by several county clerks.
- The law would take effect on December 14, 2019, but this could change depending on the outcome of the litigation.

“Red Flag” Law

- This law authorizes courts to issue extreme risk orders of protection. These orders would prohibit an individual from possessing or purchasing firearms.
- The law went into effect on August 24, 2019.

“Red Flag” Law (Continued)

- The law directly impacts law enforcement in several ways:
 - ▣ Allows police officers to petition a court for the issuance of such an order, along with district attorneys, close family members and certain school officials
 - ▣ Law enforcement may be called upon to serve such orders and accept surrender of firearms, or to seize such firearms if necessary. The law states that the court may direct such orders to the “appropriate law enforcement agency serving the jurisdiction of the respondent’s residence.”
 - ▣ Weapons surrendered or seized pursuant to such an order must be held for at least 2 years unless transferred to another party, or until the order is expired or lifted

“Red Flag” Law (Continued)

- The extreme risk order of protection may grant the police agency to whom it is directed the authority to search the named individual’s premises, should they not voluntarily surrender their firearms.
- How does law enforcement determine whether they’ve actually seized all of a person’s weapon?
- Issues of overreach may arise.

Marijuana Decriminalization

- This law decriminalizes the possession of marijuana to a certain extent. It went into effect in late August. It created two levels of Unlawful Possession of Marijuana:
 - ▣ A person would be guilty of Unlawful Possession of Marijuana in the Second Degree if they knowingly and unlawfully possess marijuana. It would be a violation level offense and would come with a fine of not more than 50 dollars.
 - ▣ A person would be guilty of Unlawful Possession of Marijuana in the First degree if they knowingly and unlawfully possess marijuana in excess of one ounce, but less than 2 ounces. It would be a violation level offence and come with a fine of not more than 200 dollars. ***NOTE*** It would no longer be a misdemeanor level offence to possess “burning marijuana” in a public place. So smoking marijuana in public would no longer be a criminal infraction.

Marijuana Decriminalization (Con't)

- There is also a component to the legislation that will require the sealing/expungement of certain marijuana convictions.
 - ▣ “The chief administrator of the courts shall promptly notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies of all counts that have been vacated and dismissed pursuant to [this statute] and that, in the absence of any other valid count or counts, all records of such action or proceeding shall be expunged and the matter shall be considered terminated in favor of the accused and deemed a nullity, having been rendered legally invalid.”

DOH Oversight of Jail Health Programs

- In 2009, the State Department of Health was required to review jail policies regarding HIV, AIDS, and Hepatitis C. DOH was given the authority not only to review, but to direct changes in policies as they deemed necessary.

DOH Oversight of Jail Health Programs (Con't)

- This new law will add the following health topics to the list of jail health policies that must be annually reviewed by State DOH:
 - ▣ Women's health; transgender health; chronic health conditions including but not limited to asthma, diabetes, and heart disease; health care services for individuals fifty years of age or older; discharge planning of health care services including planning for discharges requiring residential placement or long-term care services; and substance use disorders.

Program SJOs

- This law will allow Sheriffs to coordinate with each other to send inmates to other jails simply for the purpose of participating in “beneficial programming.” The substitute jail order could only be granted upon the consent of the inmate and all Sheriffs involved.

Right to Phone Call

- This law will require that inmates confined to keeplock pending a disciplinary hearing, or placement in segregated confinement for administrative purposes, be allowed to make a telephone call within the first 24 hours of their confinement.
- This privilege may be denied if it is determined that this would create a risk to the safety and security of other inmates or jail staff.

Legislative Staff, Jail Visits

- This law specifically states that when a legislator chooses to visit a state or local correctional facility (as is their prerogative under Correction Law § 146), they are allowed to bring their accompanying staff with them as well.

Epi-Pens

- This legislation authorizes (but does not mandate) police officers, peace officers and fire fighting personnel outside of New York City to carry epinephrine (epi-pens).
- The law would go into effect 30 days after being signed by the Governor.

Unlawful Dissemination of an Intimate Image

- The law, currently in effect, added a new section, 245.15, to the Penal Law. Under this new section, a person would be found guilty of Unlawful Dissemination or Publication of an intimate image when, with intent to cause harm, a person disseminates or published a still or video image of another, identifiable person which shows:
 - An unclothed or exposed intimate part of such other person and
 - Such image or video was taken under circumstances when the person depicted had a reasonable expectation that the image would remain private

Unlawful Dissemination of an Intimate Image (Con't)

- “Intimate image” shall mean the naked genitals, pubic area, anus or female nipple of a person.
- “Disseminate” means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person.
- “Publish” means to:
 - (a) disseminate with the intent that such image or images be disseminated to ten or more persons; or
 - (b) disseminate with the intent that such images be sold by another person; or
 - (c) post, present, display, exhibit, circulate, advertise or allows access, electronically or otherwise, so as to make an image or images available to the public; or
 - (d) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible, electronically or otherwise and to make such image or images available to the public.

Gravity Knife Decriminalization

- It is no longer illegal to possess as “gravity knife” in New York State. The Governor has signed legislation that removes gravity knives from the list of dangerous weapons prohibited from possession under Penal Law 265.0.
- A gravity knife was defined as: “[A]ny knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.”

Domestic Violence Reporting

- This legislation will allow a victim of a domestic violence to make a complaint to any local law enforcement agency in the state regardless of where the act took place.
- Such local law enforcement agency shall take a police report and a domestic incident report. The law enforcement agency shall forward the reports to the law enforcement agency with jurisdiction over the location where the incident occurred for the further investigation.
- The law was signed on August 8th, and will go into effect on Monday, October 7th.

Briana's Law

- This law will require that all people who operate motorized watercraft on navigable waters in New York obtain a boating safety certificate.
- Currently, only people born after 1996 have to take a safety course and obtain such documentation.
- Operating a motorized watercraft without boating safety certificate would be treated the same as it is now. It would be a violation level offense pursuant to Navigation Law § 49(7), punishable by a fine of 100-250 dollars, with escalating penalties for multiple convictions within a certain time period.

Briana's Law (Con't)

- The has been signed and will initially go into effect on January 1, 2020 and phase in for different age groups until it would eventually apply to all operators by January 1, 2025:
 - ▣ All motor boat operators born on or after Jan. 1, 1993 will need a boating safety certificate beginning in 2020.
 - ▣ Those born on or after Jan. 1, 1988 will need a boating safety certificate beginning in 2022.
 - ▣ Those born on or after Jan. 1, 1983 will need a boating safety certificate beginning in 2023.
 - ▣ Those born on or after Jan. 1, 1978 will need a boating safety certificate beginning in 2024.
 - ▣ All motor boat operators regardless of age will need a boating safety certificate beginning in 2025.

Looking Ahead

- There are several high profile pieces of legislation that came did not pass this year that will certainly be back next session including:
 - Marijuana legalization
 - Civil Rights Law Section 50-a repeal
 - Mandatory medication assisted treatment in prisons and jails

QUESTIONS?



Thank you for your kind attention.

Alex Wilson, Esq.

Associate Counsel

New York State Sheriffs' Association

Office: 518-434-9091

Cell: 518-419-1793