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: CS/SB 1422

SPONSOR: Criminal Justice Committee and Senator Bronson

SUBJECT: Law enforcement

DATE: April 20, 2000 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gomez	Cannon	CJ	Favorable/CS
2.	Cooper	Yeatman	CA	Favorable
3.				
4.				
5.				

I. Summary:

This bill makes the following changes to statutes affecting law enforcement:

- it amends s. 23.1225, F.S., to specify that voluntary mutual aid agreements between law enforcement agencies may include agreements to establish a joint city-county traffic enforcement task force;
- it amends ss. 810.08, and 810.09, F.S., to provide definitions for “authorized person” and “person authorized”;
- it amends s. 901.15, F.S., to authorize an officer to arrest a trespasser without a warrant if there is probable cause to believe that the person committed trespass in a secure area of an airport, under certain conditions; and
- it amends s. 934.03, F.S., to authorize interception and recording of incoming wire communications on published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only.

The bill’s effective date is October 1, 2000.

This bill substantially amends sections 23.1225, 810.08, 810.09, 901.15, and 934.03, Florida Statutes.

II. Present Situation:

FLORIDA MUTUAL AID ACT

Part I of chapter 23, F.S., is the Florida Mutual Aid Act. It was created:

> [b]ecause of the existing and continuing possibility of the occurrence of natural or manmade disasters or emergencies and other major law enforcement problems, including those that cross jurisdictional lines, and in order to ensure that preparations of this state will be adequate to deal with such activity, protect the public peace and safety, and preserve the lives and property of the people of the state . . .

s. 23.121(1), F.S.

Subsection (1) of s. 23.1225, F.S., identifies three types of "mutual aid agreements" as follows:

- a *voluntary cooperation written agreement* between law enforcement agencies - including school boards and state universities that employs police officers - which permits voluntary cooperation and assistance across jurisdictional lines;

- *operational assistance written agreement* between agencies for rendering assistance in a law enforcement emergency; and

- a c*ombination* of the agreements described in (a) and (b).

Both *voluntary cooperation* and *operational assistance* agreements require a description of the type of assistance to be rendered, the agency liable for acts undertaken pursuant to the agreement, the agency having command and supervisory responsibility, and any other conditions required of the situation.

A mutual aid agreement may be entered into by a sheriff, a mayor or chief executive officer of a municipality, or a school board that employs school safety officers. s. 23.1225(3), F.S. A copy of the agreement must be filed with the Florida Department of Law Enforcement within 14 days after it is signed. s. 23.1225(4), F.S. In the event of a state of emergency declared by the Governor, the requirement of an operational written agreement may be waived by the participating agencies for up to 90 days and all powers, privileges, and immunities apply to the agency provided the services are requested by the affected local law enforcement executive in charge of the law enforcement operations. s. 23.1225(5), F.S.

Section 23.1225(1)(a), F.S., provides as follows:

> Examples of law enforcement activities that may be addressed in a voluntary cooperation written agreement include establishing a joint city-county task force on narcotics smuggling or authorizing school safety officers to enforce laws in an area within 1,000 feet of a school or school board property.

Despite this nonexclusive list of law enforcement activities, some Florida trial courts have ruled that voluntary cooperation agreements are not intended to cover enforcement of civil traffic infractions. In *Philips v. State*, No. 92-35 (Fla. 18th Cir. Ct. Sept. 22, 1994), the court held:

> The Florida Mutual Aid Act was not intended to authorize cross jurisdictional stops for civil traffic infractions, and therefore, because the Winter Springs officers were acting outside their jurisdiction, appellant's motion to suppress should have been granted.

This ruling was apparently extended in *State v. Lorenz*, No. 96-43 (Fla. 18th Cir. Ct. Sept. 11, 1998) where the dissenting judge stated that the majority of the court was reading *Philips* too broadly by prohibiting a mutual aid agreement entered to form a Memorial Day weekend DUI Task Force. The agreement authorized participating officers from various jurisdictions to stop motorists for observed civil traffic infractions.

ARREST BY OFFICER WITHOUT WARRANT

Section 901.15, F.S., contains 14 subsections identifying exceptions to the general rule that a law enforcement officer may not arrest a person without a warrant. These statutory exceptions cover various situations. The most well established exception authorizes an officer to arrest a person that has committed a felony, misdemeanor or violated a local ordinance *in the presence of the officer*. s. 901.15(1), F.S. An arrest for a misdemeanor or violation of a local ordinance must be made immediately or in fresh pursuit. *Id*.

However, there are exceptions for specific misdemeanors that neither require the offense be committed in the presence of the officer or be made immediately after its commission or in fresh pursuit. Some examples include certain acts of domestic violence, battery, criminal mischief, or graffiti. s. 901.15(7) and (9), F.S. There is no specific exception referencing the trespass offenses, most of which are misdemeanors. *See e.g.*, s. 810.08, F.S. (Trespass in structure or conveyance). Consequently, for an officer to arrest a person without a warrant for most trespass offenses, the officer must personally witness the trespass and the officer must make the arrest immediately or in fresh pursuit.

FLORIDA'S SECURITY OF COMMUNICATIONS ACT

Chapter 934, F.S., is the Security of Communications Act, commonly known as the "wiretap statute." The act contains criminal penalties for a person who unlawfully intercepts any wire, oral or electronic communication. s. 934.03(1), F.S. The act contains various exceptions, including s. 934.03(2)(g), F.S., which states:

> It is lawful under ss. 934.03-934.09 for an employee of:
>
> 1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.30, a public utility as defined by ss. [1]365.01 and 366.02, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;
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> 2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or
>
> 3. The central abuse hotline operated pursuant to s. 39.201,

> to intercept and record incoming wire communications; *however, such employee may intercept and record incoming wire communications on published emergency telephone numbers only*. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested.

Thus, this exception authorizes a law enforcement agency employee to record incoming wire communications, but only from published emergency telephone numbers. This point was made in a 1997 Attorney General Opinion which concluded that the "business extension" exception "is not applicable to law enforcement agencies and the authority of these agencies to record telephone calls is governed by s. 934.03(2)(g), F.S., which provides that a law enforcement agency may intercept incoming and outgoing calls on its emergency telephone number only." Op. Atty. Gen. Fla. 97-16 (1997).

TRESPASS OFFENSES - "AUTHORIZED PERSONS"

Sections 810.08 and 810.09, F.S., define the offenses of trespass in a structure or conveyance and trespass on property other than structure or conveyance, respectively. The penalties vary from a second degree misdemeanor to a third degree felony, depending on several factors. In both ss. 810.08 and 810.09, F.S., the terms "authorized person" and "person authorized" are used to allow an authorized person to "stand in the shoes" of the property owner. For example, s. 810.09(2)((b), provides:

> If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an *authorized person*, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(emphasis supplied). However, "authorized person" or "person authorized" is not currently defined. In a 1990 Opinion, the Attorney General stated that "on-duty police officers may not be preauthorized to act as the agents of a private landowner for the purpose of communicating to an alleged trespasser an order to leave the private property pursuant to s. 810.09(2)(b), F.S." Op. Atty. Gen. Fla. 90-8 (1990). The Attorney General was in part concerned with s. 10, Art. VII, of the State Constitution which prohibits the use of public funds for a private purpose. The Attorney General concluded:

> The predesignation of on-duty law enforcement officers to act as the agents of the private landowner in communicating an order to leave the private property would appear to serve primarily a private not public, purpose. There may be instances where, in light of an immediate threat to the public safety and welfare, it is in the public's interest to permit a law enforcement officer to order, on behalf of a landowner, an alleged trespasser to leave the property. However, the preauthorization of on-duty police officers to generally act as the landowner's

> agent in warning individuals to leave the private landowner's property would appear to primarily benefit the private landowner rather than the public at large.

Id.

III. Effect of Proposed Changes:

Section 1 amends s. 23.1225(1)(a), F.S., to specify that voluntary mutual aid agreements between law enforcement agencies may include agreements to establish a joint city-county traffic enforcement task force. The intent is to overcome legal challenges in Florida's trial courts, including a 1998 Circuit Court ruling which indicates that s. 23.1225, F.S., does not authorize cross-jurisdictional cooperation for traffic enforcement activities such as a DUI Task Force.

Sections 2 and 3 amend ss. 810.08, and 810.09, F.S., respectively, to provide definitions for "authorized person" and "person authorized." These terms are defined to include the owner or his or her agent or any law enforcement officer whose department has received written authorization from the owner or his or her agent to communicate an order to depart the property in the case of a threat to public safety or welfare. This provision is designed to address a 1990 Attorney General Opinion which stated that there exists no authority to preauthorize on-duty police officers to act as a private landowner's agent in warning individuals to leave the private landowner's property. *See* Present Situation.

Section 4 amends s. 901.15, F.S., to authorize an officer to arrest a trespasser without a warrant if there is probable cause to believe that the person committed trespass in a secure area of an airport. However, this provision only applies when signs are posted in conspicuous areas of the airport which notifies that unauthorized entry into such area constitutes a trespass and specifies the methods for gaining authorized access to such areas.

- An arrest under this provision may be made on or off airport premises. The effect is to authorize an arrest for certain trespass offenses committed in airports without the requirement that the officer actually witness the offense or that the officer makes the arrest immediately or in fresh pursuit.

- An officer who acts in good faith and exercises due care in making an arrest under this provision is immune from civil liability that otherwise might result by reason of the officer's action.

Section 5 amends s. 934.03(2)(g), F.S., to authorize interception and recording of incoming wire communications on published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. The effect is to expand an exception under the wiretap statute which currently authorizes a law enforcement agency employee to record incoming wire communications, but only from published emergency telephone numbers.

Section 6 provides that the bill's effective date is October 1, 2000.

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:

Article III, Section 6 of the Florida Constitution states: "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The Court has stated: "the act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection. *Martinez v. Scanlan*, 583 So. 2d 1167, 1172, *quoting*, *Chenoweth v. Kemp*, 396 So. 2d 1122 (Fla. 1981). In reviewing legislation, the courts "look at both the relationship of the various subjects to the topic of the act, and the relationship of the subject matter to one another." *State v. Leavins*, 599 So. 2d 1326, 1335 (Fla. 1st DCA 1992). Consequently, although each section in a bill may be said to bear a relationship to a general topic, such a finding does not by itself satisfy the requirements of Article III, Section 6. *Id*. at 1335; *See also*, *State v. Thompson*, No. 92,831 (Fla. Dec. 22, 1999).

There is no question but that each section in this bill relates to law enforcement, the general subject contained in the act relating to clause. The closer question is whether the 5 substantive sections in this bill bear a natural or logical connection to one another. The object of sections 1, 2, 3 and 4 may be said to be aimed at enhancing police arrest powers, although this is not the object of section 5. However, all 5 sections may be said to be aimed at revising the operating procedures or functions of law enforcement agencies.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Senate Bill 1924 revises chapter 934, F.S., Florida's Security of Communications Act, to bring Florida's laws relating to the security of wire, oral, and electronic communications into harmony with similar federal provisions (18 U.S.C. 2510, et. seq.). The bill has the practical effect of expanding law enforcement's authority to intercept communications, primarily by the authorization to intercept communications in certain emergency situations without first obtaining a court order.

VIII. Amendments:

None.

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