

STORAGE NAME: h0141c.jud

DATE: February 22, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 141

RELATING TO: Law Enforcement Agencies/Operations

SPONSOR(S): Rep. Russell & others

COMPANION BILL(S): SB 0166(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT & CRIME PREVENTION YEAS 8 NAYS 0
 - (2) JUDICIARY YEAS 8 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 141 makes it a third degree felony for any person to contact or communicate with any person who is directly involved in or directly affected by a law enforcement tactical operation when that person knows that the subject of the contact or communication was directly involved in or directly affected by a law enforcement tactical operation. The bill also prohibits any person from knowingly broadcasting or telecasting live audio or video transmissions of an ongoing law enforcement tactical operation while that operation is in progress. Violators shall be guilty of a third degree felony.

If a person obtains express authorization from the law enforcement officer who has jurisdiction over the operations or incident, that person may initiate contact or communication with a person directly involved in or directly affected by a law enforcement tactical operation and may broadcast or telecast a live audio or video transmission of tactical law enforcement operations without violating the provisions of the bill.

The bill has an effective date of July 1, 1999.

The bill may be subject to constitutional challenge on grounds that it infringes on the First Amendment rights of broadcasters and other media entities.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

HB 141 was prompted by a standoff between Hank Earl Carr and law enforcement officers. The standoff was televised live, and reporters had contacted Hank Carr on the telephone, conducting an interview while he was holding a hostage. These actions interfered with law enforcement's attempts to negotiate for the release of the hostage, as well as revealing on television the location on the scene of law enforcement personnel.

Florida law does not presently criminalize or otherwise prohibit the initiation of contact with a person who is perpetrating a crime or the live broadcast or telecast of law enforcement tactical operations. However, the Florida Statutes address various related issues, such as what constitutes obstruction of justice, and what types of information the news media is entitled to have from governmental entities.

1. Refusal To Aid A Law Enforcement Officer/Resisting A Law Enforcement Officer

Section 843.06, F.S., makes it a misdemeanor of the second degree for a person to refuse a request for aid from a law enforcement officer. Similarly, section 316.072(3), F.S., requires obedience to the lawful orders or directions of police and fire department officials. Similarly, sections 843.01 and 843.02, F.S., make it a third and first degree misdemeanor, respectively, for a person to knowingly resist, obstruct, or oppose a law enforcement officer with or without violence.

2. Public Records Exceptions

Florida law provides for exceptions to the public records law "active" "criminal intelligence information" and "criminal investigation information" held by law enforcement agencies. s. 119.07(3)(b), F.S. "Criminal intelligence information" is defined in s. 119.011(3)(a), F.S., to mean information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." "Criminal investigative information" is defined in s. 119.011(3)(b), F.S., as information relating to "an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

Criminal intelligence information is considered to be "active" as long as "it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities." Section 119.011(3)(d)1., F.S. Criminal investigative information is considered to be "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d)2., F.S. In addition, criminal intelligence information and criminal investigative information are considered "active" while such information is directly related to pending prosecutions or appeals.

The purpose of this exemption is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. This exemption also protects information which, if released, could cause harm to citizens and law enforcement personnel.

There is a significant distinction between confidential information in the possession of a law enforcement agency (which the news media would like to obtain), and non-confidential information the news media is in the process of obtaining for broadcast or telecast. Consequently, it is questionable whether these exceptions to the public records law will have any relevance in an analysis of the broadcast of news events such as public and ongoing police activities or the initiation of contact with persons who are subject to such activities or who are directly involved in such activities.

3. Surveillance Techniques and Personnel

Section 119.07(3)(d), F.S., exempts from public inspection information revealing surveillance techniques, procedures, or personnel. This section also restricts access to any comprehensive inventory of state and local law enforcement resources and plans relating to emergency response except for certain agencies specified in s. 119.07(3)(f), F.S., who have an official need for such access.

B. EFFECT OF PROPOSED CHANGES:

Contact with Person Involved In Tactical Operation

HB 141 prohibits any attempts to contact or directly communicate with any person directly involved in or directly affected by a police tactical operation, including specific law enforcement officers, the perpetrator of a kidnaping or hostage taker, and the hostage/victim during the course of any tactical law enforcement operations, when the person attempting the contact or communication knew or should have known that such person was directly involved in or directly affected by such tactical operation. The person committing the stated offense shall be guilty of a third degree felony.

Broadcast of Audio/Video Transmission of Tactical Operation

HB 141 also prohibits any person from authorizing the broadcast or telecast to the public of an audio or video transmission of the tactical operation while that operation is in progress when that person knows that the broadcast or telecast depicts such tactical operation. This prohibition would continue until the tactical operations are completed. The person committing the stated offense shall be guilty of a third degree felony.

Authorization

If a person obtains express authorization from the law enforcement officer who has jurisdiction over the operations or incident, that person may initiate contact or communication with the individual directly involved in the incident, and may broadcast or telecast a live audio or video transmission of tactical law enforcement operations, without violating the provisions set forth in this bill.

Notice of Termination of Tactical Operation

HB 141 requires the law enforcement agency having jurisdiction over the tactical operation to expressly inform the public when the tactical operation is concluded as soon as is reasonably possible.

Definitions

The bill defines "special weapons or tactical operations team or detail," "hostage or crisis negotiator," "any person directly involved in or directly affected by a tactical operation," "tactical operation," "during the course of such tactical operation," and "law enforcement agency."

Exemption

HB 141 does not affect the prosecution of a person for violation of sections 843.01 or 843.02 (resisting an officer with/without violence) or any other violation of law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill does not create, increase, or reduce any authority to make rules or adjudicate disputes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill does not eliminate or reduce any agency program.

(2) what is the cost of such responsibility at the new level/agency?

No.

(3) how is the new agency accountable to the people governed?

No.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No,

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
No.
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/ associations to conduct their own affairs?
No.
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill prohibits communications with certain persons during tactical law enforcement operations and the live broadcasting or telecasting of those operations in the absence of authorization by law enforcement personnel.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:
 - (1) Who evaluates the family's needs?
The bill does not purport to provide services to families or children.
 - (2) Who makes the decisions?
N/A
 - (3) Are private alternatives permitted?
N/A
 - (4) Are families required to participate in a program?
N/A
 - (5) Are families penalized for not participating in a program?
N/A
- b. Does the bill directly affect the legal rights and obligations between family members?
N/A
- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

The bill does not create or change a program providing services to families or children.

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Makes the audio or video broadcast of ongoing police tactical operation and the contact or communication with a person who is directly involved in or directly affected by a law enforcement tactical operation a felony of the third degree. Provides for authorization by law enforcement personnel of such broadcasts and/or the initiation of contact or communication with persons who are directly involved in or directly affected by a law enforcement tactical operation. Provides definitions. Provides an exemption for prosecutions under ss. 843.01 and 843.02, F.S.

Section 2. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

There is no foreseeable non-recurring fiscal effect of the bill.

2. Recurring Effects:

There is no foreseeable recurring fiscal effect of the bill.

3. Long Run Effects Other Than Normal Growth:

There are no foreseeable long run effects other than normal growth associated with the bill.

4. Total Revenues and Expenditures:

There are no foreseeable revenues or expenditures associated with the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

There is no foreseeable non-recurring fiscal effect of the bill.

2. Recurring Effects:

There is no foreseeable recurring fiscal effect of the bill.

3. Long Run Effects Other Than Normal Growth:

There are no foreseeable long run effects other than normal growth associated with the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not mandate the expenditure of funds by local government or any actions that would require such expenditures, therefore the bill does not trigger the mandate provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

The bill raises a number of constitutional law questions centering on the free speech rights of broadcasters and the clarity of its language.

1. First Amendment

The bill as presently drafted prohibits the broadcast of live audio or video of tactical law enforcement operations without the prior permission of an authorized law enforcement officer. Consequently the bill may be vulnerable to a constitutional challenge on grounds that it operates as a prior restraint on the free speech rights of broadcasters in violation of the First Amendment to the United States Constitution and of Article 1, Section 4 of the Florida Constitution.

A prior restraint on speech will be accorded "the most exacting judicial scrutiny" by Florida courts. State v. Globe Communications Corp., 622 So.2d 1066 (Fla. 4th DCA 1993)(citing Nebraska v. Press Association, 427 U.S. 539 (1976)). A prior restraint on speech can survive constitutional challenge only if it furthers a state interest of the highest order and is drawn narrowly to achieve that interest. Smith v. Daily Mail, 443 U.S. 97 (1979).

2. Vagueness and Overbreadth

The bill may also be vulnerable to challenge on grounds that it is constitutionally void for vagueness or that it is overbroad. "A government restriction is unconstitutionally vague if it either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." Bouters v. State, 659 So. 2d 235, 238 (Fla. 1995)(citing Connally v. General Construction Co., 269 U.S. 385, 391 (1926)).

Because the bill also provides an absolute bar to certain actions which may arguably be protected by the First Amendment, it may be subject to an overbreadth challenge. A statute or law is overbroad if it "reaches a substantial amount of constitutionally protected conduct." Bouters, supra at 237 (citing Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494-495 (1982)).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Judiciary Committee adopted one strike-all amendment. The effects of the amendment are explained in Section II. B., *supra*.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT & CRIME PREVENTION:

Prepared by:

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