

STORAGE NAME: h0219a.jo.doc
DATE: January 10, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 219
RELATING TO: Open House Parties
SPONSOR(S): Representatives Ball, Needelman, and Hogan
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 1
(2) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
(3) COUNCIL FOR HEALTHY COMMUNITIES
(4)
(5)

I. SUMMARY:

Current law prohibits a person 21 years of age or older, who is in control of a premises, from having an "open house party" at which the person knowingly allows an underage person to consume or possess alcoholic beverages or drugs on the premises. This bill lowers the applicable age from 21 to 18.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 type="checkbox"/> | N/A <input checked="" 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:

The bill may be viewed as creating more government by expanding the scope of an existing criminal offense.

B. PRESENT SITUATION:

Section 856.015, F.S. provides that it is a second degree misdemeanor for an “adult” having control of any residence to allow an open house party to take place at the residence if the adult knows that an alcoholic beverage or drug is being possessed or consumed by a minor if the adult fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.¹

The section defines the term “minor” to mean a person not legally permitted by reason of age to possess alcoholic beverages. The term “adult” is defined as a person not legally prohibited by reason of age from possessing alcoholic beverages. In Florida, it is unlawful for any person under the age of 21 to possess alcoholic beverages. s. 562.111, F.S. Because s. 856.015, F.S., specifically prohibits “adults” from having an open house party where the adult has knowledge that alcohol or drugs are being consumed or possessed by underage people and defines the term “adult” as a person not legally prohibited by age from possessing alcoholic beverages, the statute only applies to individuals age 21 or older. Therefore, a person under the age of 21 could not be prosecuted for the offense.

The term “open house party” is defined to mean a social gathering at a residence. The term “control” is defined as the “authority or ability to regulate, direct, or dominate”.²

In State v. Manfredonia, 649 So.2d 1388, 1390 (Fla. 1995), the Florida Supreme Court ruled that the statute’s provisions are not unconstitutionally vague, and interpreted the provisions of the statute as follows:

As we read the statute, the State has a great burden to overcome in proving that an adult has violated section 856.015. In order to successfully prosecute under this section, the State must establish the following elements: (1) an adult in control of the premises knowingly allows a social gathering to take place there; (2) the possession or consumption of alcoholic beverages or controlled

¹ The section exempts the use of alcoholic beverages at legally protected religious observances or activities.

² The section also provides definitions for the terms “alcoholic beverage” and “drug” and defines the term residence to mean a “home, apartment, condominium or other dwelling unit”.

substances by one or more minors occurs during the gathering; (3) the adult in control has actual knowledge of the possession or consumption of alcoholic beverages or controlled substances by the minors; and (4) the adult in control: (a) allows the party to continue and (b) fails to take any reasonable steps to prevent the possession or consumption. In essence, the State has the heavy burden of proving beyond a reasonable doubt that the adult in charge stood by and did nothing in the face of the adult's actual knowledge of the minor's consumption or possession of alcohol or controlled substances.

The court noted that the "adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof." Id. at 1391.

C. EFFECT OF PROPOSED CHANGES:

This bill lowers from 21 to 18 the age at which an individual is subject to criminal prosecution for allowing an open house party at which alcohol or drugs are illegally possessed or used by a minor.

This bill takes effect on July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Office of the State Courts Administrator states that the bill will have no fiscal impact on the state court system. Because it expands the scope of a criminal offense which is only a second degree misdemeanor and therefore not punishable by a prison sentence, this bill will not have any prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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:

This bill is exempt from the requirements of Art. VII, s. 18, Fla. Const., because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill is exempt from the requirements of Art. VII, s. 18, Fla. Const., because it is a criminal law.

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

This bill is exempt from the requirements of Art. VII, s. 18, Fla. Const., because it is a criminal law.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Trina Kramer

Staff Director:

Trina Kramer

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier, Jr.

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