

STORAGE NAME: h0539a.lec

DATE: March 29, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
ANALYSIS**

BILL #: CS/HB 539

RELATING TO: Writs of Bodily Attachment

SPONSOR(S): Law Enforcement and Crime Prevention Committee and Representative Sobel

TIED BILL(S):

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 6 NAYS 3
 - (2) JUDICIARY (CJC)
 - (3) CLAIMS (CJC)
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 539 amends section 61.11(2), F.S., inserting a new paragraph (d). The bill provides that if a law enforcement officer fails to gain admittance to any building or property upon announcing his or her authority and purpose in executing a writ of bodily attachment, the officer may use all reasonable and necessary force to enter or gain access to a building or property where the person who is subject of the writ is reasonably believed to be.

A law enforcement officer executing a writ of bodily attachment in accordance with this section, shall not be held criminally or civilly liable for false arrest, false imprisonment, or false detention.

This bill shall take effect October 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Writs of Bodily Attachment ---Section 61.11(2), F.S.

Section 61.11(2), F.S., contains provisions relating to the issuance of writs of bodily attachment in connection with enforcement of court-ordered child support obligations. A writ of bodily attachment is "...[t]he arrest of a person who is either in contempt of court or is to be held as security for the payment of a judgment...[a] writ ordering legal seizure of... a person." *Black's Law Dictionary* (7th ed. 1999). Typically, writs of bodily attachment are issued following a hearing on a motion for civil contempt, pursuant to Rule 12.615 of the Florida Family Law Rules of Procedure.

Pursuant to Rule 12.615(c), Fla. Fam. L. R. P., if the court finds the movant has established that the other party (the contemnor) has failed to pay all or part of the support set forth in a prior court order, and the contemnor has failed to appear at the hearing after receiving notice of the motion and hearing, the court shall set a reasonable purge amount based on the individual circumstances of the parties. The court may then issue a writ of bodily attachment and direct that, upon execution of the writ, the alleged contemnor be brought before the court within 48 hours for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful.

Section 61.11(2)(a), F.S., provides that the writ of attachment must include, at a minimum, such information on the respondent's physical description and location as is required for entry of the writ into the Florida Crime Information Center (FCIC) telecommunications system. The writ shall direct that service and execution of the writ may be made on any day of the week and any time of the day or night. Pursuant to s. 61.11(2)(b), F.S., the clerk of the court is required to forward a copy of the writ for service to the sheriff of the county in which the writ is issued. Subsection (2)(c) of s. 61.11, F.S., requires the sheriff, upon receipt of the writ from the clerk, to enter the information on any unserved writ into the FCIC system to make the information available to other law enforcement agencies in the state. The writ is then enforceable in all counties of the state. Once a writ is purged, modified, recalled, or terminated, s. 61.11(2)(e), F.S., requires the clerk of the court to notify the sheriff who received the original writ, who is then required to modify or cancel the writ in the FCIC system.

Criminal and Civil Liability of Law Enforcement Officers

As a general rule, a law enforcement officer may be held liable in damages to any person injured in consequence of a breach of any of the duties connected with his office. 40 *Fla. Jur.2d* Police, Sheriffs, and Constables s. 135 (1982). Furthermore, certain breaches of duty on the part of a law enforcement officer are punishable by the imposition of a penalty, fine, or even imprisonment as provided by law. *Id.* In certain cases, officers may be made to respond either civilly or criminally for wrongful acts committed by them. *Miami v. Bethel*, 65 So.2d 34 (Fla. 1953). While a law enforcement officer's authority to make an arrest includes the power to use reasonable force, the use of excessive force may subject the officer to civil liability as well as criminal prosecution. *Mazzilli v. Doud*, 485 So.2d 477 (Fla. 3d D.C.A. 1986); *Dixon v. State*, 101 Fla. 840, 132 So. 684 (1931). The agency employing the officer also can be held liable for the officer's use of excessive force. *Richardson v. Pompano Beach*, 511 So.2d 1121 (Fla. 4th D.C.A. 1987).

However, under s. 768.28(9), F.S., the statute governing the waiver of sovereign immunity, a police officer is immune from tort action for a negligent arrest made in the scope of his employment unless the officer acts in bad faith, maliciously, or in wanton and willful disregard of human rights, safety, or property. See *Carpenter v. St. Petersburg*, 547 So.2d 339 (Fla. 2d D.C.A. 1989). A governmental agency employing a police officer is liable for torts committed by the officer in making an arrest unless the tortious acts were committed outside the scope of the officer's employment or the officer was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. *Richardson*, 511 So.2d 1121.

C. EFFECT OF PROPOSED CHANGES:

Writs of Bodily Attachment---Section 61.11(2), F.S.

CS/HB 539 amends s. 61.11(2), F.S., and specifies that a writ of bodily attachment may be served and executed on any day of the week and any time of the day or night. It also provides that a law enforcement officer acting in accordance with a writ of bodily attachment may use all reasonable and necessary force to both enter the building or property where the subject of the writ is reasonably believed to reside and to take custody of the person. The bill requires that law enforcement officers announce their authority and purpose. Reasonable and necessary force can only be used if admittance is not gained after announcement of authority and purpose.

The bill provides a clear expression of the authority of law enforcement to use reasonable and necessary force in execution of a writ of bodily attachment. Law enforcement officers are required to announce their purpose and authority. The use of the reasonable and necessary force is limited to the building and property where the person subject to the writ is reasonably believed to reside, to instances where they fail to gain admittance to the building after announcing their authority and purpose, and to taking the person into custody.

Regarding the requirement of "reasonable force necessary under the circumstances," Florida courts have ruled that, in terms of making an arrest, whether the force used in making the arrest was reasonable is a question of fact to be determined in light of the circumstances of each particular case. See *Mazzilli v. Doud*, 485 So.2d 477 (Fla. 3rd D.C.A. 1986); *Nelson v. Howell*, 455 So.2d 608 (Fla. 2d D.C.A. 1984).

D. 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 GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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:

A. CONSTITUTIONAL ISSUES:

The Fourth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of the State of Florida both provide a person with the right to be from unreasonable searches and seizures. In *McClain v. Crowder*, 840 F.Supp. 897 (S.D. Fla. 1994), the court, in a Section 1983 federal civil rights lawsuit brought against a sheriff and his deputies, ruled that s. 901.19(1), F.S., was unconstitutional as applied to the facts of that particular case. Section 901.19(1), F.S., known as the “knock and announce” rule, provides that an officer, after announcing his or her authority and purpose in order to make an arrest by a warrant and failing to gain entrance, may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be. The court in *McClain* held that Florida’s knock and announce rule is unconstitutional as it allows law enforcement officers, armed only with an arrest warrant and not a search warrant, to enter **any** building or property, including a third-party residence. *Id.* at 903.

Due to the bill’s similarity to s. 901.19(1), F.S., it could be constitutionally deficient for two reasons. First, it does not contain any type of a “knock and announce” standard which is required by the Fourth Amendment of the United States Constitution and Article I, Section 12 of the Florida Constitution. Second, it does not contain any limitation as to whose property may be entered in order to execute the writ. Pursuant to the court’s interpretation of s. 901.19(1), F.S., in *McClain*, it could be argued that officers can only execute writs of attachment involving the use of force to enter the property of the person who is the subject of the writ.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2000 the Committee on Law Enforcement and Crime Prevention passed a strike all amendment to HB 539. The amendment to CS/HB 539 will substantially amend s. 61.11 (2) F.S.

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VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

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