

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 919 Law Enforcement Investigations
SPONSOR(S): Grant and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u></u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, making false reports concerning the *commission* of a criminal act is a crime. Whether it's a crime to give law enforcement officers false information that simply *relates* to a criminal investigation is less clear.

This bill makes it a first degree misdemeanor for a person to knowingly and willfully give false information or a false report to a law enforcement officer who is in the course of conducting a felony investigation or a missing person investigation where such information or report may interfere with the investigation or may mislead an officer during the investigation.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

Safeguard Individual Liberty → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

Maintain Public Security → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Section 817.49 and 837.05, Florida Statutes

Florida Statutes contain two sections that specifically relate to giving false information to law enforcement officers. Sections 817.49 and 837.05, F.S., criminalize giving false information regarding the *commission* of a crime to a law enforcement officer (e.g. calling a law enforcement agency and falsely reporting that your neighbor stole your car). However, these statutes do not appear to criminalize giving false information to a law enforcement officer when the information does not relate to the *commission* of a crime (e.g. lying to a law enforcement officer when he or she asks if you know the whereabouts of a family member).

Section 843.02, Florida Statutes

Section 843.02, F.S., entitled “Resisting officer without violence to his or her person”, makes it a crime to resist, obstruct, or oppose officers in the lawful execution of any legal duty without offering or doing violence to the officer. The statute has been held to, in some instances, prohibit persons from giving false information to a law enforcement officer. For example, in *Caines v. State*, 500 So.2d 728, Fla. 2nd DCA 1987), the court held that a defendant who gave a false name and address to an officer after being arrested violated s. 843.02, F.S. In contrast, the court in *Steele v. State*, 537 So.2d 711 (Fla. 5th DCA 1989), held that a defendant who was not under arrest and who gave an officer a false name did not violate s. 843.02, F.S., because there was no evidence that the officer was engaged in a criminal investigation, or that the officer was impeded in an investigation by the misinformation.

The majority of “resisting an officer by giving false information” cases have involved defendants who were being arrested or were the subject of a criminal investigation. There is little caselaw as to whether individuals who are not the subject of a criminal investigation can be charged with resisting and officer by making false statements. Thus, in instances where an officer is investigating a crime and, in the course of doing so, interviews potential witnesses, family members, etc, who give the officer false information, it is unclear whether s. 843.02, F.S., could be used as a basis for prosecution.

Effect of the Bill

This bill makes it a first degree misdemeanor¹ for a person to knowingly and willfully give false information or a false report to a law enforcement officer who is in the course of conducting a felony investigation or a missing person investigation where such information or report may interfere with the investigation or may mislead an officer during the investigation.

It is important to note that the bill does not require that the person giving the false information *intend* to interfere with or mislead an officer. If the false information *may* interfere or *may* mislead the

¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. See ss. 775.082 and 775.083.

investigation, it is irrelevant whether the person giving the information intended to do so in order for that person to violate the bill's provisions.

C. SECTION DIRECTORY:

Section 1. Creates s. 837.055, F.S.; prohibiting knowingly and willfully giving false information or reports to law enforcement officers in certain circumstances.

Section 2. This bill takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

2. Other:

The First Amendment to the United States Constitution and article I, section 4 of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963). Put another way, statutes

cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct. *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

Overbreadth

When legislation is drafted so that it may be applied to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad. This overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court-- those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid." *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985). The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression. *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

Vagueness

A statute or ordinance is void for vagueness when, because of its imprecision, it fails to give an adequate notice of what conduct is prohibited. Thus, it invites arbitrary and discriminatory enforcement. *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

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The bill makes it a crime to knowingly and willfully give false information or a false report to a law enforcement officer who is in the course of conducting a felony investigation or a missing person investigation where such information or report may interfere with the investigation or may mislead an officer during the investigation.

There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets.² However, absent special circumstances, the person approached may refuse to cooperate and go on his way.³ The person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest.⁴ A person can even run away from the officer and, so long as that person was not being legally detained, not be charged with a crime.⁵ Thus, to the extent this bill would allow a person to be charged with a crime for intentionally lying to an officer, this bill arguably criminalizes speech that is protected by the First Amendment. As noted above, when a law attempts to restrict or burden a fundamental right, the law must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible.

The state clearly has some interest in preventing people from intentionally giving false information to law enforcement officers with the intent to interfere with the investigation. Most states with "false information" statutes require that a person willfully lie to an officer with the *intent* to interfere with an investigation. However, the bill does not require that the person giving the false information do so *with the intent* to mislead the officer or interfere with the investigation. Thus, the bill does not appear

² *R.L.L. v. State*, 466 So.2d 1230 (Fla. 2nd DCA 1985).

³ *Id.*

⁴ *Terry v. Ohio*, 392 U.S. 1, 34 (1968).

⁵ *Slydell v. State*, 792 So.2d 667 (Fla. 4th DCA 2001).

to effectuate the state's interest. Consider the following: A law enforcement officer responds to a domestic violence call and arrives to find the wife badly beaten, a husband, and three children in the background. If the officer asks the wife what happened and the wife responds by telling the officer she fell down the stairs, when in fact her husband had beaten her, despite the fact that the woman may have given the answer out of fear rather than with an intent to interfere with the investigation, she has violated the provisions of the bill (i.e. intentionally giving false information to an officer who is investigating a felony).

It should also be noted that the bill makes it a crime to intentionally give false information to an officer who is conducting a *felony* or *missing person* investigation. However, it is unclear how someone being questioned by an officer is to determine whether the officer is conducting a criminal investigation, much less a *felony* or *missing person* investigation. This language could arguably cause a person who might normally refuse to respond to an officer's questions to respond. For example, law enforcement officers often canvass neighborhoods and question residents about criminal activity. In many instances, there may be no indication whether an officer is conducting a criminal investigation, much less a *felony* or *missing person* investigation. Thus, whereas a neighborhood resident might typically refuse to respond to the officer, the resident might choose to respond for fear that he or she could be charged with a crime.

The above concerns briefly outline the potential constitutional issues the bill's language raises. As noted above, laws that attempt to restrict or burden a fundamental right must be directed toward a legitimate public purpose and must be drawn as narrowly as possible. Thus, the following language might address some of the above constitutional concerns:

Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES