

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill requires each local law enforcement agency to adopt a written police pursuit policy governing the conduct of law enforcement officers who are pursuing a fleeing vehicle.

B. EFFECT OF PROPOSED CHANGES:

Section 316.1935, F.S., makes it unlawful for anyone to flee or attempt to elude a law enforcement officer. A person is deemed fleeing when the operator of a vehicle has knowledge that they have been ordered to stop their vehicle by an authorized law enforcement officer but willfully refuses and fails to stop. Fleeing from a law enforcement officer is a third degree felony.

Currently, Florida Statutes do not establish a policy regarding the conduct of law enforcement officers in the pursuit of fleeing vehicles. Rather, the conduct of law enforcement officers in the pursuit of fleeing vehicles is governed by local policies.

HB 613 requires each local law enforcement agency, by July 1, 2007, to adopt a written police pursuit policy governing the conduct of law enforcement officers who are pursuing a fleeing vehicle. This bill encourages local law enforcement to consider comments from the public when adopting a policy.

This bill also requires each local law enforcement agencies to certify every four years to the Criminal Justice Standards and Training Commission that written policies have been adopted.

C. SECTION DIRECTORY:

Section 1. This bill requires each local law enforcement agency to adopt a written police pursuit policy governing the conduct of law enforcement officers who are pursuing a fleeing vehicle.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is unknown at this time how many local law enforcement agencies currently have written police pursuit policies. It is also unknown at this time how much it will cost local law enforcement agencies who do not have written police pursuit policies to adopt one.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires local law enforcement agencies, which are funded by counties and municipalities, to adopt a written police pursuit policy and to certify said policies every four years with the Criminal Justice Standards and Training Commission. Adopting written policies may require the expenditure of funds. However, the bill may be exempt from the mandate requirements if the fiscal impact of the bill, on an aggregate basis for all local law enforcement agencies in the state, is less than \$1.9 million over the long term. At this time, the fiscal impact of the bill is unknown.

If the bill is not exempt from the mandates requirements imposed by Art. VII, section 18 of the Florida Constitution, the Legislature must determine that the law fulfills an important state interest and the bill must be approved by two-thirds of the House and Senate membership.

2. Other:

Sovereign Immunity

HB 613 requires each local law enforcement agency to adopt a policy governing the pursuit of fleeing vehicles by law enforcement; this requirement may subject these agencies to tort liability.

Section 13, Art. X of the Florida Constitution provides, “[p]rovision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating”. The Florida Legislature exercised this authority when it enacted section 768.28, F.S., which waives sovereign immunity and imposes liability on the state or an agency or subdivision of the state for any tort claim in which a private individual would be liable under similar circumstances. An agency or subdivision of the state includes counties and municipalities.¹

This first question is whether a duty is owed. “There can be no governmental [tort] liability unless a common law or statutory duty of care existed that would have been applicable to an individual under similar circumstances.”² “Where a defendant’s conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon [the] defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses³.”

The next question is whether the state or an agency or subdivision of the state will be immune from liability notwithstanding the duty placed upon them. Sovereign immunity does not shield acts that are “operational” in nature but only those that are “discretionary⁴.” An act is considered discretionary

¹ See section 768.28(2), F.S.

² *Kaisner v. Kolb*, 543 So.2d 732, 734 (Fla. 1989); see also *Trianon Park Condominium Ass’n Inc. v. City of Hialeah*, 468 So.2d 912 (Fla. 1985).

³ *Kaisner*, at 735.

⁴ *Id* at 737.

if it involves fundamental questions of policy or planning.⁵ Conversely, an act is considered operational if it reflects a secondary decision as to how policies or plans will be implemented.⁶

Pending Legislation

HB 199, sponsored by Representative Patterson, is pending legislation that addresses the sovereign immunity issue discussed above. HB 199 provides that an employing law enforcement agency is not liable for certain damages caused by a person fleeing from a law enforcement officer in a motor vehicle (hot pursuit) if:

- the pursuit is not conducted in a reckless manner;
- the officer reasonably believes that the person fleeing has committed a forcible felony; and
- the pursuit is conducted pursuant to a specified written policy governing high-speed pursuit, and the officer received instructional training on such policy.

HB 199 includes a severability clause in the event that any provision of the act is held invalid. The act applies to causes of action that accrue on or after the effective date of the act; the act takes effect upon becoming a law.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Criminal Justice Committee passed House Bill 613 with one strike all amendment. The original bill required the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement; in turn, state and local law enforcement agencies were required to adopt policies for vehicle pursuits and to certify annually to the Commission that written policies have been adopted that comply with the model policy.

The original bill also required the Commission to develop by July 1, 2007, training objectives for a seven-hour course covering emergency vehicle operations and the conduct of vehicle pursuits that persons seeking law enforcement certification after that date must complete. State and local agencies were directed to provide in-service training that complies with Commission-approved learning objectives; the training must be at least 8 hours. The Commission was authorized to impose licensing sanctions.

The strike all amendment requires each local law enforcement agency, by July 1, 2007, to adopt a written police pursuit policy governing the conduct of law enforcement officers who are pursuing a fleeing vehicle. The strike all amendment also requires each local law enforcement agency to certify every four years to the Commission that written policies have been adopted.

This analysis reflects HB 613 as amended.

⁵ Pinellas Park v. Brown, 604 So.2d 1222 (Fla. 1992).

⁶ Id.