

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: Judiciary Committee

BILL: SB 124

INTRODUCER: Senator Posey

SUBJECT: Sovereign Immunity/Law Enforcement

DATE: March 28, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that an employing law enforcement agency is not liable for injury, death, or property damage caused by a person fleeing from a law enforcement officer in a motor vehicle if:

- the pursuit is not conducted in a reckless manner or wanting in care as to constitute disregard of human life;
- the officer reasonably believes that the person fleeing has committed a forcible felony; and
- the pursuit is conducted in accordance with a written policy governing high speed pursuit and the officer received instruction from the employing agency on the high speed pursuit policy.

This bill substantially amends section 768.28, Florida Statutes.

II. Present Situation:

Sovereign Immunity

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 claim 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 the state 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.”

Police Chases

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 government’s conduct in a police chase creates a “foreseeable zone of risk,” a duty is placed upon the government to either lessen that risk or ensure that sufficient precautions are taken to protect other people from that harm which the risk poses.¹ According to the Court, the risk that a person fleeing police will hurt a bystander can be reduced by discontinuing the chase.^{2 3}

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 those policies or plans will be implemented.”⁴ The decision to engage in a high-speed chase is generally an operational decision that is not immune from liability.⁵ The decision may be a planning decision in an emergency in which someone will be at risk of harm if a person is not pursued.⁶

¹ *City of Pinellas Park v. Brown*, 604 So. 2d 1222, 1225 (Fla. 1992) (quoting *Kaisner v. Kolb*, 543 So. 2d 732, 735 (Fla. 1989)).

² *Id.* at 1225 and note 8.

³ Justice Overton’s dissenting opinion in *Brown* stated that a “definitive policy in regard to car chases needs to be established by the executive and legislative branches . . .” *Id.* at 1228. Justice Overton also stated that the Court’s ruling “will encourage offenders to attempt escapes. In my view, this message will lead to more attempts to flee and, consequently, will put more innocent bystanders at risk.” *Id.* at 1229.

⁴ *Id.* at 1226.

⁵ *Id.*

⁶ *Id.* at 1227.

Under s. 316.1935(3)(b), F.S., a person who drives at high speed or with wanton disregard for the safety of persons or property and causes serious bodily injury or death to a another person, while fleeing a law enforcement officer in a marked vehicle, commits a first-degree felony.

III. Effect of Proposed Changes:

This bill would create a new paragraph in s. 768.28(9), F.S., which would establish some limits on civil liability for law enforcement agencies when their officers pursue fleeing suspects. The bill provides an incentive for law enforcement agencies to enact high-speed chase procedures, which might limit their exposure to liability.

Under this bill, a law enforcement agency will not be liable for injury, death, or property damage caused by a person fleeing from a law enforcement officer in a motor vehicle if: (1) the pursuit is carried out in a manner that does not involve conduct by the officer that is so reckless or wanting in care as to demonstrate a disregard of human life, safety, or the property of another; (2) the officer reasonably believes, when the pursuit is begun, that the person has committed a forcible felony; and (3) the pursuit is conducted pursuant to a written policy governing high-speed pursuit adopted by the employing agency. The policy must contain specific procedures for initiating and terminating high-speed pursuits, and the officer must have received training from the employing agency on the high-speed pursuit policy.

The bill takes effect upon becoming law and applies to chases that occur on or after that date.

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:

This bill might reduce the costs to law enforcement agencies of defending lawsuits resulting from damages caused by a person who leads a law enforcement officer on a high-speed chase.

This bill may encourage law enforcement agencies without high-speed chase policies to adopt a policy.

During the past 10 years the Legislature has passed 7 claim bills that compensated plaintiffs for damages caused by a person fleeing law enforcement officers. The payments authorized by those bills total \$12,508,829.⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

⁷ These payments are authorized in chs. 1995-512, 1995-471, 1999-406, 2000-428, 2000-430, 2001-302, and 2002-329, L.O.F.

VIII. Summary of Amendments:

None.

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