

# 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.)

BILL: SB 26-C

SPONSOR: Senators Crist and Brown-Waite

SUBJECT: Domestic Security

DATE: November 27, 2001 REVISED: \_\_\_\_\_

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

## I. Summary:

Senate Bill 26-C creates a Florida Domestic Security and Counter-Terrorism Intelligence Center within the Department of Law Enforcement. The center gathers, documents and analyzes active criminal intelligence and active criminal investigative information related to terrorism; maintains and operates a counterterrorism database; and provides support and assistance to federal, state, or local law enforcement agencies and prosecutors and information that is available from other law enforcement databases.

The bill provides that information that is exempt from public disclosure under ch. 119, F.S., when in possession of the center retains its exemption from such disclosure after such information is revealed to a federal, state, or local law enforcement agency or prosecutor, except as otherwise provided by law. Information obtained by the center from a federal, state, or local law enforcement agency or prosecutor retains its exemption from public disclosure after such information is revealed to the intelligence center, except as otherwise provided by law.

The bill defines the term "terrorism."

This bill creates ss. 775.30 and 943.0321, F.S.

## II. Present Situation:

After the terrorist attacks on the United States on September 11, 2001, Governor Bush directed the Department of Law Enforcement and the Division of Emergency Management to assess Florida's capability to prevent, mitigate and respond to a terrorist attack. Under the State plan, the Department of Law Enforcement is the lead agency for crisis management and the Department of Emergency Management is the lead agency for consequence management. For

purposes of the assessment, primary workgroups were formed around the state's existing emergency support functions: Emergency Services, Human Services, Critical Infrastructure and Public Information and Awareness. These workgroups collected information about Florida's existing capabilities and capacities and identified areas in which the state's preparedness could be enhanced.

Based on the recommendations in the Assessment of Florida's Anti-Terrorism Capabilities, the Governor issued Executive Order 01-300 (October 11, 2001) relating to domestic security. This order set forth specific actions to be taken based on recommendations made in the Assessment. The Governor directed that certain actions be taken immediately, or when necessary, upon legislative approval of funding. One of those directives required that the Department of Law Enforcement "establish a dedicated Statewide Domestic Security Intelligence Database for use by all Florida law enforcement officers under appropriate security restrictions."

There is presently no state definition of the term "terrorism."

Recent federal legislation amends 18 U.S.C s. 2331 to create a definition of "domestic terrorism." *See e.g.*, Section 802, H.R. 2975, the "USA Act of 2001" (107th Congress). The definition of "domestic terrorism" in 18 U.S.C. s. 2331, as amended by the federal legislation is as follows:

- (5) the term 'domestic terrorism' means activities that—
  - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
  - (B) appear to be intended—
    - (i) to intimidate or coerce a civilian population;
    - (ii) to influence the policy of a government by intimidation or coercion; or
    - (iii) to affect the conduct of government by mass destruction, assassination, or kidnapping; and
  - (C) occur primarily within the territorial jurisdiction of the United States.

The definition of "domestic terrorism" is similar, but not identical, to the definition of "act of terrorism" in Title 18 U.S.C. s. 3077:

- (1) "act of terrorism" means an activity that—
  - (A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and
  - (B) appears to be intended—
    - (i) to intimidate or coerce a civilian population;
    - (ii) to influence the policy of a government by intimidation or coercion; or
    - (iii) to affect the conduct of a government by assassination or kidnapping . . .

### III. Effect of Proposed Changes:

Senate Bill 26-C creates s. 943.0321, F.S., which creates a Florida Domestic Security and Counter-Terrorism Intelligence Center within the Department of Law Enforcement. The center gathers, documents and analyzes active criminal intelligence and active criminal investigative information related to terrorism; maintains and operates a counterterrorism database; and provides support and assistance to federal, state, or local law enforcement agencies and prosecutors and information that is available from other law enforcement databases.

The database shall be capable of performing data review and processing that may reveal patterns, trends, and correlations indicative of potential or actual terrorism activity within or affecting this state.

The department is required to establish methods and parameters for transference of data and information to the database. Information developed in or through use of the database shall be made available to federal, state, and local law enforcement agencies and prosecutors in a manner defined by the department and as allowed by state or federal law or review.

Information that is exempt from public disclosure under ch. 119, F.S., when in possession of the center retains its exemption from such disclosure after such information is revealed to a federal, state, or local law enforcement agency or prosecutor, except as otherwise provided by law. Information obtained by the center from a federal, state, or local law enforcement agency or prosecutor retains its exemption from public disclosure after such information is revealed to the intelligence center, except as otherwise provided by law.

The bill also creates s. 775.30, F.S., which defines the term “terrorism” for the purposes of the Florida Criminal Code. The definition in the bill contains some of the same features of Title 18 U.S.C. s. 2331, as amended by Section 802, H.R. 2975, the “USA Act of 2001” (107th Congress) and Title 18 U.S.C. s. 3077, and some features that are unique to the definition in the bill.

The definition of “terrorism” in the bill is as follows:

775.30 Terrorism; definition.—As used in the Florida Criminal Code, the term “terrorism” means an activity that:

- (1)(a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
- (b) Involves a violation of s. 815.06; and
- (2) Is intended to:
  - (a) Intimidate, injure, or coerce a civilian population;
  - (b) Influence the policy of a government by intimidation or coercion; or
  - (c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Some of the substantial differences between the definition in the bill and the federal definitions are described in the following remarks.

To constitute “terrorism,” the violent act or act dangerous to human life which is a federal criminal violation or Florida crime, the act must also have been *intended* for one of three specified purposes. In the federal sections, it is only necessary that the specified act *appear to be intended* for the specified purposes.

In addition to a violent act (Section 3077) or an act dangerous to human life (Sections 2331 and 3077) which is a criminal violation, the definition in the bill includes a violation of s. 815.06, F.S. (computer crimes). Apparently, this inclusion is to address cyberterrorism.

The specified act is an act of “domestic terrorism” (Section 2331) or an “act of terrorism” (Section 3077) if it appears to be intended to intimidate or coerce a civilian population. In the bill, the specified act is an act of “terrorism” if it is intended to intimidate, *injure*, or coerce a civilian population.

The specified act is also an act of “domestic terrorism” (Section 2331) or an “act of terrorism” (Section 3077) if it appears to be intended to affect the conduct of government by mass destruction (Section 2331), assassination (Sections 2331 and 3077), or kidnapping (*id.*). The definition in the bill does not include “mass destruction”; it includes destruction to property. Further, in addition to including assassination and kidnapping, the bill includes murder and aircraft piracy. Assassination is not a specific crime in Florida (the act would constitute murder), but it is a specific federal crime, and the definition in the bill includes violent acts that are federal crimes. *See* Title 18 U.S.C. s. 351 (Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault) and 18 U.S.C. s. 1751 (Presidential and Presidential staff assassination, kidnapping, and assault).

Under Section 2311, the relevant act must also “occur primarily within the territorial jurisdiction of the United States.” Section 3077 includes the specified act that “would be a criminal violation if committed within the jurisdiction of the United States or of any State. . . .” The definition in the bill does not include these provisions. It appears that the provision in Section 2311 is there to distinguish the definition of “domestic terrorism” in that section from the definition of “international terrorism” in that section. The provision in Section 3077 is relevant to that section, because Section 3077 appears in Chapter 204 of Part II of Title 18, which relates to rewards for information concerning terrorist acts and espionage. Neither provision is relevant to the state definition.

The bill takes effect upon becoming a law.

#### **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:

CS/SB 2-B provided for 5 positions and \$200,429 from the General Revenue Fund and \$300,000 from the Grants and Donations Trust Fund for terrorist intelligence database.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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