

STORAGE NAME: h0753.jo.doc
DATE: March 8, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 753
RELATING TO: Law Enforcement/Defamation Actions
SPONSOR(S): Representative Meadows
TIED BILL(S): None

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

- (1) JUDICIAL OVERSIGHT
- (2) SMARTER GOVERNMENT
- (3)
- (4)
- (5)

I. SUMMARY:

This bill provides that a law enforcement officer may bring a defamation action against a person who has filed certain false complaints against the officer. This act shall take effect July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Defamation

Defamation is the unprivileged publication of false statements which naturally and proximately result in injury to the reputation of another. Defamation, therefore, exposes a person to hatred, contempt, or ridicule; causes the person to be shunned or avoided; or injures the person in his business or occupation. Fla.Jur.2d, Defamation, s. 1-3.

Elements of Defamation

The elements that a plaintiff must prove in a defamation case are that the defendant:

- Published a false statement;
- Statement was communicated to a third party;
- Plaintiff suffered damages as a result of the publication. Fla.Jur.2d, Defamation, s. 4.

Defamation – Standard of Proof for Private Individual vs. Public Figure

A private individual needs to prove only that he was defamed and that the publisher acted negligently in publishing the defamatory statement. A public figure, on the other hand, must prove not only that he was defamed, but also that the publisher of the defamatory statement acted with actual malice toward him. Fla.Jur.2d, Defamation, s. 5.

In an action for libel by a public official, the plaintiff has the burden of showing that the defamatory statement was (1) a statement of fact, (2) which was false, and (3) made with actual malice. Actual malice may be shown where a falsehood was published with knowledge that it was false, or with reckless disregard as to its truth or falsity. Fla.Jur.2d, Defamation, s. 5 The burden is to show that the publisher deliberately lied and falsified something or, as an alternative to a knowing lie, that the publisher in fact entertained serious doubts as to the truth of his or her publication, or that he or she acted with a high degree of awareness of probable falsity. Fla.Jur.2d, Defamation, s. 5. Moreover, the official must prove this essential fact, not with the ordinary evidentiary burden of most civil cases, called the "greater weight" of the evidence in Florida, but instead with a higher, more demanding, burden called "clear and convincing" evidence. Fla.Jur.2d, Defamation, s. 5.

Law Enforcement Officers' Status as Public Figures

In the case of New York Times v. Sullivan, 376 U.S. 254 (1964), the United States Supreme Court established the standard that public figures or public officials may recover in a defamation action for injury to reputation only upon clear and convincing proof of actual malice, i.e., knowledge of the

falsity or a reckless disregard of whether it was false or not. A law enforcement officer qualifies as a public official for defamation purposes under New York Times because his position in government exercises substantial responsibility for or control over the conduct of governmental affairs. Smith v. Russell, 456 So. 2d 462 (Fla. 1984). Therefore, the public has an independent interest in the qualifications and performance of the person who holds a position of this type, beyond the general public interest in the qualifications and performance of all governmental employees. Smith v. Russell, 456 So. 2d at 465.

Absolute or Conditional Privilege

The law seems clear that an absolute privilege applies to defamatory statements made in the course of a judicial or quasi-judicial proceeding. An absolute privilege is indicated, in the context of statements made to law enforcement agencies, by the case of Gray v. Rodriguez, 481 So. 2d 1298 (Fla. 3rd DCA 1986). The court in this case set forth an absolute privilege, by holding that persons bringing complaints to a law enforcement agency have an absolute privilege regarding the statements they make to the agency, as long as they follow the established administrative procedure. "Otherwise, there would be not only a chilling effect on citizens' complaints, but a freezing over." Gray, 481 So. 2d at 1299. Furthermore, Gray cited Lewis v. Benson, 701 P.2d 751 (Nev. 1985), a case in which officers brought a defamation action against a citizen who filed a complaint with their police department. The Nevada Supreme Court held that the citizen was absolutely privileged from civil prosecution for defamation. The court stated, "In certain situations, it is in the public interest that a person speak freely. Where this is so, the law is willing to assume the risk that from time to time the privilege will be abused." Lewis, 701 P.2d at 751.

However, the more recent case of Fridovich v. Fridovich, 598 So. 2d 65 (Fla.1992) points toward a qualified privilege. In this case, key witnesses for the prosecution made false statements prior to trial, which they later retracted. The criminal defendant later brought a civil action seeking to recover for defamation. The court stated that the egregious facts alleged in the case made an eloquent argument for the adoption of a qualified privilege, and that, indeed, an absolute privilege would frustrate the principle that the courts should be open to redress every wrong. Fridovich v. Fridovich, 598 So. 2d at 69. Therefore, the court stated that "a qualified privilege is sufficiently protective of those wishing to report events concerning crime and balances society's interest in detecting and prosecuting crime with a defendant's interest to not be falsely accused." Fridovich, 598 So. 2d at 269. The court further stated that "defamatory statements voluntarily made by private individuals to the police or the state's attorney prior to the institution of criminal charges are presumptively qualifiedly privileged." Fridovich, 598 So. 2d at 269. To be qualifiedly privileged, a publication must be made (1) in good faith (2) by one who has a duty or interest in the subject matter (3) to someone who has a corresponding duty or interest (4) "even though it contains matter which would otherwise be actionable, and though the duty is not a legal one but only a moral or social obligation." The publication may be qualifiedly privileged even if it is untrue. Fla.Jur.2d, Defamation and Privacy, ss. 61-68. While Fridovich did not address reports of officer misconduct made by citizens to law enforcement agencies, the same rationale for adopting only a qualified privilege to the reporting of crimes would seem to apply to reports of police misconduct.

Since no Florida court has recently addressed whether statements made to a law enforcement agency are subject to an absolute privilege, a qualified privilege, or no privilege, it is difficult to say what privilege, if any, applies. It is unclear whether a law enforcement officer could sue for defamation for statements made to his or her employer. If any absolute privilege exists, no suit could be brought regardless of the falsity of the statement. If a qualified privilege exists, then a law enforcement officer could bring suit to determine if the statements made by the private citizen were outside the scope of the privilege. If no privilege exists at all, then a law enforcement officer could bring suit under the New York Times public official standard.

C. EFFECT OF PROPOSED CHANGES:

HB 753 provides that, notwithstanding any other provision of law, a law enforcement officer may bring an action for defamation against a person who has filed a complaint with that officer's employing agency alleging misconduct, criminal conduct, or incompetence if the complaint is false, was made with knowledge that it was false, and was made with spite, hatred, or ill will. Knowledge that the complaint is false may be proven by showing that the complainant had no reasonable grounds for believing the statement was true and that the complainant exhibited a reckless disregard for ascertaining the truth.

This bill would allow law enforcement officers to bring defamation suits against citizens who complain to their employment agency.

D. 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 GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the counties or cities to spend funds or take an action requiring the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that cities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with cities or counties.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT :

Prepared by:

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