

STORAGE NAME: s0026Ca.sec.doc
DATE: December 4, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SECURITY, SELECT
ANALYSIS**

BILL #: SB 26-C
RELATING TO: Domestic Security/Counter-terrorism
SPONSOR(S): Senator(s) Crist and others
TIED BILL(S):

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

- (1) SECURITY, SELECT YEAS 11 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

For purposes of the Florida Criminal Code, the bill defines the term "terrorism" as an activity that involves a violent act or an act dangerous to human life that is a violation of state or federal criminal laws and is intended to: a) intimidate, injure, or coerce a civilian population; b) influence the policy of a government by intimidation or coercion; or c) affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

The bill provides for the Florida Domestic Security and Counter-Terrorism Intelligence Center and the Florida Domestic Security and Counter-Terrorism Database to be established within the Florida Department of Law Enforcement (FDLE) to gather, document, and analyze criminal intelligence and criminal investigative information related to terrorism. The bill provides for the maintenance and operation of the database and provides for the support and assistance to federal, state, and local law enforcement agencies and prosecutors that investigate or prosecute terrorism.

The bill provides for the database to include active criminal intelligence and active criminal investigative information submitted by federal, state, or local law enforcement agencies and prosecutors, and information that is available from other law-enforcement databases. FDLE must establish methods and parameters by which data is transferred to the department and database information must be made available to federal, state, and local law enforcement agencies and prosecutors.

The bill provides that information that is exempt from public disclosure under chapter 119, F.S., when in the possession of the intelligence center retains its exemption from public disclosure after such information is revealed to a federal, state, or local law enforcement agency or prosecutor, except as otherwise provided by law. The bill also provides that information obtained by the intelligence center from a federal, state, or local law enforcement agency or prosecutor that is exempt from public disclosure under state or federal law when in the possession of a federal, state, or local law enforcement agency or prosecutor retains its exemption from public disclosure after such information is revealed to the intelligence center, except as otherwise provided by law.

The bill is effective upon becoming a law.

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:

Terrorism

Currently under state law, there is no definition for the term "terrorism." Federal law, under Title 18 USC § 2331(5), defines domestic terrorism to mean activities that:

(A) Involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) Appear to be intended -

(i) To intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) Occur primarily within the territorial jurisdiction of the United States.

Florida Department of Law Enforcement

After the terrorist attacks on the United States on September 11, 2001, Governor Bush declared a state of emergency and directed the Florida Department of Law Enforcement and the Florida Division of Emergency Management to assess Florida's capability to prevent, mitigate and respond to a terrorist attack. Primary recommendations for strengthening Florida's anti-terrorism preparedness were outlined in the report "Assessing Florida's Anti-Terrorism Capabilities."

Based on the recommendations in the assessment, on October 11, 2001, the Governor issued Executive Order 01-300 relating to domestic security. Under this Executive Order, the Governor directed that certain actions be taken immediately, or when necessary, upon legislative approval of funding. This Executive Order directed FDLE to establish a dedicated Statewide Domestic Security Intelligence Database for use by all Florida law enforcement officers under appropriate security restrictions.

FDLE provides services in partnership with local, state and federal criminal justice agencies to prevent, investigate, and solve crimes. The department is responsible for the delivery of investigative, forensic and information services to Florida's criminal justice community. Investigative authority provided under s. 943.04(2), F.S. gives the department authority to investigate violations of any of the criminal laws of the state and to engage in other investigative

activities that will aid local law enforcement in preventing or solving crimes and controlling criminal activity.

FDLE provides investigative and technical assistance to local law enforcement agencies through field investigations of major criminals and their organizations and identifies and investigates organized, multi-jurisdictional violations of Florida law. As part of its investigative function, the department provides for the collection, analysis, and dissemination of strategic criminal intelligence information. Criminal intelligence is gathered to identify targets, patterns of criminal activity and emerging criminal organizations. The department works with local, state and federal agencies to monitor: violent crime, disruptive groups and domestic terrorism; fraud and economic crime; and narcotics trafficking. The department has developed automated intelligence and investigative databases and provides database access to the criminal justice community through the Criminal Justice Network.

In performing its information services duties, FDLE manages and maintains the Criminal Justice Network. This network gives the state's criminal justice agencies access to criminal history information, criminal intelligence and investigative information, and other criminal justice data. The network operates in compliance with criminal justice definitions provided in s. 943.045, F.S., which defines the following terms:

- "Criminal intelligence information" means information collected by a criminal justice agency with respect to an identifiable person or group in an effort to anticipate, prevent, or monitor possible criminal activity.
- "Criminal investigative information" means information about an identifiable person or group, compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific criminal act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators, informants, or any type of surveillance.

A federal guideline for the operation of criminal intelligence systems is provided in 28 Code of Federal Regulations (CFR) Part 23. This guideline contains implementing standards for operating federally grant-funded multijurisdictional criminal intelligence systems. It specifically provides guidance in five primary areas: submission and entry of criminal intelligence information, security, inquiry, dissemination, and review and purge process. Although this guideline applies specifically to *federally funded* intelligence systems, as a matter of policy, law enforcement agencies may opt to voluntarily comply with these standards in the development and operation of intelligence sharing systems.

Public Records Law

Florida's public policy regarding access to government records is addressed in Article I, s. 24(a) of the Florida Constitution. Article I, s. 24(c), Florida Constitution, permits the Legislature to provide, by general law, for the exemption of records from the requirements of s. 24. Public records policy and exemptions are addressed in Chapter 119, Florida Statutes, which provides definitions of criminal justice terms including "active" criminal intelligence information and "active" criminal investigative information as follows:

- Criminal intelligence information shall be considered "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.

- Criminal investigative information shall be considered “active” as long as it is related to an ongoing investigation that is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

Section 119.07(3)(b), F.S. provides that active criminal intelligence information and active criminal investigative information are exempt from the provisions of s. 119.07(1), F.S. and s. 24(a), Article I of the Florida Constitution.

C. EFFECT OF PROPOSED CHANGES:

Section 1: Creates Section 775.30, F.S., to define terrorism as an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of Florida or of the U.S. or involves a violation of the Florida Computer Crimes Act and is intended to intimidate, injure, or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of government through the destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Section 2: Creates s. 943.0321, F.S., to create the Florida Domestic Security and Counter-Terrorism Intelligence Center and the Florida Domestic Security and Counter-Terrorism Database within the FDLE to gather, document, and analyze active criminal intelligence and criminal investigative information related to terrorism including information related to individuals or groups that plot, plan, or coordinate acts of terrorism and that operate within this state or otherwise commit acts affecting Florida.

The bill provides for the database to be maintained and operated by FDLE and identifies specific capabilities of the database to include data review and processing that may reveal patterns, trends, and correlations indicative of potential or actual terrorism activity within or affecting the state. The department must establish methods and parameters by which information and data is transferred to FDLE for inclusion in the database and database information must be made available to federal, state, and local law enforcement agencies and prosecutors in a manner defined by the department and as allowed by state or federal law or rule.

It provides for all information in the possession of the intelligence center that is exempt from public disclosure under Chapter 119 retains that exemption when the information is revealed to a federal, state or local law enforcement agency or prosecutor, except as otherwise provided by law. It further provides that information obtained by the intelligence center from a federal, state or local law enforcement agency or prosecutor which is exempt from public disclosure under state or federal law retains its exemption after such information is revealed to the intelligence center, except as otherwise provided by law.

Section 3: This bill shall take effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

House Bill 1-C, providing appropriations and reductions in appropriations for the 2001-2002 Fiscal Year, contains the following provision:

- Terrorist Intelligence Database – 5 positions and \$200,429 from the General Revenue Fund; \$300,000 from the Grants and Donations Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority the counties or municipalities 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 counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

Prepared by:

Staff Director:

Lynn Dodson

Thomas Randle/Richard Hixson