

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: SB 2002

SPONSOR: Senators Posey and Clary

SUBJECT: Sovereign Immunity

DATE: April 17, 2005      REVISED: 04/20/05 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/1 amendment</b>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

This proposed legislation amends s. 768.28, F.S., the waiver of sovereign immunity in tort actions, and creates a new subsection establishing the limits of civil liability for law enforcement officers. Under this bill a law enforcement officer would not be liable for damages to a third party for injury or death caused by a person fleeing from an officer if: (1) the pursuit is conducted in a manner that does not involve a willful or wanton disregard for the safety of people or property by the officer; and (2) the officer has a reasonable belief that the person he or she is pursuing has committed a felony.

This bill substantially amends section 768.28 of the Florida Statutes.

**II. Present Situation:**

Sovereign Immunity is the legal doctrine which provides that a government may not be sued for a claim without its consent. However, the federal government and most states have waived their immunity from suit in varying degrees in certain cases. Article X, section 13 of the Florida Constitution establishes that laws may be enacted in the statutes for suits to be brought against the state for its liabilities. Accordingly, s. 768.28(1), F.S., provides that the state “waives sovereign immunity for liability for torts, but only to the extent specified in this act.”

In s. 768.28(5), F.S., the state has limited its financial liability for a tort action by any one person to \$100,000 or to \$200,000 for additional claims and judgments arising from the same incident or occurrence. If a judgment is rendered by a court in excess of those amounts, the plaintiff may pursue a claims bill in the legislature for the amount in excess of the statutory limit.

Section 768.28(9)(a) F.S., provides that an officer, employee, or agent of the state or any of its subdivisions may not be held personally liable or named as a defendant for an injury or damage if the act occurred in the scope of his or her employment unless the officer, employee, or agent acted in bad faith or with malicious purpose or in a manner that exhibited a “wanton and willful disregard of human rights, safety, or property.” If the officer’s actions caused injury to another party, and the officer did not act in a manner that was wanton or willful, the standard by which the negligence is measured is the standard of reasonableness. The section further provides that it will not be liable for acts or omissions which are committed while the officer, employee, or agent acts outside the course and scope of his or her employment or for acts that are “committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”

Over the years multiple cases have been brought by plaintiffs under this statute seeking relief against municipalities and counties for damages sustained by them during high speed chases. The plaintiffs are often seeking damages from the government for injuries actually caused by the suspect, not the law enforcement officer. The plaintiff is suing the government for relief because the law enforcement officer initiated the chase which caused the injury. In 1989, the Florida Supreme Court held that when the defendant’s conduct, the government’s conduct, creates a “foreseeable zone of risk” a duty is placed upon the defendant to either lessen that risk or ensure that sufficient precautions are taken to protect other people from that harm which the risk poses. *Kaisner v. Kolb*, 543 So.2d 732 (Fla.1989)

The courts have held that sovereign immunity does shield governmental entities from acts that are deemed to be “discretionary” in their nature but does not shield those entities from acts that are “operational.” An act is considered to be “discretionary” and therefore immune from liability if it involves fundamental questions of policy or planning. An act is “operational” if it is not necessary or inherent in policy or planning and reflects a “secondary decision as to how policies or plans will be implemented.” *City of Pinellas Park v. Brown*, 604 So.2d 1222 (Fla.1992)

### **III. Effect of Proposed Changes:**

This proposed legislation would create a new subsection in s. 768.28, F.S., which would establish the limits of civil liability for law enforcement officers for damages caused specifically by fleeing suspects who are pursued by law enforcement officers. This legislation does not remove the officer’s personal responsibility for damages which he or she causes, rather, the focus is on removing liability from the officer for damages the fleeing suspect causes to others while being pursued.

Under the proposed language a law enforcement officer, as defined in s. 943.10, F.S., or his or her employing agency, would not be liable for civil damages for injury or death caused by a person who is fleeing from the officer if: (1) the pursuit is conducted in a manner that does not

involve either willful or wanton disregard for the safety of people or property and (2) the officer has a reasonable belief that the person he or she is pursuing has committed a felony.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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:**

This bill states that the officer must have a reasonable belief that the person he or she is pursuing has committed a felony. A “felony” is a very broad classification and is not limited to crimes that pose an immediate danger to the public or would justify a chase. Perhaps the language should be amended to provide for the pursuit of a criminal whose actions, if unchecked, are placing the public in an imminent risk of danger.

**Update:** This broad reference to a “felony” has been addressed and remedied through amendment barcode 101070 (traveling with bill) which replaces the term with a “forcible felony” as defined in s. 776.08, F.S.

**VII. Related Issues:**

None.



## VIII. Summary of Amendments:

### **Barcode 101070 by Criminal Justice:**

The substance of the original bill is replaced with this amendment which defines the limits of civil liability for damages for a law enforcement officer pursuing a suspect. Under this amendment a law enforcement officer or his or her employing agency would not be liable for damages to a third party for injury or death caused by a person fleeing from an officer if: (1) the pursuit is conducted in a manner that does not involve conduct by the officer that is so reckless or lacking in care as to constitute a disregard for the life, safety, or rights of other people or property; (2) when the officer begins the pursuit, he or she reasonably believes that the person fleeing has committed a forcible felony or the officer reasonably believes that the person fleeing is driving under the influence and the officer has observed the vehicle operated in a manner imminently dangerous to public safety; and (3) the pursuit of the fleeing suspect is conducted pursuant to a written high-speed pursuit policy adopted by the employing agency and the officer has been trained in that policy.

---

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

---