

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 752

SPONSOR: Senator Geller

SUBJECT: Writs of Bodily Attachment

DATE: March 17, 2000

REVISED: 02/08/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/2 amendments</u>
2.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

CS/SB 752 authorizes law enforcement officers to use all reasonable force necessary to enter the building or property where the person subject to the writ is believed to reside and to take custody of the person, when a writ of bodily attachment has been issued for failure to comply with a court-ordered child support obligation. The bill requires law enforcement officers to announce their authority and purpose and to use reasonable and necessary force only if admittance is not gained after such announcement.

This bill takes effect upon becoming law.

This bill substantially amends section 61.11(2) of the Florida Statutes.

II. 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), Florida Family Law Rules of Procedure, if the court finds the movant (the custodial parent) 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. A purge is the condition(s) with

which the contemnor must comply in order to clear and cancel the writ and usually includes an amount to be paid toward the child support obligation. 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.

The writs of bodily attachment, pursuant to s. 61.11(2), F.S., can be executed as a result of an initiated action, such as going to the respondent's residence, or when an outstanding writ is identified at the time there has been a violation of a law, such as a traffic violation. If a subject is unwilling to be taken into custody or to allow law enforcement to enter their building or property, some action and use of force is then necessary by law enforcement, if the writ is to be executed. The authority of the law enforcement officer to take the actions necessary to take an unwilling subject into custody in the execution of writs issued pursuant to 61.11, F.S., is not explicitly provided in statute.

However, the execution of other court orders to take an individual into custody as a result of actions or inactions in a civil proceeding have included taking the individual into custody, even when the individual is unwilling to be taken into custody. Judges have inherent authority to order law enforcement officials to arrest and thus take a person into custody through a "bench warrant" when the person has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or a trial (Black's Law Dictionary, 7th ed. 1999). These bench warrants can apply to either civil or criminal proceedings.

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. 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 v. Pompano Beach*, 511 So.2d 1121.

III. Effect of Proposed Changes:

The bill 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
