

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Gonzalez

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 0 N	Merlin	White
2) Justice Appropriations Subcommittee	10 Y, 0 N	Smith	Gusky
3) Judiciary Committee	18 Y, 0 N, As CS	Merlin	Camechis

### 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 ch. 782, F.S., 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, a violation of 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 foreign terrorist organization (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 resources 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 FTO 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, or if it results in death or serious bodily injury, a life felony.

The Criminal Justice Impact Conference (CJIC) met on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Federal Counterterrorism Laws**

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 (MSR) to a foreign terrorist organization (FTO) as designated by the Secretary of State.<sup>6</sup> Under 8 U.S.C. § 1189, the Secretary of State may designate an organization as an FTO if the Secretary finds that:

- The organization is a foreign organization;
- The organization engages in terrorist activity; and
- The terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

Federal law defines what it means to provide MSR to terrorist organizations, as well as “training,” “expert advice or assistance,” and “military-type training.”<sup>7</sup> Specifically:

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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.

- “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 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,<sup>11</sup> or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction....”<sup>12</sup>

### Offense of Providing MSR to Terrorists

Title 18 U.S.C. § 2339A criminalizes providing MSR or the concealment or disguise of the nature, location, source, or ownership of MSR, knowing or intending that the support or sources are to be used in preparation for, or in carrying out the following violations:

- Destruction of aircraft or aircraft facilities;<sup>13</sup>
- Violence at international airports;<sup>14</sup>
- Arson within special maritime and territorial jurisdiction;<sup>15</sup>
- Prohibitions with respect to biological weapons;<sup>16</sup>
- Prohibited activities related to chemical weapons;<sup>17</sup>
- Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault;<sup>18</sup>
- Prohibited transactions involving nuclear weapons;<sup>19</sup>
- Unlawful acts related to plastic explosives;<sup>20</sup>
- Maliciously damaging or destroying, or attempting to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any of its departments or agencies, or any institution or organization receiving Federal financial assistance;<sup>21</sup>
- Maliciously damaging or destroying, or attempting to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce;<sup>22</sup>
- Possession of firearms and dangerous weapons in federal facilities, killing someone in federal facility while possessing a firearm or dangerous weapon, or attempting or conspiring to do so;<sup>23</sup>
- Conspiracy to kill, maim, or injure persons or damage property in a foreign country;<sup>24</sup>
- Genocide;<sup>25</sup>

<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)(3).

<sup>12</sup> 18 U.S.C. § 2339D(c)(1).

<sup>13</sup> 18 U.S.C. § 32.

<sup>14</sup> 18 U.S.C. § 37.

<sup>15</sup> 18 U.S.C. § 81.

<sup>16</sup> 18 U.S.C. § 175.

<sup>17</sup> 18 U.S.C. § 229.

<sup>18</sup> 18 U.S.C. § 351.

<sup>19</sup> 18 U.S.C. § 831.

<sup>20</sup> 18 U.S.C. § 842(m) and (n).

<sup>21</sup> 18 U.S.C. § 844(f).

<sup>22</sup> 18 U.S.C. § 844(i).

<sup>23</sup> 18 U.S.C. § 930(c).

<sup>24</sup> 18 U.S.C. § 956.

<sup>25</sup> 18 U.S.C. § 1091.

- Killing or attempting to kill officers and employees of the United States while such officer or employee is engaged in official duties or any person assisting such officer or employee;<sup>26</sup>
- Murder or manslaughter of foreign officials, official guests, or internationally protected persons;<sup>27</sup>
- Hostage taking;<sup>28</sup>
- Injuring, committing depredation, or damaging property of the United States;<sup>29</sup>
- Injuring or damaging communication lines, stations, or systems;<sup>30</sup>
- Injuring or damaging buildings or property within special maritime and territorial jurisdiction;<sup>31</sup>
- Destruction of an energy facility;<sup>32</sup>
- Presidential and Presidential staff assassination, kidnapping, and assault;<sup>33</sup>
- Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air;<sup>34</sup>
- Destruction of national-defense materials, national-defense premises, or national defense utilities;<sup>35</sup>
- Production of defective national-defense material, national-defense premises, or national-defense utilities;<sup>36</sup>
- Violence against maritime navigation;<sup>37</sup>
- Violence against maritime fixed platforms;<sup>38</sup>
- Killing, or attempting to kill, or conspiring to kill, a national of the United States;<sup>39</sup>
- Using, threatening, attempting, or conspiring to use weapons of mass destruction;<sup>40</sup>
- Acts of terrorism transcending national boundaries;<sup>41</sup>
- Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities;<sup>42</sup>
- Torture;<sup>43</sup>
- Recruitment of child soldiers;<sup>44</sup>
- Sabotage of nuclear facilities or fuel;<sup>45</sup>
- Aircraft piracy;<sup>46</sup>
- Committing acts against interstate gas pipeline facilities, interstate hazardous liquid pipeline facilities, or intrastate gas pipeline facilities or intrastate hazardous liquid pipeline facilities that are used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, or attempting or conspiring to do such an act; failing to follow regulations, destroying signs, and not using the one-call notification system or not heeding location information or markings.<sup>47</sup>

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<sup>26</sup> 18 U.S.C. § 1114.

<sup>27</sup> 18 U.S.C. § 1116.

<sup>28</sup> 18 U.S.C. § 1203.

<sup>29</sup> 18 U.S.C. § 1361.

<sup>30</sup> 18 U.S.C. § 1362.

<sup>31</sup> 18 U.S.C. § 1363.

<sup>32</sup> 18 U.S.C. § 1366.

<sup>33</sup> 18 U.S.C. § 1751.

<sup>34</sup> 18 U.S.C. § 1992.

<sup>35</sup> 18 U.S.C. § 2155.

<sup>36</sup> 18 U.S.C. § 2156.

<sup>37</sup> 18 U.S.C. § 2280.

<sup>38</sup> 18 U.S.C. § 2281.

<sup>39</sup> 18 U.S.C. § 2332.

<sup>40</sup> 18 U.S.C. § 2332a.

<sup>41</sup> 18 U.S.C. § 2332b.

<sup>42</sup> 18 U.S.C. § 2332f.

<sup>43</sup> 18 U.S.C. § 2340A.

<sup>44</sup> 18 U.S.C. § 2442.

<sup>45</sup> 42 U.S.C. § 2284.

<sup>46</sup> 49 U.S.C. § 46502.

<sup>47</sup> 49 U.S.C. § 60123.

Additionally, it is a violation to conceal an escape from the commission of any of the above-described offenses, or to attempt or conspire to do so. A violation is punishable by a fine, imprisonment not more than 15 years, or both, and if the death of any person results, then imprisonment for any term of years or for life.<sup>48</sup>

#### Offense of Providing MSR to Designated Terrorist Organizations

Title 18 U.S.C. § 2339B provides that whoever knowingly provides MSR to an FTO, or attempts or conspires to do so, shall be fined or “imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.”<sup>49</sup> To violate the statute, a person must have knowledge that the organization:

- Is a designated terrorist organization;
- Has engaged or engages in terrorist activity; or
- Has engaged or engages in terrorism.<sup>50</sup>

#### Offense of Receiving Military-Type Training from an FTO

Title 18 U.S.C. § 2339D provides that whoever knowingly receives military-type training from or on behalf of any organization designated at the time of the training as an FTO shall be fined or imprisoned for 10 years, or both.<sup>51</sup> Like 18 U.S.C. § 2339B, a person must have knowledge that the organization:

- Is a designated terrorist organization;
- Has engaged or engages in terrorist activity; or
- Has engaged or engages in terrorism.<sup>52</sup>

#### **State Counterterrorism Laws**

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>53</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>54</sup> Section 775.30, F.S., defines the term “terrorism,”<sup>55</sup> and is modeled after the language used in Title 18 of the United States Code<sup>56</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

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<sup>48</sup> 18 U.S.C. § 2339A(a).

<sup>49</sup> 18 U.S.C. § 2339B(a)(1).

<sup>50</sup> *Id.*

<sup>51</sup> 18 U.S.C. § 2339D(a)(1).

<sup>52</sup> 18 U.S.C. § 2339D(c)(1).

<sup>53</sup> E-mail from Richard Williams, Criminal Justice Senior Policy Analyst, NCSL, Feb. 13, 2017, with attached 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 Mar. 21, 2017).

<sup>54</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>55</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>56</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.

misdemeanor or felony that can be attributed to an act of terrorism,<sup>57</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>58</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 or training that are set forth in federal legislation.

## Effect of the Bill

### Offense of Terrorism

The bill amends s. 775.30, F.S., to criminalize an act of “terrorism.”<sup>59</sup> Under the bill, a person who commits a predicate offense in furtherance of intimidating or coercing the policy of a government or in furtherance of affecting the conduct of a government by mass destruction, assassination, or kidnapping, commits the crime of terrorism, which is a first degree felony.<sup>60</sup> The predicate offenses are:

- Murder, premeditated;<sup>61</sup>
- Murder, imminently dangerous act and depraved mind;<sup>62</sup>
- Murder; law enforcement officer, correctional officer, correctional probation officer;<sup>63</sup>
- Manslaughter;<sup>64</sup>
- Killing of unborn child by injury to mother;<sup>65</sup>
- Aggravated battery;<sup>66</sup>
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers;<sup>67</sup>
- Kidnapping; kidnapping of child under 13, aggravating circumstances;<sup>68</sup>
- False imprisonment; false imprisonment of child under 13, aggravating circumstances;<sup>69</sup>
- Human smuggling;<sup>70</sup>
- Possessing or discharging weapons or firearms at a school-sponsored event or on school property;<sup>71</sup>
- Discharging firearm in public or on residential property;<sup>72</sup>
- Discharging machine guns;<sup>73</sup>
- Making, possessing, throwing, projecting, placing, or discharging any destructive device;<sup>74</sup>
- Unlawful throwing, projecting, placing, discharging of destructive device or bomb that results in injury to another;<sup>75</sup>
- Planting of “hoax” bomb prohibited;<sup>76</sup>

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<sup>57</sup> s. 775.31, F.S. (providing felony or misdemeanor reclassification of offenses).

<sup>58</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.).

<sup>59</sup> The bill also adds that the term “terrorist activity” has the same meaning as “terrorism” in s. 775.30, F.S.

<sup>60</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>61</sup> s. 782.04(1)(a)1., F.S.

<sup>62</sup> s. 782.04(2), F.S.

<sup>63</sup> s. 782.065, F.S.

<sup>64</sup> s. 782.07(1), F.S.

<sup>65</sup> s. 782.09, F.S.

<sup>66</sup> s. 784.045, F.S.

<sup>67</sup> s. 784.07, F.S.

<sup>68</sup> s. 787.01, F.S.

<sup>69</sup> s. 787.02, F.S.

<sup>70</sup> s. 787.07, F.S.

<sup>71</sup> s. 790.115, F.S.

<sup>72</sup> s. 790.15, F.S.

<sup>73</sup> s. 790.16, F.S.

<sup>74</sup> s. 790.161, F.S.

<sup>75</sup> s. 790.1615, F.S.

- 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>77</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>78</sup>
- Arson;<sup>79</sup>
- Arson resulting in injury to another;<sup>80</sup>
- Fire bombs;<sup>81</sup>
- Offenses against users of computers, computer systems, networks, and devices;<sup>82</sup>
- Offenses against public utilities;<sup>83</sup>
- Poisoning of food or water;<sup>84</sup> and
- Combination to usurp government.<sup>85</sup>

The bill provides that a person who commits a violation which results in death or serious bodily injury<sup>86</sup> commits a life felony.<sup>87</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>88</sup> with the intent to unlawfully harm another person or damage a critical infrastructure facility.<sup>89</sup> 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>90</sup>

<sup>76</sup> s. 790.162, F.S.

<sup>77</sup> s. 790.166, F.S.

<sup>78</sup> s. 790.19, F.S.

<sup>79</sup> s. 806.01, F.S.

<sup>80</sup> s. 806.031, F.S.

<sup>81</sup> s. 806.111, F.S.

<sup>82</sup> s. 815.06, F.S.

<sup>83</sup> s. 815.061, F.S.

<sup>84</sup> s. 859.01, F.S.

<sup>85</sup> s. 876.34, F.S.

<sup>86</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>87</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>88</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>89</sup> The bill provides that the term “[c]ritical infrastructure facility” (CIF) has the same meaning as provided in s. 493.631, F.S. Section 493.631(1)(a)-(i), F.S., lists nine facilities that qualify as CIF, provided that such facilities employ measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons.

<sup>90</sup> s. 790.16, F.S.

- Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do;<sup>91</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>92</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>93</sup>
- Offenses against users of computers, computer systems, computer networks, and electronic devices;<sup>94</sup>
- Poisoning food or water;<sup>95</sup>
- Crimes against railroad vehicles;<sup>96</sup>
- Aircraft piracy;<sup>97</sup>
- Treason;<sup>98</sup>
- Combination to usurp government;<sup>99</sup>
- Inciting insurrection.<sup>100</sup>

Additionally, it is a violation to conceal an escape from the commission of any of the above-described offenses or to attempt or conspire to commit an 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 knowingly provides MSR to a designated FTO, or attempts or conspires to do so, 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>101</sup> “training,”<sup>102</sup> “expert advice or assistance,”<sup>103</sup> and designated FTOs.<sup>104</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:

- Work under the direction and control of a designated FTO or a person engaged in, or intending to engage in, an act of terrorism; or
- Organize, manage, supervise, or otherwise direct the operations of a designated FTO or a person engaged in, or intending to engage in, an act of terrorism.

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<sup>91</sup> s. 790.161(2)-(4), F.S.

<sup>92</sup> s. 790.166, F.S.

<sup>93</sup> s. 790.19, F.S.

<sup>94</sup> s. 815.06, F.S.

<sup>95</sup> s. 859.01, F.S.

<sup>96</sup> s. 860.121, F.S.

<sup>97</sup> s. 860.16, F.S.

<sup>98</sup> s. 876.32, F.S.

<sup>99</sup> s. 876.34, F.S.

<sup>100</sup> s. 876.36, F.S.

<sup>101</sup> 18 U.S.C. § 2339A(b)(1) (providing a definition for “material support or resources”).

<sup>102</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>103</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>104</sup> 8 U.S.C. § 1189.

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 designated FTO or person engaged in, or intending to engage in, an act of terrorism to advance their goals or objectives, would not be considered to be working under the FTO's or person'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.

#### 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 to this violation 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.<sup>105</sup>

#### 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.

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<sup>105</sup> The elements of the proposed agroterrorism crime and affirmative offense are substantially similar to Missouri's agroterrorism crime and affirmative defense. *See* Mo. Rev. Stat. § 574.130 (2017).

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 and determined it would increase the prison population by an indeterminate amount.

“Per DOC, in FY 15-16, there were 2,603 prison admissions for the offenses specified for those that could be considered terrorism, given intent described under the amended s. 775.30, F.S. The same number of admissions exist when the additional offenses are included under s. 775.33, F.S. It is not known how many of these offenses included the intent defined in this bill.”<sup>106</sup>

“Per FDLE, there were 12 arrests since 2011 under s. 775.31, F.S., for felonies facilitating or furthering terrorism. Few of these had a court record, but those that did were recorded as dismissed.”<sup>107</sup>

“Per New America, there have been 27 Jihadist terror related arrests in Florida since 2002. There were 3 arrests in 2015 and 5 arrests in 2016. All were handled in the Federal courts. It is unknown how many additional non-jihadist terror related arrests there were in this time period.”<sup>108</sup>

### 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.

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<sup>106</sup> Department of Economic and Demographic Research, HB 457 – Terrorism and Terrorist Activities, “Criminal Justice Impact Conference,” Mar. 2, 2017, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB457.pdf> (last viewed April 13, 2017).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

- 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>109</sup> The Court also rejected arguments that the MSR statute was vague or overbroad or that the statute encroached on freedom of speech.<sup>110</sup> Likewise, the Court rejected arguments that the MSR statute infringed on protected advocacy, freedom of expression, and freedom of association.<sup>111</sup>

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>112</sup> The plaintiffs relied on the decision in Scales v. United States,<sup>113</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>114</sup> The Holder Court explained, “Nothing about Scales suggests the need for a specific intent requirement in such a case.”<sup>115</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

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<sup>109</sup> *Holder v. Humanitarian Law Project*, 561 U.S. 1, 16-17 (2010); see also 18 U.S.C. § 2339B(a)(1).

<sup>110</sup> *Id.* at 20-25.

<sup>111</sup> *Id.* at 25-40.

<sup>112</sup> *Holder*, 561 U.S. at 16.

<sup>113</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>114</sup> *Holder*, 561 U.S. at 18-19, 39-40.

<sup>115</sup> *Id.* at 18 (citing *Scales*, 367 U.S. at 221-22).

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>116</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**

On April 20, 2017, the Judiciary Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Removes the intent to influence the conduct of government from the crime of terrorism.
- Provides that terrorism requires the commission of a predicate offense in furtherance of intimidating or coercing the policy of a government or in furtherance of affecting the conduct of a government by mass destruction, assassination, or kidnapping.
- Provides that a person cannot use military-type training to unlawfully harm another person or damage a criminal infrastructure facility.

This analysis is drafted to the CS as passed by the Judiciary Committee.

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<sup>116</sup> *Scales*, 367 U.S. at 229-30.