

**Constitution Revision Commission
Executive Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: CS/P 26

Relating to: EXECUTIVE, Cabinet

Introducer(s): Commissioner Keiser

Article/Section affected: Article IV, Section 4

Date: January 24, 2018

	REFERENCE	ACTION
1.	<u>EX</u>	<u>Fav/CS</u>
2.	<u>LO</u>	<u>Pre-meeting</u>

I. SUMMARY:

The proposal creates the Office of Domestic Security and Counter-Terrorism (Office) within the Department of Law Enforcement. The Office is required to provide support for prosecutors and federal, state, and local law enforcement agencies that investigate or analyze information relating to attempted acts of terrorism or terrorism, or agencies that prosecute terrorism. The Office must perform other duties as provided by general law.

The proposal provides that county sheriffs have authority over and are responsible for security for county-operated buildings, including courthouses. Sheriffs also have authority over and are responsible for local decisions regarding the administration and operations of their offices that affect security and law enforcement.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Department of Law Enforcement

Article IV, section 4 of the Florida Constitution provides that the Governor as chair, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture are the agency head of the Florida Department of Law Enforcement (FDLE). The Executive Director of FDLE is appointed by the Governor, with the approval of three members of Cabinet.¹ The Executive Director must be confirmed by the Florida Senate and serves at

¹ Section 20.201(1), F.S.

the pleasure of the Governor and Cabinet.² Chapter 943, F.S., provides duties and responsibilities for FDLE.

FDLE provides services across the state, with an agency headquarters in Tallahassee and seven regional operations centers (ROC):

- Pensacola;
- Tallahassee;
- Jacksonville;
- Orlando;
- Tampa Bay;
- Fort Myers; and
- Miami.³

Counter-Terrorism Duties

Section 943.03101, F.S., designates FDLE the lead agency to coordinate counter-terrorism efforts, working in conjunction with the Division of Emergency Management (DEM) and others involved in preparation against or response to acts of terrorism.⁴

Domestic security and counter-terrorism is a stated priority of FDLE:

“In implementing its statutory mandate, FDLE has incorporated domestic security and counterterrorism into its core investigative mission, working with all federal, state, and local domestic security partners to combat terrorism. In partnership with first responder and other domestic security partners, and consistent with our mission, FDLE developed and operates within the structure defined by Florida’s Domestic Security Strategy. The strategy is multi-disciplinary and multi-regional in scope, and assures all domestic security partners are vested in the state’s strategy and have access to resources to prevent, mitigate, respond or recover from acts of terrorism in this state.”⁵

FDLE’s Executive Director, or designee, serves as the Chief of Domestic Security, who:

- Coordinates efforts in the ongoing assessment of Florida’s vulnerability to, and ability to detect, prevent, prepare for, respond to, and recover from acts of terrorism;
- Prepares recommendations based on ongoing assessments to limit the vulnerability of the state to terrorism;
- Uses regional task forces to support the duties of FDLE with respect to domestic security;
- Reports suggestions for specific and significant security enhancements of state buildings; and

² *Id.*

³ Florida Department of Law Enforcement, *About Us*, <http://www.fdle.state.fl.us/About-Us/About-Us.aspx> (last visited 1/13/2018).

⁴ FDLE authority pertains to terrorism as defined in s. 775.30, F.S.

⁵ Florida Department of Law Enforcement, Proposal 26 Analysis, p. 2, on file with Executive Committee staff.

- Recommends and implements best practices for the safety and security of state buildings.⁶

FDLE operates a regional domestic security task force (RDSTF) in each of its seven ROCs.⁷ The RDSTFs serve in an advisory capacity and provide support pertaining to domestic security.⁸ Each RDSTF is co-chaired by FDLE's Special Agent in Charge of the ROC and by a local Sheriff or Chief of Police within the same region.⁹ Each RDSTF:

- Coordinates efforts to counter terrorism among local, state, and federal resources to ensure that such efforts are not fragmented or unnecessarily duplicated;
- Coordinates training for local and state personnel to counter terrorism;
- Coordinates the collection and dissemination of investigative and intelligence information; and
- Facilitates responses to terrorist incidents within or affecting each region.¹⁰

The RDSTFs, in conjunction with DEM and other entities responsible for establishing law enforcement and first responder standards, identify appropriate equipment and training needs, curricula, and materials related to the effective response to suspected or actual acts of terrorism or incidents involving real or hoax weapons of mass destruction.¹¹ The RDSTFs assist in making recommendations for funding for purchases of equipment, delivery of training, implementation of, or revision to basic or continued training required for state licensure or certification.¹² Additionally, the RDSTFs work with the Office of the Attorney General to ensure that hate-driven acts against ethnic groups who may have been targeted as a result of acts of terrorism are appropriately investigated and responded to.¹³

FDLE's Executive Director is a voting member on the Domestic Security Oversight Council (Council).¹⁴ The Council is an advisory body that:

- Provides guidance to the RDSTFs;
- Makes recommendations regarding the expenditure of funds and allocation of resources related to counter-terrorism and domestic security efforts;
- Reviews the development, maintenance, and operation of a comprehensive multidisciplinary domestic security strategy;
- Reviews the overall statewide effectiveness of domestic security and counter-terrorism efforts in order to provide suggestions to improve or enhance those efforts; and

⁶ Section 943.0311, F.S.

⁷ Section 943.0312(1), F.S.

⁸ *Id.*

⁹ Section 943.0312(1)(b), F.S.

¹⁰ Section 943.0312(2), F.S.

¹¹ Section 943.0312(3), F.S. Hoax weapon of mass destruction is defined in s. 790.166(1)(b), F.S.

¹² *Id.*

¹³ Section 943.0312(4), F.S.

¹⁴ Section 943.0313(1), F.S.

- Reviews efforts within the state to better secure state and local infrastructure against terrorist attack and make recommendations to enhance the effectiveness of such efforts.¹⁵

Other FDLE functions relating to domestic security efforts include:

- The Office of Domestic Security Preparedness within the Investigations and Forensic Sciences Division coordinates preparedness issues with all domestic security partners and RDSTFs throughout the state;
- The Chief of Domestic Security also serves as Florida's Homeland Security Advisor and works closely with DEM and other federal, state, and local agencies to enhance the state's domestic security preparedness through the implementation of Florida's Domestic Security Strategic Plan;¹⁶ and
- Counter-terrorism investigative squads in each region participate on all relevant Federal Bureau of Investigation Joint Terrorism Task Forces across the state, and work with all elements within the criminal justice system to identify, investigate, arrest and convict terrorists with ties to the state.¹⁷

Florida Domestic Security and Counter-Terrorism Intelligence Center

Section 943.0321, F.S., establishes a Florida Domestic Security and Counter-Terrorism Intelligence Center (Center) within FDLE. The Center is housed within the Office of Statewide Intelligence (OSI), which was created by FDLE in 1996 to “specifically address the need for a preemptive strategy to our state’s varied criminal elements and trends.”¹⁸ Special agents for OSI operate out of all seven FDLE regions across Florida.¹⁹

The Center gathers, documents, and analyzes active criminal intelligence and active criminal investigative information related to terrorism; maintains and operates a counter-terrorism database; and provides support and assistance to federal, state, or local law enforcement agencies and prosecutors that investigate or prosecute terrorism.²⁰ The Center produces a FDLE Daily Domestic Security Brief and maintains situational awareness of issues in Florida and across the globe.²¹ Other duties include strategic assessments on various infrastructure elements, monthly newsletters concerning domestic extremism, and providing information for Department of Homeland Security Information Reports that are disseminated to the United States Intelligence Community.²²

¹⁵ Section 943.0313, F.S.

¹⁶ The Florida Domestic Security Strategic Plan: 2015-2017 can be accessed at <http://www.fdle.state.fl.us/Domestic-Security/Documents/2015-2017DomesticSecurityStrategicPlan.aspx> (last visited 1/13/2018).

¹⁷ Florida Department of Law Enforcement, Proposal 26 Analysis, p. 2-3, on file with Executive Committee staff.

¹⁸ Florida Department of Law Enforcement, *Office of Statewide Intelligence*, <http://www.fdle.state.fl.us/OSI/OSI-Home.aspx> (last accessed 1/13/2018).

¹⁹ *Id.*

²⁰ Section 943.0321(2), F.S.

²¹ Florida Department of Law Enforcement, *Office of Statewide Intelligence*, <http://www.fdle.state.fl.us/OSI/OSI-Home.aspx> (last accessed 1/13/2018).

²² *Id.*

County Sheriffs

Article VIII, section 1 of the Florida Constitution establishes five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court. Each officer is elected separately by the voters of the county for terms of four years.²³ Revision or abolition of these officers may be provided only by county charter or special law approved by a vote of the electors of the county, under certain circumstances.²⁴ The office of sheriff has been part of county government in Florida since 1822.²⁵

Section 30.15, F.S., provides powers and duties for sheriffs. Within their respective counties, sheriffs must execute all process of the court and board of county commissioners, as well as other writs, processes, and warrants.²⁶ Sheriffs are required to be conservators of the peace, suppress riots and unlawful assemblies, and apprehend any person disturbing the peace.²⁷ Sheriffs are required to attend sessions of the circuit court and county court.²⁸ If a sheriff fails to attend a session of the court, either in person or by deputy, the judge may appoint an interim sheriff to assume the sheriff's responsibilities and duties.²⁹ The sheriff of a county is the executive officer of the circuit court, as well as the county court, in that county.³⁰

Judicial Administration

Article V, section 2(d) of the Florida Constitution provides that the chief judge is responsible for the administrative supervision of the circuit courts and county courts in the circuit. Section 43.26, F.S., provides that the chief judge of each judicial circuit has authority to assign judges; supervise dockets and calendars; regulate the use of courtrooms; require attendance of state attorneys, public defenders, clerks, bailiffs, and other officers of the court; "to do everything necessary to promote the prompt and efficient administration of justice..."; and to manage, operate, and oversee the jury system.³¹ Failure of any judge, clerk, prosecutor, public defender, or other officer of the court to comply with an order or directive of the chief judge constitutes neglect of duty.³² Additionally, Florida Rule of Judicial Administration 2.215 provides that the chief judge regulates the use of court facilities and directs "the formation and implementation of policies, and priorities for the operation of all courts and officers within the circuit."³³

²³ Article VIII, s. 1(d), FLA. CONST.

²⁴ *Id.*

²⁵ Ch. 1, ss. 7, 10, Acts of the Legislative Council of the Territory of Florida (1822), <http://edocs.dlis.state.fl.us/fldocs/leg/actterritory/1822.pdf> (last visited 1/23/2018).

²⁶ Section 30.15(1), F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 30.12, F.S.

³⁰ Sections 26.49 and 34.07, F.S.

³¹ *See also* s. 40.001, F.S.

³² Section 43.26(4), F.S.

³³ Florida Rule of Judicial Administration 2.215(b)(2).

In the Twelfth Judicial Circuit, Chief Judge Charles E. Williams issued Administrative Order 2017-4.2, which required the sheriffs of DeSoto, Manatee, and Sarasota counties to provide security for court buildings, including buildings in which administrative functions of the court are carried out, but no sessions of the court are held, and court personnel and clerks' staff. The order imposed specific requirements for security of the buildings; identification verification and search of persons entering the buildings; and investigations of the background and criminal history of certain persons granted access to court facilities. The Second District Court of Appeals has upheld the administrative order and the Chief Judge's ability to compel the sheriffs to provide security beyond the "literal four corners of a courtroom wherein sessions of court take place" to include all court facilities and direct how the sheriffs must carry out the function of providing security.³⁴

B. EFFECT OF PROPOSED CHANGES:

The proposal creates the Office of Domestic Security and Counter-Terrorism (Office) within the Department of Law Enforcement. The Office is required to provide support for prosecutors and federal, state, and local law enforcement agencies that investigate or analyze information relating to attempted acts of terrorism or terrorism, or agencies that prosecute terrorism. The Office must perform other duties as provided by general law.

According to FDLE, the proposal "provide[s] FDLE original jurisdiction as the lead domestic security and counter-terrorism agency in Florida. The current structure recognizes the important roles played by all domestic security partners. It ensures collaboration and coordination across multiple disciplines, multiple levels of government and multiple regions across the state."³⁵

The proposal provides that county sheriffs have authority over and are responsible for security for county-operated buildings, including courthouses. Sheriffs also have authority over and are responsible for local decisions regarding the administration and operations of their offices that affect security and law enforcement.

C. FISCAL IMPACT:

Indeterminate.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

Executive Committee on January 19, 2018:

The amended proposal provides that county sheriffs have authority over and are responsible for security for county-operated buildings, including courthouses. Sheriffs

³⁴ *Knigh v. Chief Judge of Florida's Twelfth Judicial Circuit*, 2017 WL 6598638. Only the Westlaw citation is currently available. This opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal.

³⁵ Florida Department of Law Enforcement, Proposal 26 Analysis, p. 3, on file with Executive Committee staff.

also have authority over and are responsible for local decisions regarding the administration and operations of their offices that affect security and law enforcement.

The amendment removed provisions requiring the Office to establish regional offices in multiple regions of the state.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.