

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Current law under s. 1006.63, F.S. provides that public and nonpublic post secondary educational institutions whose students receive state student financial assistance, must adopt antihazing policies. The section of statutes defined hazing as:

"any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating under the sanction of a postsecondary institution. Such term includes but is not limited to, any brutality of physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of food, liquor, drug, or other substance, or other forced physical activity which could adversely affect the health or safety of the student, and also includes any activity which would subject the student to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct which could result in extreme embarrassment or other forced activity which could adversely affect the mental health or dignity of the student." s. 1006.63, F.S.

Section 1006.63(3)(a) provides the administrative penalties for hazing which may include fines, the withholding of diplomas or transcripts pending the payment of fines, and imposition of probation, suspension or dismissal. Organizations engaging in hazing under s. 1006.63(3)(b) may be punished by a recession of permission for that organization to operate under the sanction of the institution. Section 1001.64 makes it one of the duties of the board of trustees of community colleges to adopt a written antihazing policy. All of these penalties are handled at the university or community college level.

There is no current criminal penalty for the act of hazing, though many times criminal prosecutions arise. The principal problem for prosecuting such offenses is that the applicable crimes usually require an element that the act occur against the will of the victim. For example, under s. 784.03(1)(a), the offense of battery occurs when a person actually and intentionally touches another "against the will of the other, or intentionally causes bodily harm to another person." Similarly, under s. 784.011, F.S., the crime of assault requires a well-founded fear on the part of the victim that the violence threatened by word or act is imminent. Similarly, the offense of false imprisonment, under s. 787.02(1)(a), means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and "against his or her will." All of these offenses may be difficult to prove in hazing incidents, because the defense may assert that the victim willingly participated in the criminal act.

Recently there have been a number of incidents in which acts apparently involving hazing which resulted in the serious injury or death of students. Last December, the University of Central Florida suspended the Sigma Alpha Epsilon fraternity for one year over a suspected hazing incident which involved head-on collision of two trucks on a campus road. During the incident, which occurred in the early morning of October 16, 2003, some of the young men in one of the trucks apparently had their hands bound with duct tape. Several of the students were hurt, including one whose nose was severely cut, and alcohol was suspected to have been involved.¹

In February of this year, the Florida Agricultural and Mechanical University settled a civil suit for \$15,000 with a student who had been hazed in 1998 while a member of the Marching 100 band. He had been paddled 300 times and required hospitalization and has been left permanently injured.²

Perhaps the most tragic hazing incident to receive public attention recently involved the drowning death of a University of Miami student. Eighteen year old Chad Meredith on Nov. 5, 2001 returned from a concert and began drinking with two officers of Kappa Sigma, a fraternity he wished to join. After several hours of drinking, the group stripped to their boxers and went to swim across Lake Osceola near campus. Meredith had a blood alcohol level of 0.13 and drowned 34 feet from shore in six feet nine inches of water.³ Although, the fraternity officers protested that the incident was not a fraternity-sanctioned hazing event, a jury this February awarded the deceased student's family a \$12.6 million verdict in a negligence suit based on hazing.

HB 1261 amends the section of statutes providing the current definition of hazing. The bill expands the definition of hazing to include actions "for the purpose of, but not limited to initiation or admission into or affiliation with any organization operating under the sanction of postsecondary institution." The bill excludes from the definition of hazing customary athletic events or other similar contests or competitions. The bill provides that hazing does not include any activity or conduct which furthers a legal and legitimate objective.

HB 1261 creates two new criminal offenses of hazing. The first, a third degree felony, would occur when a person "intentionally or recklessly orders, directs, pressures, or coerces another person who is a member of or an applicant to any type of student organization to engage in conduct that results in the serious bodily injury or death of another person or that creates substantial risk of physical injury to such other person and thereby caused such injury or death." The second offense created by the bill is a first degree misdemeanor and would occur when "in the course of another person's initiation into or affiliation with any organization, he or she intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person."⁴ The bill provides that as a condition of the sentences imposed for either of these newly created offenses, the court may require the defendant to complete a 4-hour hazing education course and may also impose a condition of drug or alcohol probation.

The bill disallows certain defenses for the offense of hazing. For example, under the bill consent of the victim is not a valid defense to hazing. The bill also eliminates a defense that such hazing was not a sanctioned or approved official organizational event. In addition, the bill provides that it is not a defense to hazing that the conduct or activity that resulted in death or injury of the person was not done as a condition of membership of the organization.

¹ Damron, David "UCF Suspends Fraternity for 1 Year Over Accident the School Said it Determined Sigma Alpha Epsilon Members Were Involved in Hazing." Orlando Sentinel, December 11, 2003.

² Yeager, Melanie "Settlement Reached in Hazing Complaint" Tallahassee Democrat, February 11, 2004.

³ Arthur, Lisa "2 Peers Sued in Death of UM Student" Miami Herald, February 2, 2004.

⁴ Sections 775.082 and 775.083, F.S. provide that a third degree felony is punishable by five years in prison or a \$5000 fine, and a first degree misdemeanor is punishable by one year in jail or a \$1000 fine.

HB 1261 also provides that nothing in the act shall be construed to constitute grounds for any civil cause of action that is not otherwise provided in law.

C. SECTION DIRECTORY:

Section 1. amends s. 1006.63, F.S.

Section 2. amends s. 1006.64, F.S.

Section 3. contains a new provision of statutes to be added by bill drafting.

Section 4. provides an effective date.

II. 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:

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet evaluated the fiscal impact of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill is exempt from the mandates provision because it is a criminal law.

2. Other:

Void for Vagueness

The "void-for-vagueness doctrine" requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a

manner that does not encourage arbitrary and discriminatory enforcement. Russ v. State, 832 So.2d 901(Fla 1st DCA 2002)

The bill utilizes arguably vague language in describing the offenses of hazing. In the bill, the definition of hazing includes acts which are “for purposes including, but not limited to initiation or admission into or affiliation with any organization operating under the sanction of a postsecondary institution.” The definition also includes that hazing includes, but is not limited to “pressuring or coercing a person into violating state or federal law . . .” but hazing is not “any activity which furthers a legal and legitimate objective.” Both offenses itself proscribe conduct which “creates a substantial risk of physical injury.”

For an example of a statute reviewed for vagueness, the crime of stalking found in s. 784.048, F.S. criminalizes “harassment” and that section defines “harass” as “to engage in a course of conduct directed a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.” It is significant that this language has been found constitutional and not violative of the “void for vagueness” doctrine in multiple cases. Bouters v. State, 659 So.2d 235 (Fla 1995) (Stalking statute not unconstitutionally vague to the extent it defined “harasses” to mean to engage in course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose; statute did not create subjective standard for substantial emotional distress, but in fact created reasonable person standard.) Gilbert v. State, 659 So.2d 233 (Fla. 1995) (Criminal statute prohibiting stalking is not facially unconstitutional as being vague and overbroad.)

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In cases in which the offense of manslaughter could be charged under current law, it could be argued that the bill could have the effect of reducing the potential criminal penalty from a second degree felony to a third degree felony. Current law provides that the crime of manslaughter is a second degree felony, punishable by up to fifteen years in prison. Manslaughter under s. 782.07 is defined as “[t]he killing of a human being by the act, procurement, or culpable negligence of another without lawful justification . . . is manslaughter.” It could be argued “hazing” rising to level of culpable negligence which results in the death of a victim would be required to be prosecuted under this statute instead of the manslaughter statute.

Within criminal law, where there is a specific statute proscribing particular conduct, controlling effect is ordinarily given to particular and specific statutory proscriptions addressing acts which otherwise might also be circumscribed by more general criminal provisions. State v. Maloy 523 So.2d 815 (Fla. 1st DCA, 2002) (Statute establishing criminal sanctions for public officers' fraudulent claims for travel reimbursement was the exclusive criminal penalty for such acts, and thus a defendant, who had made false reimbursement claims on travel vouchers while he served as county commissioner, was entitled to dismissal of the charges for official misconduct, grand theft and petit theft.) Under this theory, a person whose conduct would normally subject him to prosecution for manslaughter, a second degree felony, may have that charge dismissed since the third degree felony provision regarding hazing may more specifically apply to the case.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2004, the Criminal Justice Subcommittee voted to favorably recommend the bill with two amendments. The first amendment broadened the definition of hazing from applying to “any organization operating under the sanction of a postsecondary institution” to “any organization.” This will

have the effect of allowing virtually any organization whose applicants are “students” to be subject to criminal penalties for hazing. The second amendment removed “forced calisthenics” as one of the acts which are included in the definition of hazing.