

STORAGE NAME: h3333.cp

DATE: January 30, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3333

RELATING TO: Stalking Offenses

SPONSOR(S): Rep. Crow

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2) CIVIL JUSTICE AND CLAIMS
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

The bill provides for the one year revocation of the drivers license of anyone who has used a motor vehicle in the commission of stalking or aggravated stalking in violation of **s. 784.08, F.S.**

The bill provides for the forfeiture, as contraband, of the vehicle used in the commission of stalking or aggravated stalking in violation of **s. 784.08, F.S.**

The bill provides for, in lieu of forfeiture, the immobilization or booting of the vehicle used in the commission of stalking or aggravated stalking for a 30 day period.

The bill provides an effective date of **October 1**, of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Current Penalties for Stalking

Section 784.048, F.S., currently provides the following penalties for committing the crime of stalking:

1. Any person who willfully, maliciously, and repeatedly follows or harasses another person commits the offense of stalking, a misdemeanor of the first degree.
2. Any person who willfully, maliciously, and repeatedly follows or harasses another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury, commits the offense of aggravated stalking, a felony of the third degree.
3. Any person who, after an injunction for protection against repeated violence or against domestic violence, or any other court-imposed prohibition of conduct toward the subject person or that person's property, willfully, maliciously, and repeatedly follows or harasses another person commits the offense of aggravated stalking, a felony of the third degree.
4. Any person who willfully, maliciously, and repeatedly follows or harasses a minor under 16 years of age commits the offense of aggravated stalking, a felony of the third degree.

Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (**s.932.701-s.932.707, F.S.**) provides the definition of contraband and the method for forfeiture.

Section 932.701(2)(a)(5), F.S., includes in the definition of contraband articles:

Any personal property, including but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instrument, or currency, which was used, or was attempted to be used as an instrumentality in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

Under the Forfeiture Act, the seizing agency is required only to have probable cause to believe that the property sought to be seized "was used, is being used, was attempted to be used, or was intended to be used" in violation of the Act. White v. State, 680 So.2d 550, 554 (Fla.App. 1 Dist. 1996).

"Personal property may be seized at the time of the violation, or subsequent to the violation, provided that the person entitled to notice is notified at the time of seizure or by certified mail, return receipt requested, that there is a right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been, or is being used in violation of the Act." Id.

The fact that the seizing agency does not have probable cause to believe the vehicle contained contraband or was being used in violation of the Act at the moment they seized the vehicle does not render it unlawful under the Act. Id.

The Forfeiture Act "clearly contemplates that proof of past violations of the Act may provide the basis for forfeiture." Therefore, the probable cause element required by the seizing agency may be satisfied merely because the person has violated the Forfeiture Act in the past. Knight v. State, 336 So.2d 553 (1977).

Supreme Court Cases Supporting Forfeiture as a Valid Punishment and Deterrent

The Supreme Court of the United States has held forfeiture of a vehicle to be a valid punitive measure despite the Eighth Amendment's prohibition against excessive fines. Austin v. United States, 509 US 408 (1993).

Furthermore, the Supreme Court has held that forfeiture also holds a valid deterrent purpose distinct from any punitive purpose because it prevents further illegal use of the vehicle, and also imposes an economic impact, thereby rendering the illegal activity unprofitable. Calero-Toledo v. Pearson Yacht Leasing Co., 416 US 663, 687 (1974).

Surprisingly, the Supreme Court has even gone so far as to hold that the forfeiture of a vehicle of an innocent owner which was used in the commission of a crime by someone else does not violate either the Fifth Amendment (takings clause) or the Fourteenth Amendment. This is true even if the owner has absolutely no knowledge of the illegal conduct. The Court's primary reason for this is "to preclude evasions of justice by dispensing with the necessity of judicial inquiry as to collusion between the wrongdoer and the innocent owner." Van Oester v. Kansas, 272 US 465, 467 (1926).

Even though the owner of a vehicle has privacy rights in that vehicle under the Fourteenth Amendment, those interests have a lesser degree of protection because the vehicle can so easily be moved out of the jurisdiction. California v. Carney, 471 US 386, 390 (1985).

B. EFFECT OF PROPOSED CHANGES:

The bill provides for the revocation of the drivers license for one year of anyone who has used a motor vehicle in the commission of stalking or aggravated stalking.

The bill provides for the forfeiture, as contraband, of the vehicle used in the commission of stalking or aggravated stalking, including those offenses which are misdemeanors.

The bill provides for, in lieu of forfeiture, the immobilization or booting of the vehicle used in the commission of stalking or aggravated stalking for a 30 day period.

Thus, under the bill, anyone using a vehicle while committing the misdemeanor offense of stalking will now have their driver's license revoked for one year and may have their vehicle booted for thirty days, or even forfeited.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

784.048, 932.701, 932.703.

E. SECTION-BY-SECTION RESEARCH:

SECTION 1: Amends s. 784.084, F.S., to include a one year revocation of drivers license, and either the forfeiture or the booting/ immobilization of the vehicle, for anyone committing a stalking violation while using a motor vehicle.

SECTION 2: Amends s. 932.701, F.S., to include in the definition of contraband articles those motor vehicles used in the commission of a stalking offense.

SECTION 3: Reenacts s. 932.703, F.S., to incorporate the amendment to s. 932.701.

SECTION 4: Provides an effective date of "October 1 of the year in which enacted."

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet met on this bill as of this date; however, it is anticipated that the fiscal impact will be insignificant.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because this is a criminal bill, this provision does not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

No

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

No

V. COMMENTS:

Section 932.701(2)(a)(5), F.S., of the current Florida Contraband Forfeiture Act includes in the definition of contraband articles:

Any personal property, including but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instrument, or currency, which was used, or was attempted to be used as an instrumentality in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

Therefore, even without this bill it is already possible for any seizing agency to seize those vehicles used in the commission of aggravated stalking (**s.784.048(3),(4), (5) F.S.**) because these offenses are classified as felonies, and thus already subject to the Florida Contraband Forfeiture Act.

The impact of this bill is that it now :

1. Makes the misdemeanor offense of stalking (**s.784.048(2), F.S.**) also punishable by forfeiture of any vehicle used in the commission of that crime.

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2. Gives the seizing agency the authority to boot/immobilize the vehicle for 30 days in lieu of forfeiture.

3. Makes it possible to suspend the stalker's drivers license for a period of one year.

Based on the reasoning in the line of cases listed above (see Present Situation), forfeiture of a vehicle for a misdemeanor offense does not violate the individual's Eighth Amendment right against excessive fines.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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