

By the Committee on Criminal Justice and Senators Brown-Waite, Bronson, McKay, Horne, Grant, Carlton, Cowin, Klein, Kirkpatrick, Latvala, Sullivan, Forman, Casas, Campbell, Lee and Silver

307-1125A-99

1 A bill to be entitled
2 An act relating to operations of law
3 enforcement agencies; providing definitions;
4 providing that it is a third-degree felony to
5 contact or communicate with any person who is
6 directly involved in a tactical operation of a
7 law enforcement agency during the course of the
8 operation; providing that it is a third-degree
9 felony to authorize a broadcast or telecast of
10 any recording or depiction of a tactical
11 operation of a law enforcement agency during
12 the course of the operation; authorizing
13 contact or communication with a person involved
14 in such tactical operation and broadcast or
15 telecast of such tactical operation upon the
16 approval of the head of the law enforcement
17 agency having jurisdiction over such tactical
18 operation; requiring that a law enforcement
19 agency inform the public of the conclusion of
20 such tactical operation; encouraging the
21 development of a protocol; providing that the
22 absence of a protocol does not create a defense
23 to prosecution; providing that the act does not
24 affect the prosecution of any violation of law;
25 providing an effective date.

26
27 WHEREAS, the Legislature finds that, on May 19, 1998,
28 following a multicounty spree of violence that left two police
29 detectives and a state trooper dead, Hank Earl Carr, the
30 perpetrator of these crimes, barricaded himself in a
31 convenience store and took the store clerk hostage, and

1 WHEREAS, the Legislature finds that, during the ensuing
2 4-hour standoff with Carr, law enforcement officers attempted
3 to negotiate with Carr but were unable to contact him because
4 radio station personnel had telephoned the convenience store
5 and were airing a live, 6-minute interview with the suspect,
6 and a newspaper reporter also contacted Carr by telephone
7 after hearing the radio interview, and

8 WHEREAS, the Legislature finds that, in addition to the
9 actions by news media personnel which interfered with attempts
10 by law enforcement officers to negotiate with Carr,
11 helicopters from local television stations circled the scene
12 of the hostage-taking incident and broadcast live coverage
13 that identified the positions of law enforcement officers
14 involved in the tactical operation in response to the
15 incident, and

16 WHEREAS, the Legislature finds that, in contacting Hank
17 Earl Carr and in providing "live" coverage of law enforcement
18 officers directly involved in the tactical operation in
19 response to the Carr incident, during the course of such
20 tactical operation, certain members of the news media
21 seriously interfered with a hostage negotiation and endangered
22 the lives of law enforcement officers and the life of the
23 hostage taken by Carr by impeding immediate communications
24 between law enforcement officers and Carr, and by potentially
25 alerting Carr to the positions of the law enforcement officers
26 engaged in obtaining the release of the store clerk taken
27 hostage by Carr, and

28 WHEREAS, the Legislature finds that legislative action
29 is needed to address this type of interference, and that
30 legislative action should not be delayed until this type of
31

1 interference results in the injury or death of a law
2 enforcement officer or a civilian, and

3 WHEREAS, the Legislature finds that such tactical
4 operations are initiated very quickly and judicial proceedings
5 to determine whether access should be granted to persons
6 directly involved in, or directly affected by, such tactical
7 operations, or to determine whether "live" coverage of such
8 tactical operations should be granted, prior to such tactical
9 operations being initiated, are impractical, if not
10 impossible, given these circumstances, and

11 WHEREAS, while the Legislature recognizes that there
12 have been recent, laudable efforts by some media organizations
13 to enter into agreements with local law enforcement agencies
14 on the reporting of such potentially life-endangering
15 incidents so as to avoid any future occurrence of this type of
16 interference, the Legislature finds that such agreements rely
17 on self-policing, do not subject violators of those agreements
18 to punitive sanctions, bind only those media organizations
19 that are parties to the agreement, are always subject to being
20 nullified at some future date, and do not have statewide
21 application, and

22 WHEREAS, given the inadequacies of such agreements, the
23 Legislature finds that the most appropriate means to limit
24 this type of interference is to attach criminal liability to
25 this type of interference, and, consistent with its findings,
26 the Legislature intends to attach criminal liability to this
27 type of interference, and

28 WHEREAS, while the Legislature recognizes that each
29 citizen's right to a free press and free speech must be
30 protected, those rights are not absolute, and the Legislature
31 finds that the state has a legitimate, significant, and

1 compelling interest in safeguarding the physical safety of law
2 enforcement officers and others, which must be balanced with
3 each citizen's right to free speech and a free press, if those
4 rights are implicated by punishing this type of interference,
5 and

6 WHEREAS, the Legislature does not believe that "access
7 upon demand" to a member of a special weapons or tactical
8 operation team that is responding to a kidnapping or hostage
9 situation, or to a kidnaper, hostage-taker, or person who has
10 been kidnapped or taken or held hostage, is constitutionally
11 protected free speech or that such access is news-gathering or
12 reporting that is protected by the constitutional guarantee of
13 a free press, and

14 WHEREAS, the Legislature does not believe that "live"
15 coverage of tactical operations involving a special weapons or
16 tactical team deployed for the purpose of obtaining the
17 release of a person kidnapped or taken or held hostage is
18 constitutionally protected free speech or that such coverage
19 is news-gathering or reporting that is protected by the
20 constitutional guarantee of a free press, and

21 WHEREAS, the action the Legislature intends to take
22 does not constitute an absolute prohibition on access to any
23 person or an absolute prohibition on the gathering or
24 dissemination of any information, but rather only implicates
25 the timing of access to certain persons and the dissemination
26 of certain information as is necessary to ensure the physical
27 safety of law enforcement officers and civilians, NOW,
28 THEREFORE,

29

30 Be It Enacted by the Legislature of the State of Florida:

31

1 Section 1. Unauthorized communications prohibited
2 during the course of tactical operations.--

3 (1) As used in this section, the term:

4 (a) "Special weapons or tactical operations team or
5 detail" means any type of specialized team or detail of a law
6 enforcement agency, regardless of how such team or detail may
7 be described or designated, which is responsible for
8 responding to, and which uses specialized training,
9 techniques, tactics, and equipment to respond to, any:

10 1. Sensitive or potentially life-threatening
11 situation; or

12 2. Special tactical situation that, by its nature,
13 would be considered excessively dangerous or complex, or that
14 is beyond the capability of a routine patrol force or out of
15 the scope of normal patrol or investigative functions.

16 (b) "Hostage or crisis negotiator" means any person
17 used by a law enforcement agency for the purpose of
18 negotiating for the release of any person who has been
19 kidnapped or taken or held hostage.

20 (c) "Any person directly involved in or directly
21 affected by a tactical operation" means:

22 1. Any member of a special weapons or tactical
23 operations team or detail, or any hostage negotiator or crisis
24 negotiator, who is deploying or deployed in response to a
25 situation involving a kidnapping or the taking or holding of a
26 hostage;

27 2. The perpetrator of a kidnapping or the taking or
28 holding of the hostage; or

29 3. The person kidnapped or taken or held hostage.

30 (d) "Tactical operation" means any operation involving
31 a special weapons or tactical operations team or detail, or

1 any operation involving a hostage negotiator or crisis
2 negotiator, in which such team, detail, or negotiator deploys,
3 or is deployed, in response to a situation that involves a
4 kidnapping or the taking or holding of a hostage.

5 (e) "During the course of such tactical operation"
6 means from the time a tactical operation is commenced by a
7 special weapons or tactical operations team or detail, or a
8 hostage negotiator or crisis negotiator, deploying or being
9 deployed until the time at which the law enforcement agency
10 having jurisdiction over such tactical operation expressly
11 informs the public that such tactical operation has concluded.

12 (f) "Law enforcement agency" means an agency of the
13 state, a political subdivision of the state, or the United
14 States if the primary responsibility of the agency is the
15 prevention and detection of crime or the enforcement of the
16 penal, traffic, or highway laws of this state and if its
17 agents and officers are empowered by law to conduct criminal
18 investigations and make arrests.

19 (2) Except as provided in subsection (4), any person
20 who:

21 (a) Contacts or communicates with any person directly
22 involved in or directly affected by a tactical operation
23 during the course of such tactical operation; and

24 (b) Knew or should have known that such person was
25 directly involved in or directly affected by such tactical
26 operation,

27
28 commits a felony of the third degree, punishable as provided
29 in s. 775.082, s. 775.083, or s. 775.084.

30 (3) Except as provided in subsection (5), any person
31 who:

1 (a) Authorizes a broadcast or telecast to the public
2 of any type of audio or video transmission that records or
3 depicts a tactical operation during the course of such
4 tactical operation; and

5 (b) Knew or should have known that the activities
6 broadcast or telecast to the public by any type of video or
7 audio transmission recorded or depicted such tactical
8 operation,

9
10 commits a felony of the third degree, punishable as provided
11 in s. 775.082, s. 775.083, or s. 775.084.

12 (4) Notwithstanding subsection (2), a person may
13 contact or communicate with any person directly involved in or
14 directly affected by a tactical operation during the course of
15 such tactical operation, if such contact or communication is
16 approved by the head of the law enforcement agency having
17 jurisdiction over such tactical operation, or by his or her
18 designee.

19 (5) Notwithstanding subsection (3), a person may
20 authorize a broadcast or telecast to the public of any type of
21 audio or video transmission that depicts a tactical operation
22 during the course of such tactical operation if such broadcast
23 or telecast is approved by the head of the law enforcement
24 agency having jurisdiction over such tactical operation, or by
25 his or her designee.

26 (6) A law enforcement agency having jurisdiction over
27 a tactical operation shall expressly inform the public when
28 such tactical operation is concluded as soon as is reasonably
29 possible. The Legislature encourages each law enforcement
30 agency to develop and maintain a protocol for responding to
31 any member of the public or any member of the media who

1 requests information regarding a tactical operation. However,
2 this section does not require a law enforcement agency to
3 develop such protocol and does not require a law enforcement
4 agency to disclose confidential or privileged information
5 regarding such tactical operation. The absence of such
6 protocol is not a defense to prosecution for a violation of
7 this section.

8 (7) This section does not affect the prosecution of
9 any person for a violation of section 843.01 or section
10 843.02, Florida Statutes, or for any other violation of law.

11 Section 2. This act shall take effect July 1, 1999.

- 1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 166
- 4 - Provides that it is a third degree felony if a person
5 contacts or communicates with a person directly involved
6 in or directly affected by a tactical operation during
7 the course of that tactical operation, and the person
8 knew or should have known that the person contacted was
9 directly involved in or directly affected by the tactical
10 operation.
- 11 - Provides that it is a third degree felony if a person
12 authorizes a "live" broadcast or telecast of such
13 tactical operation, and the person making such
14 authorization knew or should have known that the activity
15 broadcasted or telecasted "live" was such tactical
16 operation.
- 17 - Defines the terms: "tactical operation," "special weapons
18 or tactical operations team or detail," "hostage or
19 crisis negotiator," "during the course of such tactical
20 operation," "any person directly involved in or directly
21 affected by a tactical operation," and "law enforcement
22 agency."
- 23 - Requires that the law enforcement agency having
24 jurisdiction over such tactical operation inform the
25 public when such operation is concluded.
- 26 - Encourages, but does not require, all law enforcement
27 agencies to develop a protocol for dissemination of
28 information relating to such tactical operation.
- 29 - Provides that the absence of such protocol is not a
30 defense to prosecution.
- 31 - Provides that the new section does not affect a
prosecution for resisting arrest (with or without
violence) or a prosecution for any other violation of
state law.