

STORAGE NAME: h0141a.lec

DATE: January 20, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
ANALYSIS**

BILL #: HB 141

RELATING TO: Operations of Law Enforcement Agencies

SPONSOR(S): Representative Russell and Others

COMPANION BILL(S): SB 166

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION 8 YEAS 0 NAYS
- (2) JUDICIARY
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

House Bill 141 makes it a third degree felony for any person to initiate contact with a person who is the cause for or subject of police mobilization, deployment, or tactical operations. This includes, for example, hostage situations or kidnappings in progress. The bill prohibits any attempts to contact or directly communicate with the perpetrator of such crimes, during the course of any tactical law enforcement operations. Further, the bill prohibits any person from knowingly broadcasting or telecasting live audio or video transmissions which would reveal tactical operations in progress, or the deployment of personnel or equipment. This prohibition would continue until the tactical operations are completed.

However, if a person obtains express authorization from the law enforcement officer who has jurisdiction over the operations or incident, that person may initiate contact or communication with the individual directly involved in the incident, and may broadcast or telecast a live audio or video transmission of tactical law enforcement operations, without violating the provisions set forth in this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, there is no statute in Florida which specifically deals with the issue of initiating contact with a person while he or she is perpetrating a crime, or the live broadcasting or telecasting of an incident involving tactical operations of law enforcement officers. However, the Florida Statutes do address various related aspects, such as what constitutes obstruction of justice, and what types of information the news media is entitled to have from governmental entities.

Section 843.06, F.S., makes it a crime to refuse to aid a law enforcement officer, providing as follows:

Neglect or refusal to aid peace officers.-- Whoever, being required in the name of the state, by any officer of the Florida Highway Patrol, police officer, beverage enforcement agent, or watchman, neglects or refuses to assist him or her in the execution of his or her office in a criminal case, or in the preservation of the peace, or in the case of rescue or escape of a person arrested under civil process, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Similarly, section 316.072(3), F.S., requires obedience to police and fire department officials, stating in pertinent part:

(3) OBEDIENCE TO POLICE AND FIRE DEPARTMENT OFFICIALS.-- It is unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully to fail or refuse to comply with any lawful order or direction of any law enforcement officer, traffic accident investigation officer as described in s. 316.640, traffic infraction enforcement officer as described in s. 318.141, or member of the fire department at the scene of a fire, rescue operation, or other emergency...

There are also statutory provisions relating to public records which may be relevant to the proposed bill. Generally speaking, the public records laws describe what information must be released to the news media, and what can be held back. In Florida, law enforcement agencies may keep from the press "criminal intelligence information" and "criminal investigation information" which is considered "active." Section 119.07(3)(b), F.S., provides, "Active criminal intelligence information and active criminal investigative information are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution." [providing for exemptions from the Public Records Law]

"Criminal intelligence information" is defined in s. 119.011(3)(a), F.S., to mean information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." "Criminal investigative information" is defined in s. 119.011(3)(b), F.S., as information relating to "an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

Criminal intelligence information is considered to be "active" as long as "it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities." Section 119.011(3)(d)1., F.S. Criminal investigative information is considered to be "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d)2., F.S. In addition, criminal intelligence information and criminal investigative information are considered "active" while such information is directly related to pending prosecutions or appeals.

A "criminal justice agency" is defined in s. 119.011(4), F.S., to mean any law enforcement agency, court, prosecutor or any other agency charged by law with criminal law enforcement duties or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties.

The purpose of this exemption is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. This exemption allows the criminal justice agencies to effectively administer their criminal intelligence gathering and investigative duties by minimizing interference with such duties. This exemption also protects information which, if released, could cause harm to citizens and law enforcement personnel.

Another exemption is set forth in section 119.07(3)(d), F.S., which provides as follows:

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34(3), are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Department of Community Affairs as having an official need for access to the inventory or comprehensive policies or plans.

Section 119.07(3)(d), F.S., exempts from public inspection "any information revealing surveillance techniques or procedures or personnel." This section also restricts access to any comprehensive inventory of state and local law enforcement resources and plans relating to emergency response except for certain agencies specified in s. 119.07(3)(f), F.S., who have an official need for such access. These exemptions allow law enforcement agencies to effectively administer their investigative programs.

There is, of course, a big distinction between information which is solely in the possession of a law enforcement agency (which the news media would like to obtain), and information the news media is in the process of obtaining, and wants to broadcast or telecast. However, the public records comparison at least provides a reference point from which to consider the issues involved.

There may be constitutional considerations involved here as well. The First Amendment to the United States Constitution provides: "Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for redress of grievances." This provision has been held applicable to both state and federal governments. However, the freedom of speech, press, and of assembly which are secured by the Constitution does not confer an absolute right to speak or publish whatever one may chose without responsibility. It does not give an unrestricted license for every possible use of language, nor does it prevent punishment by the state of those utterances which impose such undesirable results on others so as to outweigh the right to free speech. This is one test used in determining the validity of such a law, whether the danger to the public welfare outweighs the interest in freedom of speech. The danger to the public must be imminent, presenting a clear and present danger.

B. EFFECT OF PROPOSED CHANGES:

House Bill 141 was prompted by a situation that occurred while law enforcement officers were attempting to apprehend Hank Earl Carr, who had killed three officers before taking a hostage at a gas station. The standoff was televised live, and reporters had contacted Hank Carr on the telephone, conducting an interview while he was holding the hostage. These actions interfered with law enforcement's attempts to negotiate for the release of the hostage, as well as revealing on television the location on the scene of law enforcement personnel.

House Bill 141 would make it a third degree felony for any person to initiate contact with a person who is the cause for or subject of police mobilization, deployment, or tactical operations. The bill specifically refers to a kidnaping or other incident that involves taking or holding of one or more hostages. The bill prohibits any attempts to contact or directly communicate with the perpetrator of such a crime, during the course of any tactical law enforcement operations. Further, the bill prohibits any person from knowingly broadcasting or telecasting live audio or video transmissions which would reveal tactical operations in progress, or the deployment of personnel or equipment. This prohibition would continue until the tactical operations are completed.

However, if a person obtains express authorization from the law enforcement officer who has jurisdiction over the operations or incident, that person may initiate contact or communication with the individual directly involved in the incident, and may broadcast or telecast a live audio or video transmission of tactical law enforcement operations, without violating the provisions set forth in this bill.

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?

The bill restricts communications with the perpetrator of a crime, during tactical law enforcement operations, and the live broadcasting or telecasting that reveals deployment of personnel and equipment.

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?

N/A

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:

N/A

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

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