

STORAGE NAME: h0449a.cp
DATE: March 21, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 449

RELATING TO: Criminal Actions/Fraud

SPONSOR(S): Representative Jones

STATUTE(S) AFFECTED: Sections 817.38, 817.39, 843.08, and 838.021, Florida Statutes.

COMPANION BILL(S): SB 468

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

(1) CRIME AND PUNISHMENT YEAS 7 NAYS 0

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I. SUMMARY:

Many states have experienced a phenomena known as "common law courts" which have been set up by groups like the Freemen. This bill responds to the problems that these self proclaimed "courts" can raise.

This bill makes it a third degree felony for any person who impersonates a public officer, public employee, or utility employee from taking any action under color of law against persons or property or in connection with legal process affecting persons and property. Legal process includes a summons, lien, complaint, warrant, injunction, writ, notice, pleading, subpoena, or order.

This bill also prohibits simulated (counterfeit) legal process. A person who falsely under color of law attempts to influence a public officer or law enforcement officer commits a third degree felony under this bill.

The third degree felony offenses prohibited by this bill were not ranked under the sentencing guidelines. Third degree felony offenses, not assigned an offense severity ranking, are score at the lowest level. Therefore, it would require a very extensive criminal history for a person to qualify for prison for violating the provisions of this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida has a number of statutes that address "simulated legal process," threats against public servants, and actions falsely taken "under color of law:"

Simulated Legal Process

Section 817.38, F.S., relating to prohibitions against the sending of anything which simulates a summons, complaint, writ, or other court process, or any letter, paper or document which simulates the seal of the state or the stationery of any state agency or fictitious state agency. Penalizes these acts as second degree misdemeanors.

Section 817.39, F.S., relating with acts by anyone to sell, publish, circulate, anything which simulates a form of court or legal process. This section also prohibits the unauthorized sale, publication, and circulation of papers or documents which simulate the seal of the state or the stationery of any state agency or fictitious state agency.

Section 713.31, F.S., makes it a third degree felony to intentionally file a fraudulent lien.

Threats Against Public Servants

Section 838.021, F.S. Whoever harms or threatens a public servant, or any other person with whose welfare the public servant is interested, for the purpose of influencing or inducing any act or omission which is within the discretion of the public official, or which is believed to be within the discretion of the public official. A threat committed in violation of this section is punishable as a third degree felony. Harm done to a person in violation of this section is punishable as a second degree felony.

Actions "Under Color of Law"

Section 843.08, F.S., makes it a third degree felony to falsely assume or pretend be a law enforcement officer. A person who falsely personates a police officer during the course of the commission of a felony is guilty of a felony of the first degree. ("Police officer" may not be inclusive as "law enforcement officer")

Section 843.085, F.S., makes it a first degree misdemeanor to wear or display without authorization, any indicia of authority of any law enforcement agency or any colorable imitation which could deceive a reasonable person into believing such item is authorized. It is also unlawful to own or operate a motor vehicle marked in a way that a reasonable person would believe that a law enforcement agency authorized the marking

A. EFFECT OF PROPOSED CHANGES:

This bill makes it a third degree felony to commit any of the following three crimes:

1. Any person who deliberately impersonates or falsely acts as a public officer or tribunal, public employee or utility employee, including, but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority in connection with or relating to any legal process affecting persons and property, or otherwise takes any action under color of law against persons or property.

[Current law only relates to the impersonation of a law enforcement officer.]

2. Any person who simulates legal process, including, but not limited to, actions affecting title to real estate, or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent.

[Current law is broader because it punishes the sending, publication, circulation or sale of anything which simulates a court process, state seal, the stationery of any state agency or fictitious state agency. This bill addresses only the act of simulating legal process. This bill does raise the penalty for this offense from a second degree misdemeanor to a third degree felony.]

3. Any person who falsely under color of law attempts in any way to influence, intimidate, or hinder a public officer or law enforcement officer in the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse or harassment, or through the use of simulated legal process, commits a felony of the third degree.

[Present law broadly addresses threats or harm to a public servant, but not harassment or attempts to influence through simulated legal process or other acts under false color of law.]

Legal process is defined by this bill as a document or order issued by a court or filed or recorded for the purpose of exercising jurisdiction or representing a claim against a person or property, or for the purpose of directing a person to appear before a court or tribunal, or to perform or refrain from performing a specified act. Legal process includes, but is not limited to, a summons, lien, complaint, warrant, injunction writ, notice, pleading subpoena, or order.

Many states have experienced a phenomena known as "common law courts" which have been set up by groups like the Freemen. This bill responds to the problems that these self proclaimed "courts" can raise.

B. 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?

It does not reduce or increase any organization's lawful authority.

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

The bill does not reduce or increase any organization's lawful responsibilities, obligations, or work.

(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?

Not applicable.

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

Not applicable.

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

Not applicable.

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.

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?

The bill prohibits people from impersonating public employees or utility employees relating to legal process. The bill also prohibits people from influencing public employees by harassment or by simulated legal process.

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

C. SECTION-BY-SECTION ANALYSIS:

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

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

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

See Fiscal Comments.

D. FISCAL COMMENTS:

The third degree felony offenses prohibited by the bill were not ranked under the sentencing guidelines. Third degree felony offenses, not assigned an offense severity ranking, are score at the lowest level. Therefore, it would require a very extensive criminal history for a person to qualify for prison for violating the provisions of this bill. The Criminal Justice Estimating Conference has not yet analyzed this bill. It is anticipated that the impact will be insignificant.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

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

The bill does not reduce state tax shared with counties and municipalities.

V. COMMENTS:

This bill would include far more conduct than current law. To criminalize the impersonation of a public or utility employee is far broader than current law which only addresses law enforcement. Present law uses the term "pretend" which is not as precise as "impersonate", and the term "police officer" which is not as broad as "law enforcement officer". This bill corrects these shortcomings.

The acts prohibited by paragraph 3, (line 27, page 2) relating to simulated legal process, is already more broadly covered in section 817.38 and 817.39, F.S., and this paragraph would be repetitive, except that the penalty is increased.

Paragraph 5, (line 11, page 3) protects certain activities that are not limited by this bill, including constitutional rights to free speech and access to the courts. None of the rights or duties protected by this paragraph are affected by this bill.

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PAGE 9

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

J. Willis Renuart

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