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DATE: December 18, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 389
RELATING TO: Manslaughter
SPONSOR(S): Representative(s) Lerner

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3) HEALTHY COMMUNITIES
- (4)
- (5)

I. SUMMARY:

HB 389 provides that a person who causes the death of a law enforcement officer or a firefighter through culpable negligence commits aggravated manslaughter, a felony of the first degree. The offense is a first degree felony, punishable by up to 30 years in prison.

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 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:

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B. PRESENT SITUATION:

Section 782.07 defines manslaughter as "the killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provision of chapter 776 and in cases in which such killing shall not be excusable homicide or murder". The offense is a second degree felony, punishable by up to fifteen years in prison.

The Florida Standard Jury Instruction describes the elements of manslaughter as follows:

Before you can find the defendant guilty of manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. The victim is dead.
2. The defendant
 - a. intentionally caused the death of the victim or
 - b. intentionally procured the death of the victim or
 - c. the death of the victim was caused by the culpable negligence of the defendant

The jury instruction further defines the term "culpable negligence" as follows:

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, of such an entire want of care as to raise a presumption of conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known,

or reasonably should have know, was likely to cause death or great bodily harm.

See also, Copertino v. State, 726 So.2d 330, 333 (Fla. 4th DCA 1999)(holding that evidence that young defendant drove 90 miles per hour on a major thoroughfare near residential areas in a large metropolitan area late at night in a Honda Civic filled with 9 persons was sufficient to prove that the driver was culpably negligent); Pritchett v. State, 414 So.2d 2 (Fla. 3rd DCA 1982)(holding that defendant's actions in flying aircraft so near to ground that he pulled up to avoid palm trees and antennae, making three or four passes at an altitude of 40 or 50 feet above populated motel causing people on ground to take cover, were sufficient to show conduct of gross and flagrant character, evincing reckless disregard of human life, and warranting conviction for manslaughter by culpable negligence of passenger in plane); Filmon v. State, 336 So. 2d 586 (Fla. 1976)(noting that "every case of manslaughter by culpable negligence must be determined upon the facts and circumstance peculiar to that case.")

Aggravated manslaughter occurs when a person causes the death of any elderly person, disabled adult or child by culpable negligence through abuse or neglect. Aggravated manslaughter requires proof that the defendant was a "caregiver" and failed to provide "the care, supervision, and services necessary to maintain the [child's, elderly or disabled person's] physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine and medical services that a prudent person would consider essential for the well being of the elderly person". s. 825.102(3) and s. 827.03(3), F.S.; Bayer v. State 788 So.2d 310 (Fla. 5th DCA 2001); Peterson v. State, 765 So.2d 861 (Fla. 5th DCA 2000)(upholding conviction of son for aggravated manslaughter of mother where defendant was living in mother's house and neglected duty of "caregiver"). These offenses are first degree felonies, punishable by up to thirty years in prison.

C. EFFECT OF PROPOSED CHANGES:

The bill provides that a person who causes the death of a law enforcement officer or a firefighter through culpable negligence commits aggravated manslaughter, a felony of the first degree.

The bill defines the term "law enforcement officer" in conformity with s. 943.10, F.S. as:

any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

The bill does not rank this offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. As a result, this offense, which is a first degree felony, will default to a Level 7 offense. s. 921.0023(3), F.S.¹ This is the same ranking as the offense of manslaughter. Thus,

¹ After adding victim injury points for the death of the victim, the sentencing range for the offense created by the bill would be 111 months (9.25 years) up to a maximum of 30 years. s. 921.0021(6), F.S. (defining "victim injury"); Wendt v. State, 711 So.2d 1166 (Fla. 2nd DCA 1998)(en banc)(holding that court held that trial court properly scored victim injury points on sentencing scoresheet in DUI manslaughter case).

while the maximum term of imprisonment for manslaughter of a law enforcement officer will be thirty years as opposed to fifteen years² for the offense of manslaughter, the lowest permissible sentence will not increase. In comparison, the offense of aggravated manslaughter of an elderly or disabled person is currently a Level 9 offense and the offense of aggravated manslaughter of a child is a Level 10 offense. ss. 921.0022(3)(i) and (j), F.S.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 782.07, F.S. to create offense of aggravated manslaughter of a law enforcement officer or firefighter.

Section 2: Provides effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. This bill increases the offense of a manslaughter from a second degree felony to a first degree felony when the victim is a law enforcement officer. However, the offense will be ranked in the same manner as the offense of manslaughter within the Offense Severity Ranking Chart of the Criminal Punishment Code. Thus, the lowest permissible sentence for the offense will not increase. As a result, it is likely that the bill will have an insignificant prison bed impact on the Department of Corrections.

²According to s. 775.082, F.S., the maximum sentence for a second degree felony is fifteen years in prison and a \$10,000 fine. The maximum sentence for a first degree felony is 30 years in prison and a \$10,000 fine.

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 counties or municipalities 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:

The offense of battery on a law enforcement officer requires proof that the officer was engaged in the lawful performance of his or her duties. s. 784.07(2), F.S. This bill only requires proof that the person was a "law enforcement officer" or a "firefighter".

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

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