

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 476

INTRODUCER: Senator Bean

SUBJECT: Terrorism and Terrorist Activities

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	Pre-meeting
2.	_____	_____	MS	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____

I. Summary:

SB 476 addresses terrorism by creating a crime of terrorism and by also creating crimes for:

- Receiving military-type training from a designated foreign terrorist organization and using that training to harm another person or damage a critical infrastructure facility;
- Providing material support or resources to designated foreign terrorist organizations, including providing such support or materials to be used for carrying out specified crimes;
- Becoming a member of such terrorist organization and serving under its direction or control with the intent to further the organization’s illegal acts; and
- Engaging in agroterrorism.

The Criminal Justice Impact Conference estimates that the bill will have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds).

II. Present Situation:

Florida Law on Terrorism

Florida does not have a crime of terrorism. Instead, Florida law defines the term “terrorism” and provides enhanced punishment for crimes that facilitated or furthered an act of terrorism.

Section 775.30(1), F.S., defines “terrorism” as an activity that:

- Involves a violent act or an act dangerous to human life which is a violation of criminal laws of this state or the United States or a violation of s. 815.06, F.S., which punishes unlawful acts against users of computers, computer systems, computer networks, or electronic devices; 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 destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Section 775.31, F.S., provides that if a person is convicted of committing a felony or misdemeanor that facilitated or furthered any act of terrorism,¹ the court shall reclassify the felony or misdemeanor to the next higher degree as provided in this section. The reclassification is made in the following manner:

- In the case of a misdemeanor of the second degree, the offense is reclassified as a first degree misdemeanor.
- In the case of a first degree misdemeanor, the offense is reclassified as a third degree felony.
- In the case of a third degree felony, the offense is reclassified as a second degree felony.
- In the case of a second degree felony, the offense is reclassified as a first degree felony.
- In the case of a first degree felony or a first degree felony punishable by a term of imprisonment not exceeding life, the offense is reclassified as a life felony.

Reclassification of the degree of an offense has the effect of increasing the maximum sentence that a judge may impose for the offense. The maximum sentence for:

- A second degree misdemeanor is 60 days in jail and a \$500 fine;
- A first degree misdemeanor is 1 year in jail and a \$1,000 fine;
- A third degree felony is 5 years in state prison and a \$5,000 fine;
- A second degree felony is 15 years in state prison and a \$10,000 fine;
- A first degree felony is generally 30 years in state prison and a \$10,000 fine; and
- A life felony is generally a term of imprisonment for life or imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine.²

Additionally, felony reclassification may impact the scored lowest permissible sentence under the Criminal Punishment Code (Code). For example, a primary offense that is a second degree felony would typically score more sentence points than a primary offense that is a third degree felony.

For purposes of sentencing under the Code, the following offense severity ranking levels apply:

- An offense that is a first degree misdemeanor and that is reclassified as a third degree felony degree is ranked in Level 2 of s. 921.0022, the Code offense severity ranking chart.
- A felony offense that is reclassified is ranked one level above the ranking specified in s. 921.0022, F.S., or s. 921.0023, F.S., (providing an assigned level ranking for offenses not ranked in the Code offense severity ranking chart).

Federal Laws on Terrorism

Pursuant to 18 U.S.C. Section 2339A, it is unlawful to provide material support or resources or conceal or disguise the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, any listed

¹ The definition of “terrorism” in s. 775.31, F.S., is identical to the definition of that term in s. 775.30, F.S.

² Sections 775.082 and 775.083, F.S.

violation of federal law or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act.

For purposes of this section, the following definitions of terms are provided:

- “Material support or resources” means “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials”;
- “Training” means “instruction or teaching designed to impart a specific skill, as opposed to general knowledge”; and
- “Expert advice or assistance” means “advice or assistance derived from scientific, technical or other specialized knowledge.”

Pursuant to 18 U.S.C. Section 2339B, it is unlawful to provide material support or resources to a foreign terrorist organization, or attempt or conspire to do so. To commit this violation, a person must have knowledge that the organization:

- Is a designated terrorist organization;
- Has engaged or engages in terrorist activity as defined in Section 212(a)(3)(B) of the Immigration and Nationality Act (INA);³ or
- Has engaged or engages in terrorism as defined in Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989.⁴

The terms “material support or resources,” “training,” and “expert advice or assistance” have the same meaning as provided in Section 2339A. The term “terrorist organization” means an organization designated as a terrorist organization under Section 219 of the INA.⁵ Section 219 of the INA authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate an organization as a foreign terrorist organization, in accordance with a process specified in that section, if the Secretary finds: (1) the organization is a foreign organization; (2) the organization engages in terrorist activity; and (3) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

³ 8 U.S.C. Section 1182. Section 212(a)(3)(B)(iii) of the INA (11 U.S.C. Section 1182(a)(3)(B)(iii)) defines “terrorist activity” as any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any state) and which involves any of the following: (1) highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle); (2) seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained; (3) a violent attack upon an internationally protected person or upon the liberty of such a person; (4) an assassination; (5) the use of any biological agent, chemical agent, nuclear weapon or device, explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property; or (6) a threat, attempt, or conspiracy to do any of the previously describe acts.

⁴ Public Law 100-204 (1987), available at <https://www.govtrack.us/congress/bills/100/hr1777/text/enr> (last visited on March 16, 2017).

⁵ 8 U.S.C. Section 1189.

A person may not be prosecuted under 18 U.S.C. Section 2339B in connection with the term:

- “Personnel” unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include himself or herself) to work under that terrorist organization’s direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives are not considered to be working under the foreign terrorist organization’s direction and control; or
- “Personnel,” “training,” or “expert advice or assistance” if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General.⁶

Pursuant to 18 U.S.C. Section 2339D, it is unlawful to knowingly receive military-type training from or on behalf of any organization designated at the time of the training by the Secretary of State under Section 219 of the INA as a foreign terrorist organization. To commit this violation, a person must have knowledge that the organization:

- Is a designated terrorist organization as defined in Section 219 of the INA;
- Has engaged or engages in terrorist activity as defined in Section 212 of the INA; or
- Has engaged or engages in terrorism as defined in Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989.

Section 2339D provides that “military-type training” includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm, or other weapon, including any weapon of mass destruction. The term “foreign terrorist organization” has the same meaning as the term “terrorist organization” in 18 U.S.C. Section 2339B.

Felony Murder

Section 782.04(1)(a)2., F.S., provides that it is first degree murder, a capital felony,⁷ to unlawfully kill a human being when the killing is committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any of the listed offenses. One of those listed offenses is any felony that is an act of terrorism or is in furtherance of an act of terrorism.⁸

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any listed offense, by a person other than the person engaged in the perpetration of, or in the attempt to perpetrate, such offense, the person perpetrating or attempting to perpetrate such felony commits second degree murder, a first degree felony punishable by life imprisonment or by up to 30 years imprisonment.⁹ One of those listed offenses is any felony that is an act of terrorism or is in furtherance of an act of terrorism.¹⁰

⁶ The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity as defined in Section 212(a)(3)(B)(iii) of the INA.

⁷ A capital felony is generally punishable by life imprisonment or a death sentence. Sections 775.082 and 921.141, F.S.

⁸ Section 782.04(1)(a)2.r., F.S.

⁹ Section 775.082, F.S.

¹⁰ Section 782.04(3)(r), F.S.

Section 782.04(4), F.S., provides that the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than a listed offense is third degree murder, a second degree felony punishable by up to 15 years imprisonment.¹¹ One of those listed offenses is any felony that is an act of terrorism or is in furtherance of an act of terrorism.¹²

III. Effect of Proposed Changes:

The bill, which takes effect October 1, 2017, addresses terrorism by creating a crime of terrorism and by also creating crimes for:

- Receiving military-type training from a designated foreign terrorist organization and using that training to harm another person or damage a critical infrastructure facility;
- Providing material support or resources to designated foreign terrorist organizations, including providing such support or materials to be used for carrying out specified crimes;
- Becoming a member of such terrorist organization and serving under its direction or control with the intent to further the organization's illegal acts; and
- Engaging in agroterrorism.

The material support offenses and military-type training offense are patterned after federal terrorism statutes.

Crime of Terrorism (Section 1)

Section 1 of the bill amends s. 775.30, F.S., which defines the term "terrorism," to create a crime of terrorism. A person who violates any listed statute or statutory provision when intending to influence or affect by intimidation or coercion, or to retaliate against, the conduct of government, commits the crime of terrorism, a first degree felony. However, it is a life felony if this violation results in death or serious bodily injury.¹³

The listed statutes or statutory provisions are:

- Section 782.04(1)(a)1. or (2), F.S., which, respectively, punish first degree murder (premeditated design) and first degree murder (felony murder);
- Section 782.065, F.S., which punishes murder of a law enforcement officer;
- Section 782.07(1), F.S., which punishes manslaughter;
- Section 782.09, F.S., which punishes the killing of an unborn child by injury to the mother;
- Section 784.045, F.S., which punishes aggravated battery;
- Section 784.07, F.S., which punishes assault or battery on a law enforcement officer or other specified persons;
- Section 787.01, F.S., which punishes kidnapping;
- Section 787.02, F.S., which punishes false imprisonment;

¹¹ Section 775.082, F.S.

¹² Section 782.04(4)(s), F.S.

¹³ The bill defines "serious bodily injury" as an injury to a person that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or an organ. The term "serious bodily injury" has this same meaning when it is used in connection with other crimes created by the bill.

- Section 787.07, F.S., which punishes human smuggling;
- Section 790.115, F.S., which punishes possessing or discharging a weapon or firearm at a school-sponsored event or on school property;
- Section 790.15, F.S., which punishes discharging a firearm in public or on residential property;
- Section 790.16, F.S., which punishes discharging a machine gun;
- Section 790.161, F.S., which punishes making, possessing, throwing, projecting, placing, or discharging a destructive device;
- Section 790.1615, F.S., which punishes throwing, projecting, placing, or discharging a destructive device or bomb resulting in injury to another;
- Section 790.162, F.S., which punishes threatening to throw, project, place, or discharge any destructive device;
- Section 790.166, F.S., which punishes manufacturing, possessing, selling, delivering, displaying, using, or attempting or threatening to use a weapon of mass destruction or a hoax weapon of mass destruction;
- Section 790.19, F.S., which punishes shooting or throwing a deadly missile into dwellings, public or private buildings, or designated vehicle;
- Section 806.01, F.S., which punishes arson;
- Section 806.031, F.S., which punishes arson resulting in injury to another person;
- Section 806.111, F.S., which punishes possessing, manufacturing, transporting, or disposing fire bombs;
- Section 815.06, F.S., which punishes unlawful acts against users of computers, computer systems, computer networks, or electronic devices;
- Section 815.061, F.S., which punishes unlawful acts against public utilities;
- Section 859.01, F.S., which punishes poisoning food or water; and
- Section 876.34, F.S., which punishes combinations by force to usurp or overturn state government or forcibly interfere in government administration.

Unlawful Use of Military-Type Training from a Designated Foreign Terrorist Organization (Section 3)

Section 3 of the bill creates s. 775.32, F.S., which provides that a person commits a second degree felony if he or she receives military-type training from a designated foreign terrorist organization and uses, attempts to use, or conspires to use such training with the intent to harm another person or damage critical infrastructure facilities.¹⁴ However, it is a first degree felony if this violation results in death or serious bodily injury.

¹⁴ “Critical infrastructure facility” is defined by reference to the definition of that term in s. 493.631, F.S. Section 493.631(1), F.S., defines a “critical infrastructure facility as any of the following if the facility employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons: (1) a chemical manufacturing facility; (2) a refinery; (3) an electrical power plant, including a substation, switching station, electrical control center, or electric transmission or distribution facility; (4) a water intake structure, water treatment facility, wastewater treatment plant, or pump station; (5) a natural gas transmission compressor station; (6) a liquid natural gas terminal or storage facility; (7) a telecommunications central switching office; (8) a deepwater port or railroad switching yard; or (9) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

“Military-type training” means training in means or methods that can cause the death of, or serious bodily injury to, another person, destroy or damage property or critical infrastructure facilities, or disrupt services to critical infrastructure; or training on the use, storage, production, or assembly of an explosive, a firearm, or any other weapon, including a weapon of mass destruction.¹⁵

“Designated foreign terrorist organization” means an organization designated as a terrorist organization under Section 219 of the INA.¹⁶

Providing Material Support or Resources for Terrorism or to a Designated Foreign Terrorist Organization (Section 4)

Section 4 of the bill creates s. 775.33, F.S., which includes two crimes relating to providing material support to foreign terrorist organizations. The bill creates s. 775.33(2), F.S., which is patterned after 18 U.S.C. Section 2339A. Subsection (2) provides that it is a first degree felony for a person to provide material support or resources or conceal or disguise the nature, location, source, or ownership of material support or resources, knowing or intending that the support or resources are to be used in preparation for or in carrying out a violation of any of the following listed statutes or statutory provisions:

- Section 775.30, F.S. (created by the bill), which includes the new crime of terrorism;
- Section 775.32, F.S. (created by the bill), which includes the new crime of unlawful use of military-type training from a designated foreign terrorist organization;
- Section 775.34, F.S. (created by the bill), which includes the new crime of membership in a designated foreign terrorist organization (discussed below);
- Section 775.35, F.S., which includes the new crime of agroterrorism (discussed below);
- Section 790.16, F.S., which punishes discharging a machine gun;
- Section 790.161(2), (3), or (4), F.S., which punishes making, possessing, throwing, projecting, placing, or discharging a destructive device if the act was perpetrated with the intent to do bodily harm, damage property, or disrupt governmental operations, commerce, or a person’s private affairs, or resulted in bodily harm or death;
- Section 790.166, F.S., which punishes manufacturing, possessing, selling, delivering, displaying, using, or attempting or threatening to use a weapon of mass destruction or a hoax weapon of mass destruction;
- Section 790.19, F.S., which punishes shooting or throwing a deadly missile into dwellings, public or private buildings, or designated vehicles;
- Section 815.06, F.S., which punishes unlawful acts against users of computers, computer systems, computer networks, or electronic devices;
- Section 859.01, F.S., which punishes poisoning food or water;

¹⁵ “Weapons of mass destruction” is defined by reference to the definition of that term in s. 790.166, F.S. Section 790.166(1)(a), F.S., defines a “weapons of mass destruction” as any of the following: (1) any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; (2) any device or object involving a biological agent; or (3) any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or (4) any biological agent, toxin, vector, or delivery system. Section 790.166(8)(a), F.S., specifies authorized exceptions for possession or use.

¹⁶ The term “designated foreign terrorist organization” has this same meaning when it is used in connection with other crimes created by the bill.

- Section 860.121, F.S., which punishes shooting at, throwing any object capable of causing death or great bodily harm at, or placing any object capable of causing death or great bodily harm in the path of any railroad train or other railroad vehicle;
- Section 860.16, F.S., which punishes aircraft piracy;
- Section 876.32, F.S., which punishes treason;
- Section 876.34, F.S., which punishes combinations by force to usurp or overturn state government or forcibly interfere in government administration; or
- Section 876.36, F.S., which punishes inciting insurrection.

Subsection (2) also provides that it is a first degree felony to conceal an escape from the commission of any of the above-described violations or to attempt or conspire to carry out any such violation.

For purposes of s. 775.33, F.S., “material support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training,¹⁷ expert advice or assistance,¹⁸ safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, or transportation. The term does not include medicine or religious materials.

The bill also creates s. 775.33(3), F.S., which is patterned after 18 U.S.C. Section 2339B. Subsection (3) provides that it is a first degree felony to knowingly provide material support or resources to a designated foreign terrorist organization, or to attempt or conspire to do so. To commit this offense, a person must have knowledge that the organization is a designated foreign terrorist organization or that the organization has engaged in or engages in terrorism or terrorist activity.

If a violation of s. 775.33(2) or (3), F.S., results in death or serious bodily injury, the violation is enhanced to a life felony.

For purposes of prosecuting a violation of s. 775.33(2) or (3), F.S., a person is deemed to provide material support or resources by providing personnel if the person knowingly provides, attempts to provide, or conspires to provide himself or herself or another person:

- To a person engaged in, or intending to engage in, an act of terrorism to work under the direction and control of the person engaged in, or intending to engage in, an act of terrorism, or to organize, manage, supervise, or otherwise direct the operations of the person engaged in, or intending to engage in, an act of terrorism; or
- To work under the direction and control of a designated foreign terrorist organization, or to organize, manage, supervise, or otherwise direct the operation of that organization.¹⁹

¹⁷ “Training” means instruction or teaching designed to impart a specific skill rather than general knowledge.

¹⁸ “Expert advice or assistance” means advice or assistance derived from scientific, technical, or other specialized knowledge.

¹⁹ A notable difference between the bill and federal law is that the prosecution language in the bill applies to s. 775.33(2), F.S., which is patterned after 18 U.S.C. Section 2339B, and to s. 775.33(3), F.S., which is patterned after 18 U.S.C. section 2339B. In contrast, the prosecution language in 18 U.S.C. Section 2339B only applies to that section. Another notable difference between the bill and federal law is that the prosecution language in the bill covers a person who provides himself or herself or another person to a person engaged in, or intending to engage in, an act of terrorism. The prosecution language in 18 U.S.C. Section 2339B does not cover such person.

Section 775.33, F.S., also:

- Specifies that an individual who acts entirely independently of the person engaged in, or intending to engage in, an act of terrorism or the designated foreign terrorist organization to advance the person's or organization's goals or objectives is not working under the direction and control of the person engaged in, or intending to engage in, an act of terrorism or the designated foreign terrorist organization;
- Prohibits prosecuting a person under s. 775.33, F.S., if his or her activity was authorized by a governmental or law enforcement agency of this state or of the United States in the agency's official capacity and pursuant to a lawful purpose;
- Provides that it is the intent of the Legislature that a violation of s. 775.33(2) or (3), F.S., be interpreted in a manner consistent with federal case law interpreting 18 U.S.C. Sections 2339A and 2339B;²⁰ and
- Requires the Florida Department of Law Enforcement,²¹ in consultation with the Office of the Attorney General, to create guidelines for law enforcement investigations conducted pursuant to this section to ensure the protection of privacy rights, civil rights, and civil liberties.

Membership in a Designated Foreign Terrorist Organization (Section 5)

Section 5 of the bill creates s. 775.34, F.S., which provides that it is a second degree felony to willfully become a member of a designated foreign terrorist organization and serve under the direction or control of that organization *with the intent to further the illegal acts of the organization*. As provided in the bill, membership alone does not constitute a crime.

Agroterrorism (Section 6)

Section 6 of the bill creates s. 775.35, F.S., which provides that it is a second degree felony for a person to intentionally disseminate or spread any type of contagious, communicable, or infectious disease among crops, poultry, livestock, or other animals. However, it is a life felony if this violation results in death or serious bodily injury.

It is an affirmative defense to this violation if the activity is consistent with a medically recognized procedure or if the activity is done in the course of legitimate, professional scientific research.

²⁰ Section 775.33, F.S., does not contain a provision similar to 18 U.S.C. Section 2339B(i), which provides that nothing in 18 U.S.C. Section 2339B shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment. However, interpretation of s. 775.33(2) and (3), F.S., would presumably be consistent with this rule of construction of s. 775.33(2) or (3), F.S., because of legislative intent to interpret these subsections in a manner consistent with federal case law interpreting 18 U.S.C. Sections 2339A and 2339B.

²¹ The Florida Department of Law Enforcement (FDLE) coordinates and directs counterterrorism efforts for Florida. FDLE's Commissioner serves as incident commander for the state in the event of a terrorist incident, and the Special Agent in Charge of FDLE's Office of Statewide Investigative Services serves as Florida's Homeland Security Advisor. *Long-Range Program Plan FY 17-18 through 21-22* (September 30, 2016), p. 16, Florida Department of Law Enforcement, available at <http://floridafiscalportal.state.fl.us/Publications.aspx?AgyID=7100> (last visited on March 16, 2017).

The elements of the new agroterrorism crime and affirmative defense are identical to Missouri's agroterrorism crime and affirmative defense.²²

Felony Murder (Section 7)

Section 7 of the bill amends the felony murder provisions of s. 782.04, F.S. Currently these provisions reference a felony that is an act of terrorism or is in furtherance of an act of terrorism as a predicate offense. The bill includes specific reference to a felony under s. 775.30, F.S., s. 775.32, F.S., s. 775.33, F.S. s. 775.34, F.S., or s. 775.35, F.S. These sections include the new crime of terrorism and new terrorism-related crimes created by the bill.

“Terroristic Activity” and Felony Degree Reclassification of Offenses Facilitating Terrorism (Sections 1 and 2)

Section 1 of the bill also amends the definition of “terrorism” in s. 775.30, F.S., to provide that the definition of this term also covers the term “terroristic activity.”

Section 2 of the bill amends s. 775.31, F.S., to specify that, as used in that section, the term “terrorism” has the same meaning as provided in s. 775.30(1), F.S. The bill also specifies that reclassification of offenses under s. 775.31, F.S., does not apply to s. 775.30, F.S., s. 775.32, F.S., s. 775.33, F.S., s. 775.34, F.S., or s. 775.35, F.S. These sections include the new crime of terrorism and new terrorism-related crimes created by the bill.

Reenactments (Sections 8-33)

Sections 8-33 of the bill reenact, respectively, ss. 373.6055, 381.95, 395.1056, 874.03, 907.041, 943.0312, 943.0321, 27.401, 39.806, 63.089, 95.11, 435.04, 435.07, 775.082, 775.0823, 782.051, 782.065, 903.133, 921.0022, 921.16, 947.146, 948.06, 948.062, 985.265, 1012.315, 1012.467, F.S., for the purpose of incorporating amendments to ss. 775.30 and 782.04, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²² MO Rev. Stat. section 574.130 (2016).

D. Other Constitutional Issues:

Most constitutional challenges to federal terrorism statutes appear to be directed at 18 U.S.C. Section 2339B²³ and involve First Amendment challenges to that statute (freedom of speech and association). One reason for the focus on this statute may be that “[u]nder Section 2339B, a person just has to attempt, conspire, or actually provide support to a *terrorist organization*, while under Section 2339A a person has to attempt, conspire, or actually provide support to a specific *terroristic act*.”²⁴

The leading case involving First Amendment challenges to 18 U.S.C. Section 2339B is *Holder v. Humanitarian Project*.²⁵ In this case, the U.S. Supreme Court considered a pre-enforcement challenge to the statute. The plaintiffs claimed that they wished to provide support for the humanitarian activities and political activities of two designated foreign terrorist organizations (FTOs) but could not do so for fear of prosecution under 18 U.S.C. Section 2339B. This support was to consist of monetary contributions, other tangible aid, legal training, and political advocacy. The plaintiffs claimed that the statute was unconstitutionally vague and violated their freedom of speech and association under the First Amendment because it criminalized their material support to the FTOs without requiring the government to prove the plaintiffs specifically intended to further illegal activities of the FTOs.

Before addressing the Plaintiffs’ vagueness, free speech, and free association claims, the U.S. Supreme Court considered and rejected the plaintiffs’ contention that the Court should interpret the statute, when applied to speech, to require proof that a defendant intended to further illegal activities of a FTO. The Court found that the text of the statute did not support this interpretation and that a case on which the plaintiffs had heavily relied for support, *Scales v. United States*,²⁶ did not apply to 18 U.S.C. Section 2339B: “Section 2339B does not criminalize mere membership in a designated foreign terrorist organization. It instead prohibits ‘material support’ to such a group.”²⁷ In *Scales*, the Court held that a person could not be convicted under a federal law which prohibited membership in a group advocating the violent overthrow of the government, unless the person had knowledge of the group’s illegal advocacy and a specific intent to violently overthrow the government.

The Court limited its analysis of the vagueness claim to addressing “whether the statute ‘provide[s] a person of ordinary intelligence fair notice of what is prohibited’”²⁸ The Court determined that the statute did provide fair notice to the plaintiffs. While acknowledging that the statute might not be clear in every application, the Court found that the statutory terms clearly applied to the plaintiffs’ proposed conduct. The Court’s

²³ As previously noted, s. 775.33, F.S., which is created by the bill, is patterned after this statute.

²⁴ Tuley, Aaron. “*Holder v. Humanitarian Law Project*: Redefining Free Speech Protection In The War On Terror,” Vol. 49:579, No. 2 (2016), at p. 584 (footnotes omitted), *Indiana Law Review*, available at <https://journals.iupui.edu/index.php/inlawrev/article/view/21003> (last visited on March 17, 2017).

²⁵ 561 U.S. 1 (2010).

²⁶ 376 U.S. 203 (1961).

²⁷ *Holder*, 561 U.S. at 18.

²⁸ *Holder*, 561 U.S. at 20, quoting *United States v. Williams*, 553 U.S. 285, 304 (2008).

findings that the terms “personnel” and “service” do not cover “independent advocacy” were important to its later analysis of the free speech claim.

Before addressing the free speech and association claims, the Court rejected the position of the plaintiffs that Congress had banned their political speech, finding that the statute does not prohibit communication on any topic or membership in a FTO. Instead, the statute prohibits providing material support. The court found that most often material support does not involve speech but when it does “the statute is carefully drawn to cover only a narrow category of speech to, under the direction of, or in coordination with foreign groups that the speaker knows to be terrorist organizations.”²⁹ The Court also rejected the government’s position that the only issue in the case was conduct, not speech. The Court found that the plaintiffs’ conduct “triggering coverage under the statute consists of communicating a message.”³⁰ Therefore, the question was whether the government could prohibit the plaintiffs from providing material support to the FTOs “in the form of speech.”³¹ The Court determined that the government could because it found a compelling governmental interest (national security) and Congress had taken action to address potential constitutional concerns.

In reaching this determination, the Court relied, in part, on a finding by Congress that FTOs were “so tainted by their criminal conduct” that any contribution to a FTO would further that conduct.³² The Court also relied on statements from a State Department official supporting this finding. The Court also found it “significant that Congress has been conscious of its own responsibility to consider how its actions may implicate constitutional concerns”: applying the statute only to FTOs; narrowing definitions and explaining knowledge required under the statute; indicating its intent not to abridge the First Amendment; creating limited exceptions to the material support ban (e.g., medicine and religious materials); and, most importantly, avoiding “any restriction on independent advocacy, or indeed any activities not directed to, coordinated with, or controlled by” FTOs.³³

Finally, the Court disposed of the plaintiffs’ free association claim. The Court found that the federal Ninth Circuit Court of Appeals had correctly rejected this claim because the statute does not penalize mere association with a FTO. Further, the Court found that any burden on the plaintiffs’ freedom of association in regard to providing material support to the FTOs was justified for the same reasons the Court denied the plaintiffs’ free speech challenge.

²⁹ *Holder*, 561 U.S. at 26 (footnote omitted).

³⁰ *Holder*, 561 U.S. at 28.

³¹ *Id.*

³² *Holder*, 561 U.S. at 29, quoting s. 301(a)(7) of the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132 (1996), available at <https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-8598.html#0-0-0-903>

³³ *Holder*, 561 U.S. at 36.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of criminal legislation, estimates that the bill will have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds).³⁴

Per the Department of Corrections, in FY 2015-2016, there were 2,603 prison admissions for the offenses specified for those that could be considered terrorism, given the intent described under the amended s. 775.30, F.S. The same number of admissions exist when the additional offenses are included under s. 775.33, F.S. It is not known how many of these offenses included the intent defined in this bill.

Per the FDLE, there were 12 arrests since 2011 under s. 775.31, F.S., for felonies facilitating or furthering terrorism. Few of these had a court record, but those that did were recorded as dismissed.

The FDLE is required to create certain guidelines, in consultation with the Attorney General, under the bill (Section 4); however, the FDLE reports that the bill will have no fiscal impact.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates new second degree felonies, first degree felonies, and life felonies. Because the bill does not specifically rank the new offenses in s. 921.0022, F.S., the Code offense severity ranking chart, they are assigned the following ranking pursuant to s. 921.0023, F.S.:

- A second degree felony is ranked in level 4;
- A first degree felony is ranked in level 7; and
- A life felony is ranked in level 10.

³⁴ Impact information was provided by staff of the Office of Economic and Demographic Research on March 6, 2017, via e-mail (on file with the Senate Committee on Criminal Justice). All information in this section of the analysis is from this source.

³⁵ 2017 FDLE Legislative Bill Analysis (SB 476) (February 1, 2017) (on file with the Senate Committee on Criminal Justice).

Generally, a first-time offender with a Level 4 offense will not score a lowest permissible sentence of state prison but the court still has the discretion to impose a state prison sentence up to the statutory maximum in s. 775.082, F.S.³⁶ However, if the victim died or was severely injured as a result of the offense, this offender will score a lowest permissible sentence of state prison.³⁷ A first-time offender with a Level 7 or Level 10 offense will score a lowest permissible sentence of state prison, regardless of victim injury.³⁸

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.30, 775.31, and 782.04.

This bill creates the following sections of the Florida Statutes: 775.32, 775.33, 775.34, and 775.35.

This bill reenacts ss. 27.401, 39.806, 63.089, 95.11, 373.6055, 381.95, 395.1056, 435.04, 435.07, 775.082, 775.0823, 782.051, 782.065, 874.03, 903.133, 907.041, 921.0022, 921.16, 943.0312, 943.0321, 947.146, 948.06, 948.062, 985.265, 1012.315, and 1012.467, F.S., for the purpose of incorporating amendments to ss. 775.30 and 782.04, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁶ Section 921.0024, F.S.

³⁷ *Id.*

³⁸ *Id.*