

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: SB 752

SPONSOR: Senator Geller

SUBJECT: Writs of Bodily Attachment

DATE: February 6, 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>CF</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill amends subsection (2) of s. 61.11, F.S., to provide that law enforcement officers may use all reasonable force necessary to enter any building or property to take custody of a person pursuant to a writ of bodily attachment issued for failure to comply with a court-ordered child support obligation. The bill also provides law enforcement officers with criminal and civil immunity unless the officers fail to exercise good faith and fail to use reasonable force when taking the person into custody.

The 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), 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.

III. Effect of Proposed Changes:

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

The bill amends subsection (2) of s. 61.11, F.S., by redesignating present paragraphs (d) and (e) as (e) and (f), respectively, and adding a new paragraph (d). The bill 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 force necessary to enter any building or property to take custody of the person who is the subject of the writ. The bill further provides that a law enforcement officer may not be held criminally or civilly liable if the officer acted in good faith and used only the reasonable force necessary to execute the writ.

Criminal and Civil Liability of Law Enforcement Officers

The bill has two provisions relevant to immunity granted to law enforcement officers when executing writs of bodily attachment. The first provision states that an officer "...may use all reasonable force necessary to enter any building or property to take custody of the person who is the subject of the writ." As drafted, it could be construed that officers may use necessary reasonable force only to enter any building or property, but not to take custody of the person who is the subject of the writ. However, since a writ of bodily attachment is defined as an arrest of a person who is in contempt of court, s.776.05(1), F.S., may provide officers with the authority to use reasonable force in taking the person into custody as it states, in pertinent part, that "[a] law enforcement officer...need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force...which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest..."

The bill's second provision pertaining to immunity provides that an officer may not be held criminally or civilly liable if the officer acted in good faith and used only the reasonable force necessary to execute the writ. To receive immunity, the officer must do two things: (1) act in good faith in executing the writ; and (2) use only the reasonable force necessary to execute the writ. Florida courts have discussed the meaning of similar concepts in cases brought against police officers for injuries and damages resulting from lawful arrests. Traditionally, a presumption of good faith attaches to an officer's use of force in making a lawful arrest and an officer is liable for damages only where the force used is clearly excessive. *City of Miami v. Sanders*, 672 So. 2d 46 (Fla. 3rd D.C.A. 1996). If excessive force is used in an arrest, the ordinarily protected use of force by a police officer is transformed into a battery for which criminal and civil liability can attach. *Id.* Since battery is an intentional act involving intentional, affirmative conduct, as opposed to an omission or failure to act (i.e. negligence), it is conceivable that the bill's good faith requirement may be met as long as the police officer does not engage in intentionally wrongful conduct.

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).

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:

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 free 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.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could subject law enforcement officers and their employers to litigation when officers act outside the parameters of the bill's immunity provisions. However, the impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:**#1 by Judiciary:**

Adds a provision which requires law enforcement officers to announce their authority and purpose prior to using reasonable force to enter any building or property to execute the writ of bodily attachment.

#2 by Judiciary:

Deletes the provision from the bill which would provide law enforcement officers with civil and criminal immunity as long as they acted in good faith and used only the reasonable force necessary to execute the writ.