

STORAGE NAME: h0069.lecp
DATE: February 2, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
ANALYSIS**

BILL #: HB 69

RELATING TO: Failure to Report Crime

SPONSOR(S): Representative Diaz de la Portilla and Others

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION
 - (2) CRIME AND PUNISHMENT
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 69 will create a law which would compel individuals to report crimes in which there is bodily injury to the victim as soon as it is reasonably possible. This bill creates a legal duty to report crimes in which a person has been injured. Persons in violation of this statute would be guilty of a misdemeanor in the second degree.

This bill is not intended to include the following: A person who is prosecuted as a principal in the first degree, or an accessory after the fact to an offense, or who is prosecuted for attempting, soliciting, or conspiring to commit an offense.

There are at least 5 other states, Massachusetts, Rhode Island, Ohio, Wisconsin and Washington that have enacted similar statutes placing criminal liability upon the act of failing to report a crime of violence.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

CRIMINAL LIABILITY:

This bill is in many ways similar to the old common law crime, "misprision of a felony," which consisted of failure to report or prosecute a known felony. This common law crime was found not to be incorporated into Florida law, via section 775.01 F.S., in the case Holland v. State, 302 So. 2nd 806 (Fla. 2nd DCA 1974). The court quoted Chief Justice Marshall who wrote, "It may be the duty of a citizen to accuse every offender, and to proclaim every offense which comes to his knowledge; but the law which would punish him in every case, for not performing this duty is too harsh for man." Marbury v. Madison, 20 US (7 Wheat) 556 (1822) quoted in Holland v. State, 302 So. 2nd 806, 809 (Fla. 2nd DCA 1974).

Under current Florida law, parents and or guardians are subject to criminal liability for failure to act in accordance with common law affirmative duties to protect and care for their children. In 1997 the Florida Legislature enacted section 794.027 F.S., ("Duty to Report Sexual Battery") thus joining a minority of states which have codified a version of this common law crime. Massachusetts, Rhode Island, Ohio, Wisconsin, and Washington have also enacted similar statutes.

House Bill 69 is very similar to the "Good Samaritan Law" in the State of Wisconsin, set forth in Criminal Code 940.32, Wisconsin Statutes. This section provides as follows:

(2)(a) Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.

* * *

- (d) A person need not comply with this subsection if any of the following apply:
1. Compliance would place him or her in danger.
 2. Compliance would interfere with the duties the person owes to others.
 3. In the circumstances described under par. (a), assistance is being summoned by others.
 4. In the circumstances described under par. (b) or (c), the crime or alleged crime has been reported to an appropriate law enforcement agency by others.

(2m) If a person is subject to sub. (2)(b) or (c), the person need not comply with sub. (2)(b) or © until after he or she has summoned or provided assistance to a victim.

(3) If a person renders emergency care for a victim, s. 895.48(1) W.S., applies. Any person who provides other reasonable assistance under this section is immune from civil liability for his or her acts or omissions in providing the assistance. This immunity does not apply if the person receives or expects to receive compensation for providing the assistance.

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This Wisconsin provision was upheld in the case of State v. La Plante, 521N.W.2d 448 (app. 1994) where the court found the defendant's conduct fell squarely in the prohibited zone of conduct (witnessing a brutal assault on the victim at the defendant's party, and failing to call law enforcement for help).

CIVIL LIABILITY:

In the State of Florida, civil liability is based upon the statutes and common law. With this in mind, an individual could be subjected to civil liability if he or she did not report the act of sexual battery, because the State of Florida has a "duty to report" statute involving sexual battery, 794.027 F.S. There are other situations in which a person may be subject to civil liability in respect to the acts of others. Duty exists to control the conduct of others, such as an employee, a child, or legal dependant. Land owners are also liable for the conduct of others in some cases, when the conduct takes place on their property.

With regard to House Bill 69, there is currently no statute compelling a person to act or report a crime. Therefore, a mere witness to an assault has minimal potential for civil liability. A tragic incident recently occurred in the State of Nevada, where David Cash witnessed the brutal murder of Sherrice Iverson, by Jeremy Strohmeyer, but made no effort to render assistance to Sherrice or report the act to law enforcement . David Cash could not be held criminally and or civilly liable for his actions or inactions in respect to the crime against Sherrice Iverson. Under current law, the result in Florida would be the same.

B. EFFECT OF PROPOSED CHANGES:

House Bill 69 would make the act of not reporting a violent crime, or crime that involves bodily injury to the victim, a misdemeanor of the second degree, punishable as stated in 775.082. F.S. Thus an individual could face civil liability as well as criminal liability for failure to report a crime of violence to law enforcement.

This bill is in many ways similar to that of 794.027 F.S., which states: "A person who observes the commission of the crime of sexual battery and who: (1) has reasonable grounds to believe the he or she has observed the commission of a sexual battery; (2) has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer; (3) fails to seek such assistance; (4) would not be exposed to any threat of physical violence for seeking such assistance; (5) is not the husband, wife, parent, grandparent, child, brother, or sister of the offender or victim, by consanguinity or affinity; and is not the victim of such sexual battery. Is guilty of a misdemeanor in the first degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

794.027 F.S., is important to HB 69 in that it sets the precedent in statute rescinding the common law interpretation by the decision in Holland v. State, 302 So. 2nd 806 (Fla. 2nd DCA 1974)

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None

(2) what is the cost of such responsibility at the new level/agency?

None

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 877.31 F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

There will be very little fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

There will be very little if any fiscal impact due to the implementation and enforcement of this proposed bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Allen Mortham Jr.

Kurt E. Ahrendt