

**STORAGE NAME:** h0333.cp

**DATE:** November 15, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME AND PUNISHMENT  
ANALYSIS**

**BILL #:** HB 333

**RELATING TO:** Failure to Report a Crime

**SPONSOR(S):** Representative Diaz de la Portilla

**TIED BILL(S):** None

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

- (1) CRIME AND PUNISHMENT
  - (2) CRIMINAL JUSTICE APPROPRIATIONS
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

House Bill 333 requires individuals who know that a crime is being committed which exposes the victim to serious bodily injury to report the crime to a law enforcement officer as soon as it is reasonably practicable to the extent that the report can be made without danger to the person reporting or to another person. The bill provides that an individual who fails to make such a report is guilty of a second degree misdemeanor.

The bill provides that this provision may not be construed to apply to a person who is prosecuted as a principal in the first degree, as an accessory after the fact or for attempting, soliciting, or conspiring to commit an offense when the prosecuted offense has occurred in the course of the same criminal episode as the criminal offense which exposes the victim to serious bodily injury.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill would make it illegal to fail to report a crime that exposes the victim to serious bodily injury. This could be viewed as affecting an individual's freedom to not get involved when a crime is being committed.

B. PRESENT SITUATION:

Under common law, failing to report a crime was called "misprision of a felony". This common law crime does not exist in Florida. Holland v. State, 302 So. 2nd 806 (Fla. 2nd DCA 1974).

**Failure to Report Sexual Battery**

Section 794.027 F.S. makes it a first degree misdemeanor for a person to observe the commission of a sexual battery and fail to report it. The statute provides as follows:

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
- (6) 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.

### **Failure to Report Child Abuse**

Section 39.201, F.S. requires any person, including but not limited to any health care professional, school teacher or other school personnel, social worker, day care center worker or law enforcement officer who knows or has reasonable cause to suspect that a child is abused, abandoned, or neglected to report such suspicion to the Department of Children and Family Services.

Section 39.205, F.S. provides that any person who is required to report known or suspected child abuse and who knowingly ignores the statutory reporting requirements, is guilty of a second degree misdemeanor. In Barber v. State, 592 So.2d 330 (Fla. 2nd DCA 1992), a foster care counselor failed to report to HRS a phone call that she had received which informed her that a child had been abused. The counselor was convicted of failure to report child abuse and the conviction was affirmed on appeal.

### **Accessory After the Fact**

According to the Florida Standard Jury Instructions, in order to prove a defendant guilty of being an accessory after the fact, the State must prove five elements:

1. A felony was actually committed.
2. After the felony was committed, the defendant maintained, assisted or gave any other aid to the person who committed the felony.
3. At that time, the defendant knew that the felony had been committed.
4. The defendant aided the person who committed the felony with the intent that the felon avoid or escape detection, arrest, trial or punishment.
5. The defendant was not related to the person who committed the felony by blood or marriage as husband, wife, parent, grandparent, child, grandchild, brother or sister.

See also, s. 777.03, F.S.

### **Principal in the First Degree**

The standard jury instruction relating to "principals" states:

If the defendant helped another person or persons commit or attempt to commit a crime, the defendant is a principal and must be treated as if he or she had done all the things the other person or persons did if: (1) the defendant had a conscious intent that the criminal act be done, and (2) the defendant did some act or said some word which was intended to and which did incite, cause, encourage, assist or advise the other person or persons to actually commit or attempt to commit the crime.

Fla. Standard Jury Instruction 3.01; Section 777.011, F.S.

C. EFFECT OF PROPOSED CHANGES:

HB 333 requires a person who knows that a crime which exposes the victim to serious bodily injury is being committed to report the crime to a law enforcement officer as soon as it is reasonably practicable, to the extent that report can be made without danger to the person reporting or to another person. The bill provides that any person who violates this subsection commits a second degree misdemeanor.

The bill also provides that this section may not be construed to apply to a person either 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, when the prosecuted offense has occurred in the course or the same criminal conduct, transaction or episode as the offense which exposes the victim to serious bodily injury.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that a person who knows that a crime is being committed to report the crime to a law enforcement officer when the crime exposes the victim to serious bodily injury. Provides that failure to report is a second degree misdemeanor.

Section 2: Provides effective date of October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill, which creates a second degree misdemeanor offense, will not have any impact on the Department of Corrections. Further, the number of cases prosecuted under this newly created section would likely be small and therefore have very little impact on the county jail population.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

During the 1999 session, CS/HB 69 which was identical to this bill was sponsored by Representative Diaz de la Portilla. The bill passed the Committee on Law Enforcement and the Committee on Crime & Punishment and died in Criminal Justice Appropriations. The bill did not have a Senate companion.

This bill would impose a duty on a person who knows that a crime is being committed to report the crime if the crime exposes the victim to a life threatening injury but does not appear to apply to reporting a crime that the person discovers after it is completed. For example, if a person discovered that a friend had previously committed a crime in which the victim had received a life-threatening injury, this bill does not appear to impose on the person an obligation to report the crime. [However, if the person aids or maintains the offender with the intent that the offender escape or arrest for the crime, they could be charged with being an accessory after the fact.]

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

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Trina Kramer

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David De La Paz