

STORAGE NAME: h0119.jud

DATE: October 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 119

RELATING TO: Culpable Negligence

SPONSOR(S): Rep. Argenziano

TIED BILL(S):

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

- (1) JUDICIARY
 - (2) GOVERNMENTAL OPERATIONS
 - (3) CRIME & PUNISHMENT
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

The bill creates the offense of "culpable negligence causing public financial injury." The offense occurs when any person who has been given custody and control of public property causes losses in the value of the property of \$100,000 or more over a 12-month or contract period, whichever is longer, through culpable negligence or inaction.

The new offense is classified as a 3rd-degree felony if the loss to the state is valued at \$500,000 or more or as a misdemeanor of the first degree if the loss to the state is valued at between \$100,000 or more but less than \$500,000.

Additionally, the bill requires every state contract with a value of \$50,000 or more to include notice of the existence of the new offense. The failure to provide such notice shall constitute a defense to the crime.

The bill also provides for prosecution of the offense of culpable negligence by any state attorney or by the statewide prosecutor. Persons who are in compliance with a state contract or who cause losses as a result of following the express direction of the Legislature or a state agency rule are not subject to prosecution for commission of culpable negligence causing public financial injury.

The bill has an effective date of July 1, 2000.

The bill does not appear to have any significant fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

Bill creates new crime.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

Bill creates new criminal penalties punishing certain behavior.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Theft

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriately the property to his or her own use or to the use of any person not entitled to the use of the property. See, s. 812.014, F.S.

Theft requires proof of specific intent to steal. Gross negligence is not sufficient to prove theft.

Conspiracy

In order to be convicted of conspiracy, it must be proved the person agreed, conspired, combined or confederated with another with the object of that conspiracy to commit the underlying crime. See, s. 777.04, F.S. In order to prove a person conspired with another to steal state assets, a prosecutor needs testimony from one of the conspirators or documentation of their illegal agreement. Naturally, conspiracies are difficult to prove since criminals rarely memorialize their crime in a written document. Nor may they be forced to give testimony against themselves. See, Article I, Section 9 of the Florida Constitution (right to remain silent).

Culpable Negligence

Negligence is defined by Black's Law Dictionary as: The failure to use such care as a reasonably prudent and careful person would use under similar circumstances; or the doing of some act which a person of ordinary prudence would not have done under similar circumstances. Negligence is characterized by inadvertence.

Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. Gross negligence is characterized by a conscious indifference to the rights and welfare of persons affected.

Culpable negligence is often called "criminal negligence." Culpable negligence is the state of mind or intent which amounts to a reckless or willful indifference to the rights and welfare of persons affected. For example, aiming a gun at another and pulling the trigger will support a charge of manslaughter if the gun discharges and kills the person, even if the shooter thought the gun was unloaded and only meant to scare the victim. See, s. 782.07, F.S. Similarly, driving a car in a reckless manner which results in a fatal accident will support a charge of vehicular homicide. See, s. 782.071, F.S.

C. EFFECT OF PROPOSED CHANGES:

New Offense

The bill creates a new offense of culpable negligence with four elements of proof, as follows:

- ▶ The person is entrusted with public property;
- ▶ The person through culpable negligence causes losses to the state property, or through inaction allows such losses;
- ▶ The loss of state assets is \$100,000 or more; and
- ▶ The loss occurs in any 12-month or contract period, whichever is longer.

Definitions

Culpable negligence means negligence of a gross and flagrant character which evinces a reckless disregard for public property and is so outrageous as to raise a presumption that the offender was indifferent to the consequences of his or her action or inaction.

Public property means that property defined in s. 812.012, F.S., which is owned by the state, any state agency, or any political subdivision of the state, excluding state-managed retirement, pension, or related investment funds.

State means the state of Florida or any agency or political subdivision of the state.

Entrust means giving custody or control, by any means, to a person or, in the case of a legal entity, to that entity's officers, directors, employees, or agents who have managerial authority over the public property, or who could otherwise prevent financial injury, regardless of the existence of a fiduciary relationship.

Causes losses, or through inaction allows losses means acting or failing to act under circumstances which would indicate that a loss of value would occur when such a loss could be foreseen and prevented, even though the loss was not actually intended.

New Protection For State Assets

The bill requires that any contract with the state with a value of \$50,000 or more must include notice of the bill's provisions regarding the offense of culpable negligence causing public financial injury. Failure to provide such notice shall constitute a defense to the crime.

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Penalty

The new offense is a third degree felony, punishable by 5 years in prison and a \$5,000 fine if the loss is valued at \$500,000 or more and is a misdemeanor of the first degree, punishable by 1 year in prison and a \$1,000 fine, if the loss sustained is valued at \$100,000 or more but less than \$500,000.

Prosecution

Prosecution for violations may be brought on behalf of the state by any state attorney or by the statewide prosecutor. Additionally, only the Department of Legal Affairs, any state attorney, or any state agency having jurisdiction over certain specified violations may institute civil proceedings.

Exemption

The bill provides an exemption for persons who are in compliance with a state contract or who cause losses as a result of following the express direction of the Legislature or a state agency rule.

Effective Date

The bill provides an effective date of July 1, 2000, and will apply to acts or omissions that occur on or after that date.

D. 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 GOVERNMENT:

1. Revenues:

Not estimated.

2. Expenditures:

Not estimated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not estimated.

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2. Expenditures:

Not estimated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is exempt from the mandates of Article VII, Section 18 of the State Constitution in that it creates a criminal penalty for its violation.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

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

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Council Director:

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