

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 457 Terrorism and Terrorist Activities

**SPONSOR(S):** Gonzalez

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Merlin	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

In Florida, there are a limited number of terrorism-related statutes. Chapter 943, F.S., indicates that the Florida Department of Law Enforcement (FDLE) serves as the coordinating agency in statewide counterterrorism efforts and responses to terrorist events. Section 775.30, F.S., defines the term “terrorism,” and is modeled after the language used in federal law regarding domestic and international terrorism. Section 775.31, F.S., utilizes this definition and provides for the enhancement or reclassification, to the next highest level, of a misdemeanor or felony that can be attributed to an act of terrorism, while Chapter 782, lists an “act of terrorism” as a predicate for establishing that a homicide crime, such as felony murder, has been committed.

The bill creates new criminal offenses for:

- An act of terrorism or terrorist activity, which is a first degree felony, or if it results in death or serious bodily injury, a life felony.
- The use of “military-type training” by a designated FTO to harm another person or destroy or disrupt critical infrastructure. A violation is:
  - A second degree felony, or
  - If there is death or serious bodily injury, a first degree felony.
- Individuals who provide material support or resourced for terrorism or to terrorist organizations. A violation is:
  - A first degree felony, or
  - If there is death or serious bodily injury, a life felony.
- The act of membership in a designated foreign terrorist organization with the intent to further the organization’s illegal goals, a violation of which is a second degree felony.
- Agroterrorism, a violation of which is a second degree felony. If the agroterrorism results in death or serious bodily injury, then it is a life felony.

The Criminal Justice Impact Conference (CJIC) has determined that the bill will have a positive indeterminate impact, meaning that the bill will have a positive impact on the number of prison beds, but the exact number is unquantifiable. Please see “FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT,” *infra*.

The bill provides an effective date of October 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Counterterrorism Laws – Federal and Florida**

For many years, lawmakers in the United States have enacted legislation aimed at curbing the threat of terrorism. At the federal level, the definition of “terrorism” is referenced in several places. Title 22, Chapter 38 of the United States Code, regarding the Department of State, contains a definition of terrorism in its requirement that annual country reports on terrorism be submitted by the Secretary of State to Congress every year. Under that definition, “the term ‘terrorism’ means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”<sup>1</sup> The Code of Federal Regulations (CFR), on the other hand, indicates that terrorism “includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”<sup>2</sup> Other similar definitions are used by various federal agencies.<sup>3</sup> Title 18, Chapter 113B of the United States Code, in turn, provides definitions of “international terrorism” and “domestic terrorism.”<sup>4</sup>

Congress has enacted counterterrorism laws to facilitate the prosecution and investigation of terrorism cases, including prohibited conduct and penalties. Such laws give the federal government broad power to conduct investigations and prosecutions in cases of national security and terrorism.<sup>5</sup> Currently, federal law prohibits a person from providing any material support or resources to a foreign terrorist organization (FTO) as designated by the Secretary of State.<sup>6</sup> Federal law also defines what it means to provide “material support or resources” to terrorist organizations, as well as “training,” “expert advice or assistance,” and “military-type training.”<sup>7</sup> Specifically:

- “Material support or resources’ means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications

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<sup>1</sup> 22 U.S.C. § 2656f(d).

<sup>2</sup> 28 C.F.R. § 0.85(l).

<sup>3</sup> Agencies with related definitions of terrorism include the Department of Defense and the Federal Emergency Management Agency (FEMA). See *Department of Defense Dictionary of Military and Associated Terms*, at 241, Nov. 8, 2010 (as amended through Feb. 15, 2016), available at [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf) (last viewed Mar. 15, 2017); FEMA Publication, *Terrorism*, July 26, 2013, available at <https://www.fema.gov/media-library-data/20130726-1549-20490-0802/terrorism.pdf> (last viewed Feb. 9, 2017); see also FEMA Guidebook, *Managing the Emergency Consequences of Terrorist Incidents*, at J-3, July 2002, available at <https://www.fema.gov/pdf/plan/managingemerconseq.pdf> (last viewed Mar. 15, 2017).

<sup>4</sup> 18 U.S.C. § 2331(1) and (5).

<sup>5</sup> Title II of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, 118 Stat. 3638, outlines intelligence authorities of the Federal Bureau of Investigation (FBI), as does Exec. Order 12333; 50 U.S.C. 401 et seq., transferred to 50 U.S.C. § 3002; 50 U.S.C. 1801 et seq.

<sup>6</sup> See 8 U.S.C. § 1189(a)(1)(A)-(C). Title 8 of the United States Code is one of 50 titles that deals with Aliens and Nationality under the Immigration and Nationality Act (INA). The process under which the Secretary of State designates an entity as an FTO is authorized in Section 219 of the INA. See Charles Doyle, *Terrorist Material Support: An Overview of 18 U.S.C. §2339A and §2339B*, CONGRESSIONAL RESEARCH SERVICE, at 17, Dec. 8, 2016, available at <https://fas.org/sgp/crs/natsec/R41333.pdf> (last viewed on Feb. 7, 2017); see also *United States v. Ahmed*, 94 F. Supp. 3d 394, 404-06 (E.D. N.Y. March. 24, 2015) (involving defendants who were charged with conspiring to provide, providing, and attempting to provide “material support or resources to” and “receiving military-type training from” al-Shabaab, a designated FTO, and listing statutory criteria under which an organization may be designated as an FTO under 8 U.S.C. § 1189). The website for the United States Department of State includes a list of those organizations that have been designated by the Secretary of State as FTOs and those organizations that have been delisted from that category. See Website for the Department of State, *Foreign Terrorist Organizations*, available at <https://www.state.gov/j/ct/rls/other/des/123085.htm> (last viewed Feb. 11, 2017).

<sup>7</sup> 18 U.S.C. §§ 2339A, 2339B, and 2339D.

equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.”<sup>8</sup>

- “‘Training’ means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.”<sup>9</sup>
- “‘Expert advice or assistance’ means advice or assistance derived from scientific, technical or other specialized knowledge.”<sup>10</sup>
- “‘Military-type training’ includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction....”<sup>11</sup>

According to the National Conference of State Legislatures (NCSL), forty-four states and the District of Columbia have passed some form of legislation addressing terrorism, while the remaining states may have other laws regarding conspiracy to commit terrorism, threatening the government or an officer of the government, or threats of arson.<sup>12</sup>

In Florida, there are a limited number of terrorism and counterterrorism-related statutes. Chapter 943, F.S., indicates that the Florida Department of Law Enforcement (FDLE) serves as the lead or coordinating agency in statewide counterterrorism efforts and responses to terrorist events.<sup>13</sup> Section 775.30, F.S., defines the term “terrorism,”<sup>14</sup> and is modeled after the language used in Title 18 of the United States Code<sup>15</sup> regarding domestic and international terrorism. Section 775.31, F.S., utilizes this definition and provides for the enhancement or reclassification, to the next highest level, of a misdemeanor or felony that can be attributed to an act of terrorism,<sup>16</sup> while Chapter 782, lists an “act of terrorism” as a predicate for establishing that a homicide crime, such as felony murder, has been committed.<sup>17</sup>

Thus, at present, Florida law defines “terrorism” and refers to terrorism for purposes of enhancement or reclassification and as a predicate offense for the commission of murder. Florida law, however, has not made terrorism a separate crime and has not specifically adopted the definitions or criminal offenses regarding material support or resources (MSR) or training that are set forth in federal legislation.

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<sup>8</sup> 18 U.S.C. §§ 2339A(b)(1) and 2339B(g)(4).

<sup>9</sup> 18 U.S.C. §§ 2339A(b)(2).

<sup>10</sup> 18 U.S.C. §§ 2339A(b)(3).

<sup>11</sup> 18 U.S.C. § 2339D(c)(1).

<sup>12</sup> E-mail from Richard Williams, Criminal Justice Senior Policy Analyst, NCSL, Feb. 13, 2017, with attached 2014 NCSL Report on State Terrorism Statutes (E-mail Correspondence and Report on file with the Florida House of Representatives Subcommittee on Criminal Justice). An earlier version of the NCSL report from 2002 noted that in the weeks following the September 11, 2001, terrorist attacks, 33 states had passed anti-terrorism laws. See <http://www.ncsl.org/Portals/1/documents/cj/terrorismcrimes.pdf> (last viewed Feb. 13, 2017).

<sup>13</sup> s. 943.03(14), F.S.; see also ss. 943.0311-13, F.S.; s. 943.03101, F.S.; and s. 943.0321, F.S.

<sup>14</sup> s. 775.30, F.S. (which provides, “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.”).

<sup>15</sup> 18 U.S.C. § 2331(1) and (5). The definition in s. 775.30(1) and (2), F.S., is substantially similar to the definition in its federal counterpart but excludes any language relating to the boundaries or territorial jurisdiction of the United States.

<sup>16</sup> s. 775.31, F.S. (providing felony or misdemeanor reclassification of offenses).

<sup>17</sup> s. 782.04(1)(a)(2)(r); s. 782.04(3)(r); s. 782.04(4)(s); see also s. 782.04(5)(a)-(b), F.S. (providing the same definition for terrorism set forth in s. 775.30, F.S.).

## Effect of the Bill

### Offense of Terrorism

The bill amends s. 775.30, F.S., to criminalize an act of “terrorism.”<sup>18</sup> Under the bill, a person who commits a predicate offense when intending to influence or affect by intimidation or coercion, or to retaliate against, the conduct of government, commits the crime of terrorism, which is a first degree felony.<sup>19</sup> The predicate offenses are:

- Murder, premeditated;<sup>20</sup>
- Murder, imminently dangerous act and depraved mind;<sup>21</sup>
- Murder; law enforcement officer, correctional officer, correctional probation officer;<sup>22</sup>
- Manslaughter;<sup>23</sup>
- Killing of unborn child by injury to mother;<sup>24</sup>
- Aggravated battery;<sup>25</sup>
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers;<sup>26</sup>
- Kidnapping; kidnapping of child under 13, aggravating circumstances;<sup>27</sup>
- False imprisonment; false imprisonment of child under 13, aggravating circumstances;<sup>28</sup>
- Human smuggling;<sup>29</sup>
- Possessing or discharging weapons or firearms at a school-sponsored event or on school property;<sup>30</sup>
- Discharging firearm in public or on residential property;<sup>31</sup>
- Discharging machine guns;<sup>32</sup>
- Making, possessing, throwing, projecting, placing, or discharging any destructive device;<sup>33</sup>
- Unlawful throwing, projecting, placing, discharging of destructive device or bomb that results in injury to another;<sup>34</sup>
- Planting of “hoax” bomb prohibited;<sup>35</sup>
- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction prohibited;<sup>36</sup>
- Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad case, streetcars, or other vehicles;<sup>37</sup>
- Arson;<sup>38</sup>
- Arson resulting in injury to another;<sup>39</sup>

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<sup>18</sup> The bill also adds that the term “terrorist activity” has the same meaning as “terrorism” in s. 775.30, F.S.

<sup>19</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>20</sup> s. 782.04(1)(a)1., F.S.

<sup>21</sup> s. 782.04(2), F.S.

<sup>22</sup> s. 782.065, F.S.

<sup>23</sup> s. 782.07(1), F.S.

<sup>24</sup> s. 782.09, F.S.

<sup>25</sup> s. 784.045, F.S.

<sup>26</sup> s. 784.07, F.S.

<sup>27</sup> s. 787.01, F.S.

<sup>28</sup> s. 787.02, F.S.

<sup>29</sup> s. 787.07, F.S.

<sup>30</sup> s. 790.115, F.S.

<sup>31</sup> s. 790.15, F.S.

<sup>32</sup> s. 790.16, F.S.

<sup>33</sup> s. 790.161, F.S.

<sup>34</sup> s. 790.1615, F.S.

<sup>35</sup> s. 790.162, F.S.

<sup>36</sup> s. 790.166, F.S.

<sup>37</sup> s. 790.19, F.S.

<sup>38</sup> s. 806.01, F.S.

<sup>39</sup> s. 806.031, F.S.

- Fire bombs;<sup>40</sup>
- Offenses against users of computers, computer systems, networks, and devices;<sup>41</sup>
- Offenses against public utilities;<sup>42</sup>
- Poisoning of food or water;<sup>43</sup> and
- Combination to usurp government.<sup>44</sup>

The bill provides that a person who commits a predicate offense which results in death or serious bodily injury<sup>45</sup> commits a life felony.<sup>46</sup>

#### Offense of Use of Military-Type Training

The bill creates s. 775.32, F.S., to criminalize the use of, attempted use of, or conspiracy to use “military-type training” by a designated FTO<sup>47</sup> to harm another person or destroy, damage, or disrupt services to a critical infrastructure facility. A violation is:

- A second degree felony; or
- A first degree felony, if the violation results in death or serious bodily injury to a person.

The bill provides that the definition of an FTO is the same as federal law under the Immigration and Nationality Act. The bill also creates a definition for “military-type training” that is modeled on current federal counterterrorism language.

#### Offense of Providing Material Support

The bill creates s. 775.33(2), F.S., to criminalize the provision of MSR or the concealment or disguise of the nature, location, source, or ownership of the MSR, knowing or intending that the support or resources are to be used in preparation for or in carrying out a violation of:

- The bill’s newly created offenses in ss. 775.30, 775.32, 775.34, or 775.35, F.S.;
- Discharging machine guns;<sup>48</sup>
- Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do;<sup>49</sup>
- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction;<sup>50</sup>
- Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles;<sup>51</sup>
- Offenses against users of computers, computer systems, computer networks, and electronic devices;<sup>52</sup>
- Poisoning food or water;<sup>53</sup>
- Crimes against railroad vehicles;<sup>54</sup>

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<sup>40</sup> s. 806.111, F.S.

<sup>41</sup> s. 815.06, F.S.

<sup>42</sup> s. 815.061, F.S.

<sup>43</sup> s. 859.01, F.S.

<sup>44</sup> s. 876.34, F.S.

<sup>45</sup> The bill defines “serious bodily injury” as “an injury to a person which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or an organ.” s. 775.30(3)

<sup>46</sup> The punishments for a life felony are set forth in s. 775.082, F.S. The fine for a life felony can go up to \$15,000. *See* s. 775.083, F.S.

<sup>47</sup> Like current federal legislation, the bill refers to “military-type training” from a designated FTO. This is distinguishable from those circumstances in which an American soldier with dual citizenship lawfully serves in another country’s military without voluntarily renouncing his or her citizenship or applying for foreign nationality. *See* Lauren Raab, *Q&A Why Would an American Join Israel’s Military? Answers to that and More*, LOS ANGELES TIMES, July 21, 2014, available at <http://www.latimes.com/nation/nationnow/la-fg-americans-israel-gaza-military-20140721-story.html> (last viewed Feb. 9, 2017).

<sup>48</sup> s. 790.16, F.S.

<sup>49</sup> s. 790.161(2)-(4), F.S.

<sup>50</sup> s. 790.166, F.S.

<sup>51</sup> s. 790.19, F.S.

<sup>52</sup> s. 815.06, F.S.

<sup>53</sup> s. 859.01, F.S.

- Aircraft piracy;<sup>55</sup>
- Treason;<sup>56</sup>
- Combination to usurp government;<sup>57</sup>
- Inciting insurrection.<sup>58</sup>

Additionally, it is a violation to conceal an escape from the commission of the above-described offense or to attempt or conspire to commit the above-described offense. A violation is:

- A first degree felony, or
- A life felony, if the violation results in death or serious bodily injury to a person.

The bill also creates s. 775.33(3), F.S., which provides that a person who attempts to, conspires to, or knowingly provides MSR to a designated FTO commits a first degree felony, or if the violation results in death or serious bodily injury to a person, a life felony. To violate that subsection, a person must have knowledge that the organization is a designated FTO or that the organization has engaged in or engages in terrorism or terrorist activity.

The bill creates definitions which are modeled after current federal counterterrorism laws, including MSR,<sup>59</sup> “training,”<sup>60</sup> “expert advice or assistance,”<sup>61</sup> and designated FTOs.<sup>62</sup> The bill excludes medicine or religious materials from the definition of MSR.

The bill provides that for purposes of prosecution, a person is deemed to provide MSR by providing personnel if the person knowingly provides, attempts to provide, or conspires to provide himself, herself, or another person:

- To a person engaged in, or intending to engage in, an act of terrorism to work under the direction and control of the person engaged in, or intending to engage in, an act of terrorism, or to organize, manage, supervise, or otherwise direct the operations of the person engaged in, or intending to engage in, and act of terrorism; or
- To work under the direction and control of a designated FTO, or to organize, manage, supervise, or otherwise direct the operation of that organization.

However, the bill excludes individuals working with, or authorized by, a state or federal governmental or law enforcement agency for a lawful purpose. Further, individuals who act entirely independently of the FTO to advance its goals or objectives would not be considered to be working under the FTO’s direction and control. The bill also provides, “It is the intent of the Legislature that subsections (2) and (3) be interpreted in a manner consistent with federal case law interpreting 18 U.S.C. ss. 2339A and 2339B, respectively.” The bill provides that FDLE and the Office of Attorney General shall create guidelines for law enforcement investigations to ensure the protection of privacy rights, civil rights, and civil liberties.

#### Membership in a Designated FTO

The bill creates s. 775.34, F.S., to criminalize the act of membership in a designated FTO with the intent to further the organization’s illegal goals, a violation of which is a second degree felony. The bill also includes the definition of an FTO, as referenced in s. 775.32, F.S. and in federal legislation.

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<sup>54</sup> s. 860.121, F.S.

<sup>55</sup> s. 860.16, F.S.

<sup>56</sup> s. 876.32, F.S.

<sup>57</sup> s. 876.34, F.S.

<sup>58</sup> s. 876.36, F.S.

<sup>59</sup> 18 U.S.C. § 2339A(b)(1) (providing a definition for “material support or resources”).

<sup>60</sup> 18 U.S.C. § 2339A(b)(2) (defining “training” as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge[.]”).

<sup>61</sup> 18 U.S.C. § 2339A(b)(3) (defining “expert advice or assistance” as “advice or assistance derived from scientific, technical or other specialized knowledge.”).

<sup>62</sup> 8 U.S.C. § 1189.

### Agroterrorism

The bill creates s. 775.35, F.S., to criminalize acts of agroterrorism, where a person intentionally spreads any type of contagious, communicable, or infectious disease among crops, poultry, livestock or other animals. A violation is:

- A second degree felony, or
- A life felony, if the violation results in death or serious bodily injury to a person.

The bill provides an affirmative defense if the activity is consistent with medically recognized procedures or if it is done in the course of legitimate, professional scientific research. A person who commits a violation of this section resulting in serious bodily injury or death commits a life felony.

### Miscellaneous

The bill amends s. 775.31, F.S., the statute which reclassifies a felony or misdemeanor that facilitated or furthered an act of terrorism, to:

- Eliminate a duplicative definition of "terrorism,"
- Provide that the section does not apply to the new terrorism or terrorism-related crimes created by the bill in s. 775.30, s. 775.32, s. 775.33, s. 775.34, or 775.35, F.S.

The bill makes conforming changes to s. 782.04, F.S., to cross-reference the new crimes created in ss. 775.30, 775.32, 775.33, 775.34, and 775.35, F.S.

The bill also reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 775.30, F.S., relating to terrorism; defined; penalties.

Section 2. Amends s. 775.31, F.S., relating to facilitating or furthering terrorism; felony or misdemeanor reclassification.

Section 3. Creates s. 775.32, F.S., relating to use of military-type training provided by a designated foreign terrorist organization.

Section 4. Creates s. 775.33, F.S., relating to providing material support or resources for terrorism or to terrorist organizations.

Section 5. Creates s. 775.34, F.S., relating to membership in a designated foreign terrorist organization.

Section 6. Creates s. 775.35, F.S., relating to agroterrorism; penalties.

Section 7. Amends s. 782.04, F.S., relating to murder.

Section 8. Reenacts s. 373.6055, F.S., relating to criminal history checks for certain water management district employees and others.

Section 9. Reenacts s. 381.95, F.S., relating to medical facility information maintained for terrorism response purposes; confidentiality.

Section 10. Reenacts s. 395.1056, F.S., relating to plan components addressing a hospital's response to terrorism; public records exemption; public meetings exemption.

Section 11. Reenacts s. 874.03, F.S., relating to definitions.

Section 12. Reenacts s. 907.041, F.S., relating to pretrial detention and release.

Section 13. Reenacts s. 943.0312, F.S., relating to regional domestic security task forces.

Section 14. Reenacts s. 943.0321, F.S., relating to the Florida Domestic Security and Counter-Terrorism Intelligence Center and the Florida Domestic Security and Counter-Terrorism Database.

Section 15. Reenacts s. 27.401, F.S., relating to cross-circuit conflict representation pilot program.

Section 16. Reenacts s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 17. Reenacts s. 63.089, F.S., relating to proceedings to terminate parental rights pending adoption; hearings; grounds; dismissal of petition; judgment.

Section 18. Reenacts s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 19. Reenacts s. 435.04, F.S., relating to Level 2 screening standards.

Section 20. Reenacts s. 435.07, F.S., relating to exemptions from disqualification.

Section 21. Reenacts s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 22. Reenacts s. 775.0823, F.S., relating to violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

Section 23. Reenacts s. 782.051, F.S., relating to attempted felony murder.

Section 24. Reenacts s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.

Section 25. Reenacts s. 903.133, F.S., relating to bail on appeal; prohibited for certain felony convictions.

Section 26. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 27. Reenacts s. 921.16, F.S., relating to when sentences to be concurrent and when consecutive.

Section 28. Reenacts s. 947.146, F.S., relating to control release authority.

Section 29. Reenacts s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 30. Reenacts s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.

Section 31. Reenacts s. 985.265, F.S., relating to detention transfer and release; education; adult jails.

Section 32. Reenacts s. 1012.315, F.S., relating to disqualification from employment.

Section 33. Reenacts s. 1012.467, F.S., relating to noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.

Section 34. Provides an effective date of October 1, 2017.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017. The CJIC determined that the bill's creation of new felony offenses will have a positive indeterminate impact on prison beds. This means that the bill will increase the need for prison beds, but the extent of the increase is unquantifiable.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

### D. FISCAL COMMENTS: The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017. The CJIC determined that the bill will have a positive indeterminate impact, meaning that the bill will have a positive impact on the number of prison beds, but the exact number is unquantifiable.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

#### *Constitutionality of the MSR Statute:*

Section 4. of the bill makes it a crime to provide MSR for terrorism or to terrorist organizations. The definition of MSR, and the prohibited conduct for MSR, is modeled after 18 U.S.C. §§ 2339A and 2339B. Section 4. of the bill provides, "It is the intent of the Legislature that subsections (2) and (3) be interpreted in a manner consistent with federal case law interpreting 18 U.S.C. ss. 2339A and 2339B, respectively."

In Holder v. Humanitarian Law Project, the United States Supreme Court upheld the necessary mental state for a violation of 18 U.S.C. § 2339B.<sup>63</sup> The Court also rejected arguments that the MSR statute was vague or overbroad or that the statute encroached on freedom of speech.<sup>64</sup> Likewise, the Court rejected arguments that the MSR statute infringed on protected advocacy, freedom of expression, and freedom of association.<sup>65</sup>

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<sup>63</sup> *Holder v. Humanitarian Law Project*, 561 U.S. 1, 16-17 (2010); see also 18 U.S.C. § 2339B(a)(1).

<sup>64</sup> *Id.* at 20-25.

<sup>65</sup> *Id.* at 25-40.

In Holder, the plaintiffs (U.S. citizens and organizations) challenged the constitutionality of 18 U.S.C. § 2339B, which prohibits providing MSR to designated FTOs. The plaintiffs in that case argued that the Court should not reach any constitutional issues because they did not intend to further a “further a foreign terrorist organization’s illegal activities.”<sup>66</sup> The plaintiffs relied on the decision in Scales v. United States,<sup>67</sup> where a defendant (who was a member of the Communist Party) challenged his conviction under the membership clause of the Smith Act, making it a felony to knowingly be a member in any organization that advocated the overthrow of the United States by force or violence.

The Holder Court noted that under the facts of that case, “[s]ection 2339B does not criminalize mere membership in a designated foreign terrorist organization. It instead prohibits providing ‘material support’ to such a group.”<sup>68</sup> The Holder Court explained, “Nothing about Scales suggests the need for a specific intent requirement in such a case.”<sup>69</sup> As the decision in Holder was based on an analysis of the federal MSR statute, and as that statute was upheld by the Court, the same rationale should be applicable under the bill.

*Membership in a Designated FTO:*

Section 5. of the bill prohibits membership in a designated FTO with the intent to further the illegal acts of the organization. While there is no counterpart for this language in federal counterterrorism law, this section of the bill specifically appears to be based on the holding in Scales, which required knowledge of the group’s illegal advocacy and a specific intent to bring about violent overthrow of the government.<sup>70</sup> As the Court in Scales upheld a conviction under a statute criminalizing active membership and guilty knowledge and intent, the bill appears to meet these requirements.

- B. RULE-MAKING AUTHORITY: This bill does not appear to create the need for rulemaking or rulemaking authority.
- C. DRAFTING ISSUES OR OTHER COMMENTS: None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.

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<sup>66</sup> *Holder*, 561 U.S. at 16.

<sup>67</sup> *Scales v. United States*, 367 U.S. 203, 224-30 (1961) (affirming defendant Communist Party member’s conviction under the membership clause of the Smith Act, and holding that it did not violate the right to freedom of association or the Due Process Clause).

<sup>68</sup> *Holder*, 561 U.S. at 18-19, 39-40.

<sup>69</sup> *Id.* at 18 (citing *Scales*, 367 U.S. at 221-22).

<sup>70</sup> *Scales*, 367 U.S. at 229-30.