

STORAGE NAME: h4059.leps

DATE: March 9, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4059 (PCB LEPS 98-03)

RELATING TO: Fleeing or Attempting to Elude a Law Enforcement Officer

SPONSOR(S): Committee on Law Enforcement and Public Safety

COMPANION BILL(S): None

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

(1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 6 NAYS 0

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill amends **s. 316.1935(1), F.S.**, to provide that it is a third-degree felony for the operator of a vehicle to fail to stop the vehicle when so directed by a law enforcement officer, or to attempt to elude such officer.

The bill amends **s. 316.1935(2), F.S.**, to provide that it is a second-degree felony for a person to drive at high speed, or in any manner demonstrating a wanton disregard for the safety of persons or property, during the course of willfully fleeing or attempting to elude a law enforcement officer in a marked patrol vehicle with agency insignia displayed and with sirens and lights activated.

The bill amends **s. 316.1935(3)(b), F.S.**, to provide that the penalty for the offense of aggravated fleeing or eluding a law enforcement officer be increased from a third-degree felony to a second-degree felony.

The bill amends **s. 921.0022, F.S.**, to provide for the revising of the ranking of such offenses to conform to changes made by the act.

The bill provides an effective date of **October 1**, of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Current Penalties for Fleeing or Attempting to Elude a Law Enforcement Officer

Section 316.1935, F.S., currently provides the following penalties for the crimes of fleeing and/or eluding a law enforcement officer:

(1) It is unlawful for the operator of any vehicle, having knowledge that he or she has been directed to stop such vehicle by a duly authorized law enforcement officer, willfully to refuse or fail to stop the vehicle in compliance with such directive or, having stopped in knowing compliance with the directive, willfully to flee in an attempt to elude the officer and shall, upon conviction, be punished by imprisonment in the county jail for a period not to exceed 1 year, or by fine not to exceed \$1000, or by both such fine and imprisonment.

(2) Any person who, in the course of unlawfully fleeing or attempting to elude a law enforcement officer in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated, pursuant to subsection (1), having knowledge of an order to stop by a duly authorized law enforcement officer, causes the law enforcement officer to engage in a high speed vehicle pursuit commits a felony of the third degree.

(3)(b) As a result of such fleeing or eluding, causes injury to another person or causes damage to any property belonging to another person commits aggravated fleeing or eluding, a felony of the third degree.

Current Problems with the Wording of s.316.1935(2), F.S.

According to the present wording of **s. 316.1935(2), F.S.**, there are numerous requirements an agency must prove in order to convict:

1. The suspect has **knowledge** of an order to stop.
2. The unlawful fleeing or attempting to flee **causes** the officer to engage in a pursuit.
3. The officer actually **engaged** in the pursuit.
4. The result was a **high speed vehicle pursuit**.

This poses several problems for the agency trying to enforce this provision:

1. How do you prove that the suspect in the other vehicle has sufficient knowledge of your order to stop?
2. At what point is the fleeing the cause of the pursuit?
3. At what point has the officer actually "engaged" in a pursuit, and when is the pursuit disengaged?
4. What constitutes a "high speed vehicle pursuit"?

Also, because of the vagueness of some of these terms, the constitutionality of the statute has been questioned. The court noted that it had "legitimate concern for the potential, however, slight, for the arbitrary enforcement of the law". Fox v. State, 700 So.2d 172 (Fla.App. 4 Dist. 1997).

Supreme Court determines need to impose liability on Municipalities for accidents stemming from high speed pursuits.

Between 52-63% of all high speed chases in the United States were initiated for a simple traffic violation. Police Pursuit in Pursuit of Policy: The Pursuit Issue, Legal and Literature Review, and an Empirical Study, Illinois State University, Department of Criminal Justice Sciences, Normal, Ill. (1992)

In 1993 there were 343 deaths nationally from high speed chases. The majority of these deaths were innocent bystanders. AFTL Journal, vol 421, p8.

Under **42 U.S.C. 1983**, the federal statute dealing with the deprivation of civil rights, the Supreme Court held a municipality may be liable for the accidents caused by officers engaging in high speed pursuits. Brower v. County of Inyo, 489 US 593 (1989).

However, the Court has significantly narrowed the instances in which a municipality may be held liable to "the inadequacy of police training...where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact". This includes those municipalities that have failed to adopt reasonable pursuit policies. Canton v. Harris, 489 US 378 (1989).

Florida Officer Liability For Engaging in High Speed Chases.

Despite there being no Florida law requiring law enforcement agencies to adopt vehicle pursuit policies, a great number of these agencies have done so to protect themselves from liability for a failure to train and/or adopt reasonable policies.

Florida currently ranks 11th nationwide in pursuit-related fatalities. Shaver, Katherine. "Tampa Crashes Reignite Police Chase Controversy". St. Petersburg Times, June 26, 1995.

The Florida Supreme Court greatly extended officer liability when it recognized liability for injuries caused to innocent third parties. City of Pinellas Park v. Brown, 604 So.2d 1222 (Fla 1991).

There is a two part test used in Florida to determine officer liability for engaging in a high speed pursuit:

1. *Is there a duty owed to the injured party?*

This is a threshold question of law that asks whether the conduct creates a "zone of risk" that poses a general threat or harm to others. Without duty, there is no liability. Porter v. State, 689 So.2d 1152 (Fla.App. 1 Dist. 1997)

Even if there is a duty, can the officer claim sovereign immunity to escape liability?

An officer can claim sovereign immunity if the act is deemed discretionary as opposed to operational. S. 768.28, F.S. Discretionary functions are governmental actions that involve "an exercise of executive or legislative power such that, for the court to intervene by way of tort law, it inappropriately would entangle itself in fundamental questions of policy and planning". Kaisner v. Kolb 543 So.2d 732, 737 (Fla. 1989). The Court in City of Pinellas Park v. Brown further clarified the term

“discretionary” by saying it only applied to emergency situations, not created by the officers, in which choosing to engage in a high speed pursuit is choosing between the lesser of two evils (i.e. greater harm to general public by not pursuing). 604 So.2d at 1222. For an officer to proceed in a high speed pursuit contrary to department policy is clearly operational, and thus, not protected by sovereign immunity. Id.

2. Was the action the proximate cause of the accident?

This is a question of fact that must be proven once it is determined that a duty existed. Proximate cause focuses on whether the conduct of the officer foreseeably and substantially caused the injury. Creamer v. Sampson, 700 So.2d 711 (Fla.App. 2 Dist. 1997). The fact that the police car was not in the actual collision does not mean that the officer can not be the proximate cause of the accident. City of Pinnellas Park v Brown, 604 So.2d at 1228.

If the law enforcement officer: (1) owes a duty of care to the individual, (2) is not protected by sovereign immunity, and (3) was the proximate cause of the accident, then the officer will be held liable for the accident.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that it is a third-degree felony for the operator of a vehicle to fail to stop the vehicle when so directed by a law enforcement officer, or to attempt to elude such officer.

The bill provides that it is a second-degree felony for a person to drive at high speed, or in any manner demonstrating a wanton disregard for the safety of persons or property, during the course of willfully fleeing or attempting to elude a law enforcement officer in a marked patrol vehicle with agency insignia displayed and with sirens and lights activated.

The bill provides that it is a second-degree felony to commit the offense of aggravated fleeing or eluding a law enforcement officer.

The bill provides for the revising of the ranking of such offenses to conform to changes made by the act.

Thus, under the bill, a person who flees or eludes a law enforcement officer with a wanton disregard for the safety of persons or property in violation of **s. 316.1935(2), F.S.** may be charged with a second-degree felony, without the officer risking liability to himself, his department, and other innocent bystanders by having to engage in a high speed pursuit. Furthermore, the present wordiness of **s. 316.1935(2), F.S.** is corrected to eliminate the possibility of constitutional vagueness.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

STORAGE NAME: h4059.leps

DATE: March 9, 1998

PAGE 6

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

STORAGE NAME: h4059.leps

DATE: March 9, 1998

PAGE 7

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

316.1935, 921.0022.

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

There is presently a major conflict between the statute, the law enforcement agencies, and the case law. Absent bodily injury, the statute presently requires that an officer must "engage in a high speed vehicle pursuit" in order to charge the suspect with anything above a misdemeanor. However, in pursuing, the officer is most likely going against departmental policy, not to mention public policy in possibly endangering the lives of innocent people. The department has policies prohibiting high speed chases because if they do not, they can be liable for inadequate training. Therefore the officer is the one left in a very precarious position. Does he risk trying to apprehend the offender for a crime in possible violation of department policy and risk lives and liability for an accident, or does the officer let the suspect speed away endangering lives each time he/she feels like driving away, only to face a misdemeanor charge if later apprehended? Even if the officer is successful in his high speed pursuit, the wordiness of the statute makes it very difficult to convict. Thus, the effectiveness of the present statute is very limited.

This bill remedies this conflict. The officer no longer has to pursue the suspect in order to charge him with a second-degree felony. The law enforcement agent can write down the licence plate number of the vehicle and let them drive away. If they speed off in a manner that demonstrates a "wanton disregard for persons or property", then they will be charged with a felony. The rewording of the statute will make it much more effective in that there are not as many loopholes through which a defendant can escape. In a more general context, the liability issues should take care of themselves as the officer no longer has to "engage in a high speed vehicle pursuit", thus lessening the chances that accidents and deaths will occur.

STORAGE NAME: h4059.leps

DATE: March 9, 1998

PAGE 10

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

J. Gregory Godsey

Kurt E. Ahrendt