

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1 Combating Public Disorder
SPONSOR(S): Judiciary Committee, Fernandez-Barquin and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 484

FINAL HOUSE FLOOR ACTION: 76 Y's 39 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1 passed the House on March 26, 2021, as amended, and subsequently passed the Senate on April 15, 2021.

CS/HB 1 gives law enforcement and prosecutors additional tools to prevent violence and property destruction that may result from public disorder. The bill:

- Defines previously undefined crimes of affray, rioting, and inciting a riot and creates new crimes and enhanced penalties for aggravated rioting and aggravated inciting a riot.
- Increases penalties for assault or battery when committed in furtherance of a riot and requires a court to sentence a person convicted of battery of a law enforcement officer committed in furtherance of a riot to a six month minimum mandatory sentence.
- Creates the crime of mob intimidation, prohibiting a mob from forcefully compelling or attempting to compel another person to do, or refrain from doing, any act or to assume, abandon, or maintain a particular viewpoint.
- Enhances penalties for specified burglary and theft offenses committed during a riot when facilitated by conditions arising from the riot.
- Creates new crimes prohibiting a person from defacing, damaging, destroying, or pulling down a memorial or historic property.
- Increases the minimum sentence for specified crimes committed in furtherance of a riot.
- Requires a person arrested for specified offenses related to rioting and unlawful assembly to be held in jail until he or she appears for a first appearance hearing and a court determines bond.
- Creates the crime of cyberintimidation by publication, prohibiting a person from publishing another person's identification information with the intent to incite violence or the commission of a crime against the person or to threaten or harass the person.
- Creates a process by which the state attorney of the judicial circuit in which a municipality is located, or an objecting member of the municipality's governing body, may appeal a funding reduction to the operating budget of the municipal law enforcement agency to the Administration Commission.
- Waives sovereign immunity for tort claims arising from a riot or unlawful assembly if the governing body of a municipality breaches its statutory duty to allow law enforcement to respond appropriately to protect persons and property during a riot or unlawful assembly.
- Creates an affirmative defense in a civil action arising from a riot if the plaintiff's injury or damage was sustained as a result of participating in a riot.
- Corrects constitutional infirmities relating to the prohibition against willfully obstructing a roadway.

The bill may have a positive indeterminate impact on prison and jail beds by creating new penalties and enhancing current penalties for specified felony and misdemeanor offenses. The bill may have a negative indeterminate fiscal impact on municipal governments by waiving sovereign immunity for specified civil claims arising from a riot or unlawful assembly. See *Fiscal Analysis & Economic Impact Statement*.

The bill was approved by the Governor on April 19, 2021, ch. 2021-6, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

In May 2020, protests erupted across the country in response to the death of George Floyd, a black man who was killed under the knee of a white police officer in Minneapolis, Minnesota. Large and small cities alike experienced peaceful protests mixed with outbreaks of violence and destruction.¹

Locally, several Florida cities experienced incidents of rioting and civil unrest. While most protests were peaceful, isolated groups were responsible for acts of violence and property damage. In Miami, following the issuance of an emergency curfew, four police officers were injured, 17 police cars were damaged, and police made 46 arrests after responding to looting at an outdoor shopping center and protesting outside of police headquarters. Groups of protestors marched onto I-95, blocking traffic and creating hours of gridlock. Miami-Dade County temporarily suspended all public transit service in response to the unrest. Following the rioting, city and private cleaning crews were employed to remove graffiti and debris.²

In Tampa, what began as a peaceful protest near the University of South Florida, devolved into unrest as police were forced to form barriers around businesses after several stores were broken into and looted. One sporting goods store and a gas station were set on fire. A crowd of people launched fireworks into officers, while others threw bottles and rocks, and the windows of multiple police cars were broken.³ Tampa's mayor issued a citywide curfew and city and county leaders reported more than 50 businesses were damaged or burglarized and more than 50 police cars were damaged. More than 40 people were arrested for charges including burglary and rioting.⁴

In Jacksonville, peaceful protests involving over 1,000 participants escalated when a group of about 200 people began confronting police, throwing water bottles, rocks, and bricks, and attempting to set police cars on fire. Some officers were injured by rocks and bricks⁵ while one officer was hospitalized after being stabbed in the neck.⁶

In July 2020, protestors demonstrating in a crosswalk in St. Petersburg refused to move for a fire-rescue ambulance and local police received over 400 complaint calls about protesters blocking traffic.⁷ In September 2020, also in St. Petersburg, protestors accosted a couple dining outside at a restaurant.

¹ Joanna Walters, *George Floyd protests: The US cities that became hotspots of unrest*, The Guardian (May 31, 2021), <https://www.theguardian.com/us-news/2020/may/31/george-floyd-protests-us-cities-hotspots-unrest> (last visited May 3, 2021).

² Douglas Hanks, Sarah Blaskey, Nicholas Nehamas, Daniel Chang, *Scenes of destruction- few injuries- on morning after Miami protest of George Floyd death*, Miami Herald (May 31, 2020), <https://www.miamiherald.com/article243130356.html> (last visited May 3, 2021).

³ Julio Ochoa, *Peaceful Protests Turn Violent in Tampa in Response to George Floyd Killing*, WUSF Public Media (May 30, 2020), <https://wusfnews.wusf.usf.edu/law-order/2020-05-30/peaceful-protests-turn-violent-in-tampa-in-response-to-george-floyd-killing> (last visited May 3, 2021).

⁴ Mary Shedden, Daylina Miller, Stephanie Colombini, *Tampa Issues Curfew After Businesses Damaged in Overnight Protests*, WUSF Public Media (May 31, 2021), <https://www.wusfnews.wusf.usf.edu/law-order/2020-05-31/tampa-issues-curfew-after-businesses-damaged-in-overnight-protests> (last visited May 3, 2021).

⁵ Marilyn Parker, *Peaceful protest marred by riots in downtown Jacksonville*, News4Jax (May 30, 2020), <https://www.news4jax.com/news/local/2020/05/30/demonstrators-in-jacksonville-join-national-i-cant-breathe-protests/> (last visited May 3, 2021).

⁶ Andrea Torres, *Officer stabbed in neck during protests in Jacksonville* (May 31, 2020), <https://www.local10.com/news/local/2020/05/31/officer-stabbed-in-neck-during-protests-in-jacksonville/> (last visited May 3, 2021).

⁷ Jillian Olsen, *Protesters refused to let an ambulance pass, St. Pete police say*, WTSP Tampa Bay (Jul. 9, 2020), <https://www.wtsp.com/article/news/local/protests/st-petersburg-protestors-fire-truck/67-1553a001-0683-4363-8b39-ab4a28930146> (last visited May 3, 2021).

A video capturing the incident showed a protestor threatening to punch a diner and berating other diners with expletives and insults.⁸

Most recently, in January 2021, a large group of protestors violently stormed the U.S. Capitol as lawmakers were certifying the Electoral College vote. The riot led to five deaths, including the death of one Capitol police officer who was reportedly struck in the head with a fire extinguisher while engaging with rioters. Overall, 60 Capitol police officers were injured.⁹ Following the violence, the FBI warned state and local officials about the potential for unrest and chatter of plans to storm government buildings leading up to Inauguration Day.¹⁰ On January 15, 2021, the FBI arrested one person in Tallahassee after he encouraged others online to join a violent attack on protestors who were expected to gather at the Florida Capitol.¹¹ Later that day, Governor DeSantis issued an executive order activating the Florida National Guard to assist the Florida Department of Law Enforcement and local law enforcement authorities in their efforts to protect the state, its citizens, and public buildings and property from potential unrest.¹²

Unlawful Assembly, Affray, Rioting, Inciting or Encouraging a Riot

Background

Unlawful Assembly

Section 870.02, F.S., prohibits three or more persons from meeting together to commit a breach of the peace or any other unlawful act. A criminal violation for unlawful assembly is a second degree misdemeanor punishable by up to 60 days in county jail and a \$500 fine.¹³ Under Florida law, a person commits a breach of the peace by:

- Committing any act which may:
 - Corrupt the public morals,
 - Outrage the sense of public decency, or
 - Affect the peace and quiet of persons who may witness them; or
- Engaging in:
 - Brawling or fighting,
 - Conduct which constitutes a breach of the peace, or
 - Disorderly conduct.¹⁴

The Florida Supreme Court (FSC) has relied on the common law definition of an unlawful assembly to define which elements must be alleged for the offense to pass constitutional muster. Persons participating in an unlawful assembly commit a breach of the peace when: an assembly of three or more persons who, having a common unlawful purpose, assemble in such a manner as to give a reasonable person in the vicinity of the assembly a well-founded fear of a breach of the peace.¹⁵ Applying this definition, the FSC has held that prohibiting an assembly whose purpose is to commit a breach of the peace is not a violation of the First Amendment.¹⁶

⁸ Josh Fiallo, Romy Ellenbogen, Caitlin Johnston, *Demonstrators vs. diners: St. Petersburg encounter goes viral*, Tampa Bay Times (Sept. 24, 2020), <https://www.tampabay.com/news/st-petersburg/2020/09/24/tense-exchange-between-st-pete-demonstrators-and-diners-goes-viral/> (last visited May 3, 2021).

⁹ Kenya Evelyn, *Capitol Attack: the five people who died*, The Guardian (Jan. 8, 2021), <https://www.theguardian.com/us-news/2021/jan/08/capitol-attack-police-officer-five-deaths> (last visited May 3, 2021).

¹⁰ Steven Lemongello and Gray Rohrer, *DeSantis calls up National Guard in advance of possible protests at Florida Capitol*, Orlando Sentinel (Jan. 15, 2021), <https://www.orlandosentinel.com/politics/os-ne-tallahassee-rally-sunday-20210115-ug4mdgcuovbqj5vlpjh4sahua-story.html> (last visited May 3, 2021).

¹¹ Jeff Burlew, *FBI arrests former U.S. soldier in alleged plot to carry out violence at Florida Capitol*, Tallahassee Democrat (Jan. 15, 2021), <https://www.tallahassee.com/story/news/local/2021/01/15/capitol-riots-florida-protests-violence/4175324001/> (last visited May 3, 2021).

¹² Fla. Exec. Order No. 21-11, National Guard Activation in Response to Possible Protest (Jan. 15, 2021).

¹³ Ss. 775.082 and 775.083, F.S.

¹⁴ S. 877.03, F.S.

¹⁵ *State v. Simpson*, 347 So.2d 414, 415 (Fla. 1977).

¹⁶ *Id.*

Section 870.03, F.S., similarly prohibits an unlawful assembly from demolishing, pulling down or destroying, or beginning to pull down or destroy any dwelling house or other building, or any ship or vessel. A violation is a third degree felony punishable by up to five years in prison and a \$5,000 fine.¹⁷

Affray

Section 870.01(1), F.S., imposes a first degree misdemeanor¹⁸ penalty on a person who commits an affray. The statute does not define the elements of the offense, leaving Florida courts to rely on the common law definition. At common law, an "affray" is defined as the fighting of two or more persons in a public place, to the terror of the people.¹⁹ An affray is distinguished from an assault or battery by requiring fighting by two or more people, while an assault or battery may be committed by only one person.²⁰

Rioting and Inciting or Encouraging a Riot

Under Florida law, all persons found guilty of rioting, or of inciting or encouraging a riot, are guilty of a third degree felony.²¹ Like the affray statute, the riot statute does not define prohibited conduct by laying out the elements of the crime. Florida courts have resorted to the common law definition of riot when deciding challenges to the statute. At common law, a "riot" is a tumultuous disturbance of the peace by three or more persons, assembled and acting with a common intent, either in executing a lawful private enterprise in a violent or turbulent manner, to the terror of the people, or in executing an unlawful enterprise in a violent and turbulent manner.²² The FSC has construed s. 870.01(2), F.S., to require three or more persons to act with the common intent to mutually assist each other in a violent manner to the terror of the people and a breach of the peace.

For the offense of inciting or encouraging a riot, the FSC has held that a person must speak or act with the intent to provoke a riot, and the person's language must clearly intend to incite a breach of the peace. To avoid any infringement of the First Amendment, a person's words must be such that they advocate violence and tend to incite an immediate breach of the peace.²³ Specifically, the FSC has construed the statute to require a defendant's language to create a clear and present danger of a riot by tending to incite an assembly to an immediate breach of the peace.²⁴

Effect of the Bill - Unlawful Assembly, Affray, Rioting, Inciting a Riot, Mob Intimidation

CS/HB 1 defines the crime of affray by prohibiting a person from engaging, by mutual consent, in fighting with another person in a public place to the terror of the people. The bill incorporates the elements of an affray as defined at common law and used by the FSC in deciding previous challenges to the statute. A violation for an affray remains a first degree misdemeanor.

The bill also defines the crime of rioting. Under the bill, a person who willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in: injury to another person, damage to property, or an imminent danger of injury to another person or damage to property commits a riot.

¹⁷ Ss. 775.082 and 775.083, F.S.

¹⁸ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. *Id.*

¹⁹ *Carnley v. State*, 88 Fla. 281, 283 (Fla. 1924).

²⁰ *O.A. v. State*, 312 So.2d 202, 203 (Fla. 2d DCA 1975).

²¹ Rioting, or inciting or encouraging a riot, is a Level 3 offense on the Criminal Punishment Code's offense severity ranking chart. S. 921.0022(3)(c), F.S.

²² *State v. Beasley*, 317 So.2d 750, 752 (Fla. 1975).

²³ *Id.* at 753.

²⁴ In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the U.S. Supreme Court held that "the constitutional guarantees of free speech and free press do not permit the State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

Rioting remains a third degree felony and continues to be ranked a Level 3 offense on the Criminal Punishment Code's (CPC) offense severity ranking chart (OSRC).²⁵

The bill creates the new offense of aggravated rioting. Under the bill, aggravated rioting is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine²⁶ and is ranked a Level 4 offense on the OSRC. A person commits aggravated rioting, if, in the course of rioting, he or she:

- Participates with 25 or more other persons;
- Causes great bodily harm to a person not participating in the riot;
- Causes property damage in excess of \$5,000;
- Displays, uses, threatens to use, or attempts to use a deadly weapon;²⁷ or
- By force, or threat of force, endangers the safe movement of a vehicle traveling on a public street, highway, or road.

CS/HB 1 defines the offense of inciting a riot. Under the bill, a person who willfully incites another to participate in a riot, resulting in a riot or an imminent danger of a riot, commits a third degree felony. Inciting a riot continues to be ranked as a Level 3 offense on the OSRC. The bill also creates a new offense for aggravated inciting a riot. Under the bill, the crime is a second degree felony and is ranked as a Level 4 offense on the OSRC. A person commits aggravated inciting a riot if he or she:

- Incites a riot resulting in:
 - Great bodily harm to another person not participating in the riot; or
 - Property damage in excess of \$5,000; or
- Supplies a deadly weapon to another person or teaches another person to prepare a deadly weapon with intent that the deadly weapon be used in a riot for an unlawful purpose.

The bill protects constitutionally protected activity, such as a peaceful protest, from falling within the activities prohibited by s. 870.01, F.S., by specifying the section cannot be construed to interfere with such activities.

The bill repeals s. 870.03, F.S., relating to riots and routs, which prohibits an unlawful assembly from demolishing, pulling down or destroying, or beginning to pull down or destroy any dwelling house or other building, or any ship or vessel. A separate crime is unnecessary as the same conduct captured by this section is also captured under the definition of rioting created in s. 870.01, F.S.

The bill also creates a new crime for mob intimidation. Under the bill, it is unlawful for a person, assembled with two or more other persons and acting with a common intent, to use force or to threaten to use imminent force, to compel or induce, or attempt to compel or induce, another person to do, or refrain from doing, any act or to assume, abandon, or maintain a particular viewpoint. A violation for mob intimidation is a first degree misdemeanor.

Under the bill, a person arrested for rioting, aggravated rioting, inciting a riot, aggravated inciting a riot, unlawful assembly, or mob intimidation must be held in custody until he or she appears for a first appearance hearing and a court determines bond.²⁸

²⁵ Felony offenses subject to the CPC are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure. S. 921.0022, F.S.

²⁶ Ss. 775.082 and 775.083, F.S.

²⁷ When undefined in statute, Florida courts have defined a "deadly weapon" as an instrument that will likely cause death or great bodily harm when used in the ordinary and usual manner contemplated by its design or an object that is used or threatened to be used in a way likely to produce death or great bodily harm. See *Brown v. State*, 86 So.3d 569, 571 (Fla. 5th DCA 2012).

²⁸ Similarly, under current law, when a defendant is charged with a specified offense, such as a gang related crime or an act of domestic violence, he or she must be held without bail until his or her first appearance to ensure the full participation of the prosecutor and the protection of the public. See s. 903.046(2)(f) and s. 741.2901, F.S.

Obstructing a Roadway

Background

Section 316.2045, F.S., generally prohibits²⁹ a person from willfully obstructing the free, convenient, and normal use of any public street, highway, or road. A person who willfully obstructs the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles, commits a pedestrian violation.^{30, 31} If a person does so to solicit, without proper authorization or a lawful permit,³² the offense becomes a second degree misdemeanor.³³ However, a charity registered under ch. 496, F.S.,³⁴ or a political campaign is exempt from permitting requirements for activities on a local street or road.^{35, 36}

Free Speech

Speech regulations are generally analyzed as to whether they are content-based or content-neutral. A content-based law targets speech based on its content and is subject to strict scrutiny, while a content-neutral law regulates the time, place, and manner of expression, without regard to the substance or message, and is subject to intermediate scrutiny. Content-based laws are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve a compelling state interest.³⁷ Whereas, content-neutral laws need only be tailored to serve a significant government interest, and leave open alternative channels of communication. A law may also place an unconstitutional prior restraint on speech when access to a public forum is denied before the expression occurs. Prior restraints “are not per se unconstitutional,” but there is a “strong presumption against their constitutionality.”³⁸ Requiring a permit to exercise speech in a public forum is typically unconstitutional without a narrow, objective, and definite standard to guide a permitting authority.³⁹

Constitutional Challenges

In 2003, the U.S. District Court for the Middle District of Florida found that s. 316.2045, F.S., was content-based, vague, and overbroad, because the law facially preferred the viewpoints expressed by registered charities and political campaigns, while restricting the expression of all other subjects, without serving a compelling state interest.^{40, 41} Based on its findings, the Court held that s. 316.2045, F.S., was unconstitutional because it imposed content-based restrictions on speech in a traditional

²⁹ S. 316.2045(5), F.S., exempts commercial vehicles collecting solid waste or recycling when displaying amber flashing hazard lights.

³⁰ Ch. 318, F.S.

³¹ A pedestrian violation is punishable by a \$15 fine and court costs. S. 316.2045(1), F.S.

³² A permit to use a state-maintained road or right-of-way is required only for a purpose and in the manner laid out in s. 337.406, F.S.

³³ In *Vigue v. Shoar*, No. 3:19-CV-186-J-32JBT, 2020 WL 6020484, at *18 (M.D. Fla. Oct. 12, 2020) (appeal pending), the Court found that the portion of s. 337.406(1), F.S., relating to charitable solicitation imposes an unconstitutional prior restraint on speech. The Court found the portions of s. 337.406(1), F.S., pertaining to charitable solicitation are severable from the remainder of the statute, and as such, the portions of s. 337.406(1), F.S., unrelated to charitable solicitation and the entirety of s. 337.406(2)–(5) remain unaffected.

³⁴ Ch. 496, F.S., requires that non-profit organizations register with the Department of Agriculture and Consumer Services, provide various background and financial information, and pay a registration fee ranging from \$10 to \$400 depending on the contributions received in the last fiscal year. A person or organization acting on the charity's behalf is also exempt.

³⁵ S. 316.2045(2), F.S.

³⁶ A local government may issue a permit for its streets or roads, and in 2007, the legislature specifically provided that qualified charities are also exempt from local permitting requirements, if certain conditions are met. See Ch. 2007–43, Laws of Fla.

³⁷ *Reed v. Town of Gilbert*, 576 U.S. 155, 163, 135 S.Ct. 2218, 192 L.Ed.2d 236 (2015).

³⁸ *United States v. Frandsen*, 212 F.3d 1231, 1236–37 (11th Cir. 2000).

³⁹ *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–51, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969).

⁴⁰ *Bischoff v. Fla.*, 242 F. Supp. 2d 1226, 1256 (M.D. Fla. 2003). See also *Vigue v. Shoar*, No. 3:19-CV-186-J-32JBT, 2020 WL 6020484, (M.D. Fla. Oct. 12, 2020) (appeal pending) (S. 316.2045, F.S., impermissibly prefers speech by 501(c)(3) charities and by persons who are engaged in “political campaigning” over all other activity that retards traffic, without any showing that the latter is more disruptive than the former.); *Homeless Helping Homeless, Inc. v. City of Tampa*, No. 8:15-CV-1219-T-23AAS, 2016 WL 4162882 (M.D. Fla. Aug. 5, 2016).

⁴¹ *Id.* at 1257. (Holding that nothing in the section's content-based charity-noncharity distinction or political-nonpolitical distinction has any bearing whatsoever on road safety or uniformity).

public forum which was not narrowly tailored to meet a compelling state interest.^{42, 43} While the Legislature amended s. 316.2045, F.S., following the *Bischoff* ruling, the implemented changes did not address the unconstitutional portions of the law.⁴⁴ As a result, local law enforcement agencies continuing to enforce the law have been subject to legal action.⁴⁵

Effect of the Bill – Obstructing a Roadway

CS/HB 1 amends s. 316.2045, F.S., to remove portions held unconstitutional by federal courts while preserving the state interest of keeping roadways safe. Under the bill, a person commits a pedestrian violation if he or she willfully obstructs the free, convenient, and normal use of a public street, highway, or road by:

- Impeding, hindering, stifling, retarding, or restraining traffic or passage thereon;
- Standing on or remaining in the street, highway or road; or
- Endangering the safe movement of vehicles or pedestrians traveling thereon.

The bill retains the current exception for commercial vehicles collecting solid waste and protects a person's right to obtain a permit from a local government to organize an event such as a parade or a march by specifying that the prohibitions in this section do not prohibit a local governmental entity from issuing a special event permit as authorized by law.

Assault and Battery

Background

An assault is an intentional, unlawful threat by word or act to do violence to another, combined with the apparent ability to do so, and doing some act which creates a well-founded fear in the other person that such violence is imminent.⁴⁶ Assault is a second degree misdemeanor. An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony.⁴⁷ Aggravated assault is a third degree felony.

A battery occurs when a person actually and intentionally touches or strikes another person against the person's will or intentionally causes bodily harm to another person.⁴⁸ A battery is generally a first degree misdemeanor, however, if an offender has a prior conviction for battery, aggravated battery, or felony battery, a battery is enhanced to a third degree felony.⁴⁹

An aggravated battery occurs when a person committing battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Additionally, a battery committed upon a pregnant victim whom the offender knew or should have known was pregnant is an aggravated battery.⁵⁰

Crimes Against Specified Persons

⁴² The Court also held that s. 316.2055, F.S., is content-neutral, but unconstitutionally broad.

⁴³ Courts have also held that s. 316.2045, F.S., constitutes an unconstitutional prior restraint on expression. *Vigue v. Shoar* at 14.

⁴⁴ See 2007-50 Fla. Att'y Gen. Op. (2007).

⁴⁵ In 2006, the Northern District of Florida issued a preliminary injunction as to ss. 316.2045 and 337.406, F.S. *Chase v. City of Gainesville*, No. 1:06-CV-044-SPM/AK, 2006 WL 2620260 (N.D. Fla. Sept. 11, 2006). Subsequently, the parties in *Chase* agreed to have the court permanently enjoin enforcement of ss. 316.2045 and 337.406, F.S., and find both statutes facially unconstitutional. *Chase v. City of Gainesville*, No. 1:06-CV-44-SPM/AK, 2006 WL 3826983 (N.D. Fla. Dec. 28, 2006). See also *Vigue v. Shoar*, No. 3:19-CV-186-J-32JBT, 2020 WL 6020484 (M.D. Fla. Oct. 12, 2020) (appeal pending).

⁴⁶ S. 784.011, F.S.

⁴⁷ S. 784.021, F.S.

⁴⁸ S. 784.03, F.S.

⁴⁹ "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered. S. 784.03, F.S.

⁵⁰ S. 784.045, F.S.

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault, aggravated assault, battery, and aggravated battery when a person knowingly commits any of these offenses upon a specified person while such person is engaged in the lawful performance of his or her duties, including:

- A law enforcement officer (LEO);⁵¹
- A firefighter;
- An emergency medical care provider;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A uniformed licensed security officer;
- A security officer employed by the board of trustees of a community college; or
- A public transit employee or agent.

The offenses are reclassified as follows:

- Assault is reclassified from a second degree misdemeanor to a first degree misdemeanor.
- Battery is reclassified from a first degree misdemeanor to a third degree felony.
- Aggravated assault is reclassified from a third degree felony to a second degree felony.
 - The penalty for aggravated assault upon an LEO includes a three-year mandatory minimum sentence.⁵²
- Aggravated battery is reclassified from a second degree felony to a first degree felony.⁵³
 - The penalty for aggravated battery upon an LEO includes a five-year mandatory minimum sentence.⁵⁴

Effect of the Bill – Assault and Battery

CS/HB 1 reclassifies or increases the criminal penalty for an assault or battery when committed in furtherance of a riot or an aggravated riot, as follows:

- Assault is reclassified from a second degree misdemeanor to a first degree misdemeanor.
- Aggravated assault is re-ranked from a Level 6 to a Level 7 offense on the OSRC.⁵⁵
- Battery is reclassified from a first degree misdemeanor to a third degree felony and is ranked as a Level 2 offense on the OSRC.
- Aggravated battery is re-ranked from a Level 7 to a Level 8 offense on the OSRC.⁵⁶
- Battery on a LEO is re-ranked from a Level 4 to a Level 5 offense on the OSRC and a person convicted for the crime must be sentenced to a six month mandatory minimum sentence.

⁵¹ “Law enforcement officer” includes a law enforcement officer (LEO), a correctional officer (CO), a correctional probation officer, a part-time LEO or CO, an auxiliary LEO or CO, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Florida Commission on Offender Review; a federal LEO as defined in s. 901.1505, F.S.; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement. S. 784.07(1)(d), F.S.

⁵² S. 784.07(2)(c), F.S.

⁵³ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

⁵⁴ S. 784.07(2)(d), F.S.

⁵⁵ S. 921.0022(3)(f), F.S.

⁵⁶ S. 921.0022(3)(g), F.S.

Cyberintimidation by Publication

Background

Doxing

“Doxing” refers to gathering an individual’s personal identification information (PII), such as a name, telephone number, email address, or physical address, and disclosing or posting it publicly, usually for malicious purposes such as public humiliation, stalking, identity theft, or targeting an individual for harassment.⁵⁷ Doxing victims can include both private citizens who have had their personal information released to the public, and well-known people who have had information such as their home addresses or personal telephone number released without their consent. For example, in 2019 two former U.S. Senate aides publicly released the home addresses and telephone numbers of several senators after illegally obtaining the information from the computerized Senate personnel database.⁵⁸ Both aides were convicted under federal law for crimes related to unauthorized access of a computer database since doxing is not currently a federal crime.

First Amendment

The First Amendment to the U.S. Constitution does not protect “true threats” as free speech and the government is permitted to restrict such speech.⁵⁹ For speech to be a true threat, a person must intentionally or knowingly communicate the threat and the listener must have a reasonable fear that the speaker intends to carry out the threat.⁶⁰ The prohibition on true threats “protect[s] individuals from the fear of violence” and “from the disruption that fear engenders,” in addition to protecting people “from the possibility that the threatened violence will occur.”⁶¹

Criminal Use of Personal Identification Information

Section 817.568(4), F.S., prohibits a person from willfully and without authorization possessing, using, or attempting to use PII concerning another for the purpose of harassing that person. A person who violates this prohibition commits harassment by use of PII, a first degree misdemeanor. While the law may prohibit behavior similar to some forms of doxing, it does not specifically prohibit the type of speech which can cause a person to fear for his or her safety or contemplate a third party using PII to harass or threaten a victim.

Effect of the Bill - Cyberintimidation by Publication

CS/HB 1 prohibits a person from electronically publishing the PII of another person with the intent that the information will be used to incite violence or the commission of a crime against the person, or threaten or harass the person, such that he or she is placed in reasonable fear of bodily harm. A violation is punishable as a first degree misdemeanor.

The bill defines “electronically publish” to mean to disseminate, post, or otherwise disclose information to an Internet site or forum. Under the bill, “harass” means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate

⁵⁷ U.S. Department of Homeland Security, *How to Prevent Online Harassment from Doxing*, (Apr. 2017), <https://www.dhs.gov/sites/default/files/publications/How%20to%20Prevent%20Online%20Harassment%20From%20Doxing.pdf> (last visited May 3, 2021).

⁵⁸ Politico, *Ex-Hassan Aide Sentenced to 4 Years for Doxing Senators*, (Aug. 5, 2019), <https://www.politico.com/story/2019/06/19/maggie-hassan-staff-doxing-case-1370529> (last visited May 3, 2021).

⁵⁹ *Virginia v. Black*, 538 U.S. 343, 344 (2003) quoting *Watts v. United States*, 394 U.S. 705, 708 (1969).

⁶⁰ *Planned Parenthood v. ACLA*, 290 F.3d 1058, 1076-77 (9th Cir. 2002) (holding that a true threat is “a statement which, in the entire context and under all the circumstances, a reasonable person would foresee the statement would be interpreted by those to whom the statement is communicated as a serious expression of intent to inflict bodily harm upon that person.”).

⁶¹ *Id.* See also *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992).

purpose. “Harass” does not mean to use PII for accepted commercial purposes and the term does not include constitutionally protected conduct such as organized protests.

The bill defines “personal identification information” to mean any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person’s financial resources.

Theft and Burglary

Background

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:⁶²

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender’s prior history of theft convictions or the type of property stolen. The offense levels for theft crimes based on property value thresholds are classified as follows:

	Property Value	Offense Level
Grand Theft	≥ \$100,000	First Degree Felony
	≥ \$20,000, but < \$100,000	Second Degree Felony
	≥ \$10,000, but < \$20,000	Third Degree Felony
	≥ \$5,000, but < \$10,000	Third Degree Felony
	≥ \$750, but < \$5,000	Third Degree Felony
	≥ \$100, but < \$750 if taken from a dwelling or unenclosed curtilage ⁶³ of a dwelling	Third Degree Felony

⁶² S. 812.014(1)(a)–(b), F.S.

⁶³ “Unenclosed curtilage of a dwelling” means the unenclosed land or grounds, or any outbuildings, directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.

Petit Theft	≥ \$100, but < \$750	First Degree Misdemeanor
	< \$100	Second Degree Misdemeanor

A person commits burglary by:⁶⁴

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein – unless the premises are open to the public or the person’s entry is licensed or invited; or
- Remaining in a dwelling, structure, or conveyance:
 - Surreptitiously, with the intent to commit an offense therein;
 - After permission to remain is withdrawn, with the intent to commit an offense therein; or
 - To commit or attempt to commit a forcible felony.⁶⁵

A burglary is a felony offense classified according to the offense’s specific circumstances, as follows:

- A burglary of an unoccupied structure or conveyance is a third degree felony.⁶⁶
- A burglary of a dwelling, an occupied structure or conveyance, or an authorized emergency vehicle is a second degree felony.⁶⁷
- A burglary is a first degree felony when an offender:⁶⁸
 - Commits an assault or a battery;
 - Becomes armed with explosives or a dangerous weapon within the premises;
 - Causes damage to a dwelling or structure with a motor vehicle; or
 - Causes damage to a dwelling or structure over \$1,000.

Theft or Burglary During a State of Emergency

The penalty for specified theft and burglary offenses is reclassified when a person commits the offense during a declared state of emergency (SOE) and the perpetration of the offense is facilitated by conditions arising from the emergency.⁶⁹ Conditions arising from the emergency are defined to include civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.⁷⁰ Under current law, specified penalties for theft or burglary offenses committed during a SOE are increased as follows:

- A third degree felony theft is reclassified as a second degree felony and the offense is re-ranked one level higher on the OSRC;⁷¹
- A second degree felony theft is reclassified as a first degree felony and the offense is re-ranked one level higher on the OSRC;⁷²
- A third degree felony burglary is reclassified as a second degree felony and the offense is re-ranked one level higher on the OSRC; and
- A second degree felony burglary is reclassified as a first degree felony and the offense is re-ranked one level higher on the OSRC.⁷³

A person arrested for burglary during a SOE must remain in custody until he or she appears for a first appearance hearing and a court determines bond.⁷⁴ Current law does not require a person arrested for theft during a SOE to be detained until first appearance.

⁶⁴ S. 810.02, F.S.

⁶⁵ “Forcible felony” means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.

⁶⁶ S. 810.02(4), F.S.

⁶⁷ S. 810.02(3), F.S.

⁶⁸ S. 810.02(2), F.S.

⁶⁹ Ss. 810.02(3)(f) and (4)(b) and 812.014(2)(b)4. and (c), F.S.

⁷⁰ *Id.*

⁷¹ S. 812.014(2)(b)4., F.S.

⁷² S. 812.014(2)(c)13., F.S.

⁷³ S. 810.02(3)(f), F.S.

⁷⁴ S. 810.02(3)(f) and (4)(b), F.S.

Effect of the Bill - Theft and Burglary

CS/HB 1 reclassifies specified theft and burglary offenses committed during a riot or an aggravated riot, when the commission of the crime is facilitated by conditions arising from the riot, as follows:

- A third degree felony theft is reclassified to a second degree felony, if the property value is at least \$5,000, and the offense is re-ranked from a Level 3 to a Level 4 or a Level 4 to a Level 5 on the OSRC.
- A second degree felony theft is reclassified to a first degree felony, and the offense is re-ranked from a Level 5 to a Level 6 on the OSRC.
- A third degree felony burglary is reclassified as a second degree felony, and the offense is re-ranked from a Level 4 to a Level 5 on the OSRC.
- A second degree felony burglary is reclassified as a first degree felony, and the offense is re-ranked one level higher on the OSRC.

Under the bill "conditions arising from the riot" include civil unrest, power outages, curfews, or a reduction in the presence of, or response time for, first responders or homeland security personnel.

The bill requires a person arrested for committing theft during a riot or aggravated riot or a SOE or burglary during a riot or an aggravated riot to be held in custody until he or she appears for a first appearance hearing and a court determines bond.

Damaging or Destroying Memorials or Historic Property

Background

Memorials throughout Florida⁷⁵ recognize historical events or significant accomplishments of residents, including a number of memorials located on the grounds of the Capitol Complex.⁷⁶ Throughout Florida, vandals have destroyed memorials honoring veterans, such as a Jacksonville memorial honoring local fallen soldiers that was damaged in May 2018⁷⁷ and a war memorial in Gainesville's Veterans Memorial Park damaged in April 2016.⁷⁸ Similarly, in 2018, a Pensacola man was arrested for damaging a 9/11 monument⁷⁹ and vandals damaged 18 tombstones and statues at an historic Tampa graveyard.⁸⁰

In addition to memorials, property may be designated as a historical place or historical landmark by a federal, state, or local designation program. The National Park Service manages federal designations including the National Historic Landmarks Program and the National Register for Historic Places.⁸¹ On a state level, historic properties and sites may be listed on the state registrar, which is managed by the

⁷⁵ See ch. 265, F.S.

⁷⁶ S. 281.01, F.S., defines capitol complex to mean portions of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term also includes the State Capital Circle Office Complex located in Leon County, Florida. See ss. 265.001-265.006, F.S.

⁷⁷ Bridgette Matter, *Monument for local slain soldier vandalized*, Action News JAX (Mar. 20, 2018), <https://www.actionnewsjax.com/news/local/monument-for-local-slain-soldier-vandalized/718999871> (last visited May 3, 2021).

⁷⁸ *War monument smashed into pieces at Florida park*, Fox News (Apr. 13, 2016), <https://www.foxnews.com/us/war-monument-smashed-into-pieces-at-florida-park> (last visited May 3, 2021).

⁷⁹ Associated Press, *Florida Man Accused of Vandalizing 9/11 Monument in Park*, U.S. News and World Report (Jun. 1, 2019), <https://www.usnews.com/news/best-states/florida/articles/2018-06-01/florida-man-accused-of-vandalizing-9-11-monument-in-park> (last visited May 3, 2021).

⁸⁰ Ryan Smith, *Tampa Police search for vandals who damaged several tombs at historic cemetery*, ABC Action News (Jul. 18, 2018), <https://www.abcactionnews.com/news/region-tampa/tampa-police-search-for-vandals-who-destroyed-several-tombs-at-historic-cemetery> (last visited May 3, 2021).

⁸¹ *How to Save a Place: Apply for Historic Designation*, National Trust for Historic Preservation, (May 21, 2015), <https://savingplaces.org/stories/persevation-tips-tools-how-to-save-a-place-apply-for-historic-designation#:~:ext=Federal%20desingations%20inc> (last visited May 3, 2021).

state Historic Preservation Office. Local communities may offer greater protections to places or landmarks by enacting a preservation ordinance.⁸²

Criminal Mischief

A person commits criminal mischief by willfully and maliciously injuring or damaging the property of another, including by vandalism or graffiti.⁸³ The penalty for criminal mischief generally corresponds to the value of the damage:

Value of Damage ⁸⁴	Penalty
≤ \$200	Second degree misdemeanor
> \$200 but ≤ \$1,000	First degree misdemeanor
> \$1,000	Third degree felony

Criminal mischief may also be enhanced to a third degree felony based on a prior criminal mischief conviction⁸⁵ or the nature of the property damaged, including when a person damages a:

- Church, synagogue, mosque, or other place of worship, or a religious article therein, if the damage is valued greater than \$200.⁸⁶
- Public telephone, regardless of the value of the damage.⁸⁷
- Sexually violent predator detention or commitment facility,⁸⁸ if the damage is valued greater than \$200.⁸⁹

A minor who commits criminal mischief by placing graffiti on any public or private property is subject to additional penalties, and any criminal mischief offense relating to graffiti requires specified community service and a fine ranging from \$250 to \$1,000.⁹⁰

No law specifically protects memorials or historic property from malicious damage, destruction, or removal, and the owner or caretaker is often left to pay for the repair to vandalized structures without recourse.

Injuring or Removing a Tomb or Monument

Under s. 872.02, F.S., a person commits a third degree felony if he or she:

- Willfully and knowingly destroys, mutilates, defaces, injures, or removes any:
 - Tomb,⁹¹ monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead; or
 - Fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or structure or thing placed or designed for a memorial of the dead, or for any enclosure for the burial of the dead.
- Willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant located within any enclosure for the burial of the dead.

⁸² *Id.*
⁸³ S. 806.13(1)(a), F.S.
⁸⁴ S. 806.13(1)(b), F.S.
⁸⁵ S. 806.13(1)(b)4., F.S.
⁸⁶ S. 806.13(2), F.S.
⁸⁷ S. 806.13(3), F.S.

⁸⁸ As defined in ch. 394, F.S.

⁸⁹ S. 806.13(4), F.S.

⁹⁰ See ss. 806.13(7), 806.13(8), 806.13(6)(b), and 806.13(6)(a) and (c), F.S.

⁹¹ A "tomb" includes any mausoleum, columbarium, or belowground crypt. S. 872.02(4), F.S. A "mausoleum" is a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains. S. 497.005(46), F.S. A "columbarium" is a structure or building that is substantially above the ground and that is intended to be used for the inurnment of cremated remains. S. 497.005(8), F.S.

Additionally, it is a second degree felony to willfully and knowingly disturb the contents of a tomb or grave. Neither crime is ranked on the OSRC, meaning both are assigned a ranking under s. 921.0023, F.S. An unranked third degree felony is a Level 1 offense and an unranked second degree felony is a Level 4 offense. The section exempts certain persons and entities from criminal liability including:

- Any person acting under the direction or authority of the Division of Historical Resources of the Department of State;
- Cemeteries operating under ch. 497, F.S.; or
- Any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents.

Effect of the Bill – Damaging or Destroying Memorials or Historic Property

CS/HB 1 creates new crimes specifically aimed at preventing vandalism to, or destruction of, memorials and historic property. The bill defines a memorial to include specific memorials established by ch. 265, F.S.,⁹² and any plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display when such item is:

- Constructed and located with the intent that it be permanently displayed or perpetually maintained;
- Dedicated to an historical person, entity, event, or a series of events; and
- Intended to honor or recount any past or present:
 - Military service of any U.S. Armed Forces military personnel; or
 - Public service by any Florida or U.S. resident.

The bill defines "historic property" as any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program.

Under the bill, a person commits:

- Criminal mischief of a memorial or historic property, a third degree felony ranked as a Level 2 offense on the ORSC, if he or she, without authorization from the memorial's or historic property's owner, willfully and maliciously defaces, injures, or otherwise damages a memorial or historic property in a manner resulting in damage greater than \$200.
- Destruction or demolition of a memorial or historic property, a second degree felony ranked as a Level 4 offense on the ORSC, if he or she, without authorization from the memorial's or historic property's owner, willfully and maliciously, destroys, demolishes, or pulls down a memorial or historic property.

CS/HB 1 requires a court to order a person convicted of either offense to pay restitution, including the full cost to repair or replace the memorial or historic property. The bill does not prohibit the owner of a memorial or other historic property, or any person authorized by the owner of the memorial or historic property, from taking down or relocating any memorial or other historic property.

The bill increases the offense severity ranking level of offenses for injuring or removing a grave or tomb by one level when a person commits the offense in furtherance of a riot or aggravated riot. As such, a third degree felony offense will be increased from a Level 1 to a Level 2 offense on the OSRC, and disturbing the contents of a grave or tomb is increased from a Level 4 to a Level 5 offense. The increased ranking will subject an offender committing either offense in furtherance of a riot or aggravated riot to an increased lowest permissible sentence under the CPC.

⁹² Including: The Florida Women's Hall of Fame; The Florida Medal of Honor Wall; The Florida Veterans' Hall of Fame; The POW-MIA Chair of Honor Memorial; The Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden; The Florida Law Enforcement Officers' Hall of Fame; The Florida Holocaust Memorial; The Florida Slavery Memorial; and Any other memorial located within the Capitol Complex, including Waller Park.

Municipal Law Enforcement Funding

Background

Law Enforcement Funding

In 2020, following a series of incidents involving the unjustified or questionable use-of-force by law enforcement, activists began a nationwide movement to “defund the police.” Although in some circumstances the goal of defunding the police is the complete elimination of a law enforcement agency, the more common usage advocates for shifting a portion of the law enforcement budget to social services and other community initiatives that may reduce crime without the need for law enforcement intervention.⁹³ For example, in July 2020, St. Petersburg announced it would redirect grant money that was earmarked to hire additional police officers to contract with social service workers to respond to nonviolent emergency calls.⁹⁴ Critics of the “defund the police” movement argue a drastic reduction in law enforcement will lead to an increase in crime and will disproportionately impact minority communities and further marginalize the residents in those areas.⁹⁵

Municipal Budgets

A municipality is required to adopt a budget each fiscal year.⁹⁶ As part of the budget process, a municipality is required to post a tentative budget to the municipality’s official website prior to a formal hearing adopting the final budget.⁹⁷ In the vast majority of municipalities in Florida, the police chief serves at the pleasure of the city commission or city manager and law enforcement funding is entirely controlled by the governing body of the municipality.

Sheriffs’ Budgets

The Florida Constitution specifies five elected county officers, including the county sheriff.⁹⁸ In contrast to a municipal law enforcement agency, a sheriff has much greater input in the budget process. For each fiscal year, the sheriff submits a proposed budget to the county commission. After reviewing the sheriff’s budget request, the county commission may amend, modify, increase, or reduce the recommended budget.⁹⁹

If the sheriff disagrees with the budget modifications or reductions, he or she may file an appeal to the Administration Commission, which is comprised of the Governor and Cabinet.¹⁰⁰ The Executive Office of the Governor (EOG) conducts a budget hearing to consider the sheriff’s appeal. Following the budget hearing, the EOG forwards its recommendation to the Administration Commission, which may amend, modify, increase, or reduce the sheriff’s budget. The decision of the Administration Commission is final.¹⁰¹

Effect of the Bill - Municipal Law Enforcement Funding

⁹³ Michael Balsamo, *When Protestors Demand ‘Defund the Police’ at George Floyd Demonstrations, What Does It Mean?*, Chicago Tribune (Jun. 7, 2020), <https://www.chicagotribune.com/nation-world/ct-nw-cb-george-floyd-protesters-defund-police-20200607-kiupi5allvgehinzidz3jund5e-story.html> (last visited May 3, 2021).

⁹⁴ Mitch Perry, *St. Pete Police Social Worker Program Set to Begin*, Bay News 9 (Jan. 13, 2021), <https://www.baynews9.com/fl/tampa/news/2021/01/13/st-pete-police-social-worker-program-set-to-begin-> (last visited May 3, 2021).

⁹⁵ Tom Jackman, *Defunding or disbanding the police is a dangerous idea if done hastily*, Washington Post (Jun. 18, 2020), <https://www.washingtonpost.com/crime-law/2020/06/18/guest-post-defunding-or-disbanding-police-is-dangerous-idea-if-done-hastily/?outputType=amp> (last visited May 3, 2021).

⁹⁶ The fiscal year for a municipality in Florida is October 1 through September 30. S. 166.241(1) - (2), F.S.

⁹⁷ S. 166.241(3), F.S.

⁹⁸ Art. VIII, s. 1(d), Fla. Const.

⁹⁹ S. 30.49, F.S.

¹⁰⁰ S. 30.49(4), F.S.

¹⁰¹ *Id.*

CS/HB 1 creates a budget appeal process to challenge reductions in municipal law enforcement agencies budgets similar to that available to a county sheriff. If a municipality's tentative budget contains a funding reduction to the operating budget of the municipal law enforcement agency, the state attorney for the judicial circuit in which the municipality is located or a member of the governing body of the municipality who objects to the funding reduction may file an appeal within 30 days of the date the tentative budget is posted on the municipality's website. The bill requires a municipality to reply to the appeal within five working days of receipt. The bill requires the EOG to conduct a hearing on the appeal and make a recommendation to the Administration Commission which may approve, amend, or modify the municipal law enforcement budget. Under the bill, the decision of the Administration Commission is final.

Sovereign Immunity and Civil Liability

Background

Statutory Waiver of Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.¹⁰² Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Section 768.28(1), F.S., authorizes suits in tort against the State and its agencies and political subdivisions for damages resulting from the negligence of government employees acting in the scope of their employment. This liability exists only where a private person would be liable for the same conduct. The waiver applies only to "injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment"¹⁰³

Tort recovery from a governmental entity in Florida is capped at \$200,000 per person and \$300,000 total per incident.¹⁰⁴ Although a court may enter a judgment exceeding these amounts, unless the Legislature passes a claims bill, a claimant may not collect any amount exceeding the statutory caps.

Exceptions

The statutory waiver of sovereign immunity is not absolute. The FSC has recognized that there are certain functions which are inherent in the act of governing and that judicial interference with these "discretionary" functions would lead to the court second-guessing policy and planning decisions of the legislative and executive branches.¹⁰⁵ Governmental entities are immune from tort claims arising from decisions over whether to enforce a law, the tactical deployment of police officers, and the obligation to provide law enforcement protection because courts have held these are all discretionary functions.¹⁰⁶

There are also statutory exceptions to the waiver of sovereign immunity. Section 768.28(15), F.S., bars any claim against a governmental entity by a person who unlawfully participates in a riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of that person's participation in a riot, unlawful assembly, public demonstration, mob violence, or civil disobedience.

Effect of the Bill - Sovereign Immunity and Civil Liability

CS/HB 1 creates a statutory duty requiring a municipality to allow the municipal law enforcement agency to respond appropriately to protect persons and property during a riot or an unlawful assembly

¹⁰² Legal Information Institute, *Sovereign Immunity*, www.law.cornell.edu/wex/sovereign_immunity (last visited May 3, 2021).

¹⁰³ S. 768.28(1), F.S.

¹⁰⁴ S. 768.28(5), F.S.

¹⁰⁵ *Trianon Park Condominium Ass'n v. City of Hialeah*, 468 So.2d 912, 918 (Fla. 1985).

¹⁰⁶ *Id.*, *Wallace v. Dean*, 3 So.3d 1035 (Fla. 2009), *Wong v. City of Miami*, 237 So.2d 132 (Fla. 1970), *Hernandez v. City of Miami*, 305 So.2d 277 (Fla. 3d DCA 1974), *Carter v. City of Stuart*, 468 So.2d 955 (Fla. 1985).

based on the availability of adequate equipment to its municipal law enforcement officers and relevant state and federal laws. The bill waives a municipality's sovereign immunity for damages caused by a riot or unlawful assembly if the governing body of the municipality, or a person authorized by the municipality's governing body, breaches that duty. Under the bill, a person who is injured, killed, or suffers damage to his or her property due to a riot or unlawful assembly may sue the municipality for a breach of the statutory duty that proximately caused the person's injury or damages. The complete waiver of sovereign immunity under the bill means the \$200,000 per person or \$300,000 per incident recovery limits do not apply.

Affirmative Defense to a Civil Action

Background

Affirmative Defense

An affirmative defense is "a legal defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal liability or civil liability, even if it is proven that the defendant committed the alleged acts."¹⁰⁷ Examples of affirmative defenses include contributory negligence, assumption of risk, insanity, self-defense, and entrapment.¹⁰⁸

Section 776.085, F.S., provides that a defendant in a civil action for personal injury, wrongful death, or property damage has a defense if the plaintiff's injuries or damages were sustained while the plaintiff was committing or attempting to commit a forcible felony.¹⁰⁹ The plaintiff's conviction for committing or attempting to commit a forcible felony can be proven by introducing a prior criminal conviction or by a preponderance of the evidence.¹¹⁰ Any civil action in which a defendant has raised this affirmative defense is required to be stayed until the conclusion of the plaintiff's criminal proceedings, unless the court finds a conviction would not be a valid defense.¹¹¹

Effect of the Bill - Affirmative Defense to a Civil Action

CS/HB 1 creates an affirmative defense available to a defendant in a civil action for personal injury, wrongful death, or property damage if the plaintiff's injuries or damages were caused because he or she participated in a riot or aggravated riot. The plaintiff's participation in the riot or aggravated riot can be established by the plaintiff's criminal conviction for rioting or aggravated rioting, or by a preponderance of the evidence in civil court that the plaintiff participated in a riot or aggravated riot. Under the bill, a civil action in which a defendant raises the affirmative defense is stayed until the conclusion of the plaintiff's criminal proceedings, unless the court finds a conviction would not be a valid defense.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹⁰⁷ Legal Information Institute, *Affirmative Defense*, https://www.law.cornell.edu/wex/affirmative_defense (last visited May 3, 2021).

¹⁰⁸ *Id.*

¹⁰⁹ *Supra* n. 65.

¹¹⁰ S. 776.085(1), F.S.

¹¹¹ S. 776.085(3), F.S.

The Criminal Justice Impact Conference considered HB 1 on February 15, 2021, and determined the bill may increase the prison population by an indeterminate amount by modifying and creating new felony offenses relating to public disorder.¹¹²

To the extent that individuals are arrested for, charged with, and convicted of the criminal offenses modified and created in the bill, the bill may have an indeterminate impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on jail beds by creating new misdemeanor offenses relating to public disorder and requiring offenders arrested for offenses related to rioting to be held in custody until appearing for a first appearance hearing.

The bill may have a negative indeterminate fiscal impact on local governments by exposing them to civil liability for any damages, including those arising from personal injury, wrongful death, or property damage proximately caused by the municipality's breach of its duty to allow the municipal law enforcement agency to respond appropriately to protect persons and property during a riot or unlawful assembly.

There could be an indeterminate impact to municipal government budgets based on the appeal process for law enforcement funding.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹¹² Criminal Justice Impact Conference, Office of Economic and Demographic Research, HB 1 – Combating Public Disorder (Identical SB 484) (Feb. 15, 2021).