

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:

During the fall of 2003, it was widely reported in the media that a rock band had publicized plans to have a "terminally ill" person commit suicide during a concert in St. Petersburg, Florida. The St. Petersburg City Commission passed an emergency city ordinance which prohibited conducting for commercial or entertainment purposes any event that includes a suicide as a component of the event.¹ The ordinance also authorized the city attorney to seek an injunction to bar such an event.

Section 782.08 provides that a person who *deliberately assists* another in the commission of self-murder shall be guilty of manslaughter, a felony of the second degree. The offense is punishable by imprisonment for up to fifteen years.

¹ The ordinance was adopted at a meeting held on September 29, 2003 and provided in part: Ordinance No. 634-G. Section 20-100. Conduct, promotion, etc., of events at which actual suicide is knowingly scheduled or knowingly permitted to occur prohibited.

(1) As used herein:

(a) "Actual suicide" shall mean self-murder, as that term is used in section 782.08, Florida Statutes.

(b) "Simulated suicide" shall mean the depiction or portrayal of a suicide which is not an actual suicide and which is performed under circumstances in which a reasonable person is aware, or reasonably should be aware, that the depiction or portrayal is not an actual suicide. For example, but without limiting the generality of the foregoing, a depiction or portrayal of a suicide in accordance with a script or story that is generally known to the public, or a depiction or portrayal of a suicide during an event for which the public has been informed during the promotion of the event or otherwise in advance of the event that the depiction or portrayal will not be an actual suicide, shall be deemed a "simulated suicide."

(2) No person shall conduct for commercial or entertainment purposes any event that the person knows or reasonably should know includes an actual suicide as a component of the event.

(3) No person shall promote or publicize for commercial or entertainment purposes any event that the person knows or reasonably should know includes an actual suicide as a component of the event.

(4) No person shall collect an admission fee or accept anything of value for admission to any event that the person knows or reasonably should know includes an actual suicide as a component of the event.

(5) No person shall provide a theater, auditorium, club, or other venue or any location for any event that the person knows or reasonably should know includes an actual suicide as a component of the event.

(6) The provisions of this section shall not be construed as prohibiting any event in which a "simulated suicide," as defined herein, but not an actual suicide, will occur.

(7) A violation of this section shall be subject to the penalties set forth in Section 1-7, City Code.

(8) In addition to the penalties set forth in Section 1-7, City Code, or in the alternative thereto, the city attorney is authorized to seek declaratory relief, injunctive relief, or any other available relief to enforce any or all of the provisions of this section, including any appeals in connection therewith.

(9) In the event that any court having jurisdiction over any case arising under this section determines that any subsection or other provision of this section is invalid for any reason, the remaining subsections or other provisions shall continue to be in full force and effect, and towards that end the City Council declares this section and its subsections and other provisions to be severable.

HB 221 amends section 782.08 to provide legislative findings that the state has a compelling interest in preserving human life, preventing suicide, protecting vulnerable persons, protecting the public health and safety, and maintaining the integrity of the medical profession. The bill also provides that the legislature finds a distinction between assisting self-murder and refusing or foregoing medical treatment.

The bill also provides the following definitions:

“Deliberately assisting” means carrying out a act that is intended to:

1. Aid, abet, facilitate, permit, advocate or encourage;
2. Publicize, promote, advertise, operate, stage, schedule or conduct;
3. Provide or secure a venue, transportation, or security; or
4. Result in the collection of an admission or fee.

“Person” means every natural person, firm, copartnership, association or corporation.

The bill further provides that a person commits the offense of assisted self murder if that person deliberately assists another in the commission of self-murder, *regardless of whether death actually occurs*.

C. SECTION DIRECTORY:

Section 1. Amends s. 782.08; relating to assisting self murder.

Section 2. Amends s. 921.0022; ranking the offense of assisting self-murder in the offense severity ranking chart of the Criminal Punishment Code.

Section 3. Reenacts s. 790.065, F.S. for the purpose of incorporating the amendment to s. 782.08 by reference.

Section 4. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill ranks the offense of assisting self-murder in level 7 of the offense severity ranking chart. As a result, the lowest permissible sentence for this offense will be 21 months in prison. However, it appears unlikely that a large number of people will be convicted of this offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 221 would prohibit an entity from staging a public suicide of the type that was publicized in St. Petersburg during the fall of 2003.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

In Krischer v. Mclver, 697 So.2d 97 (Fla. 1997), the Florida Supreme Court rejected a constitutional challenge to section 782.08, F.S.. A terminally ill patient and his physician sought an injunction against the state attorney from prosecuting the physician for giving deliberate assistance to the patient in committing suicide. The court reviewed two United States Supreme Court cases on the subject of whether there is a right to assisted suicide under the federal constitution. In one case, the U.S. Supreme Court held that a "right" to assistance in committing suicide was not a fundamental liberty interest protected by the due process clause². In the other case³, the higher court rejected a claim that a prohibition on assisted suicide violated equal protection by holding that there was a "logical and recognized distinction between the right to refuse medical treatment and assisted suicide and concluded that there were valid and important public interests which easily satisfied the requirement that a legislative classification bear a rational relation to some legitimate end." Id. at 100. The Florida Supreme Court then held that the patient did not have a right to have his physician assist him in committing suicide under the privacy provision of the Florida constitution. In conclusion, the court stated the following:

By broadly construing the privacy amendment to include the right to assisted suicide, we would run the risk of arrogating to ourselves those powers to make social policy that as a constitutional matter belong on to the legislature.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

² Washington v. Glucksberg, 117 S.Ct. 2258 (1997).

³ Vacco v. Quill, 117 S.Ct. 2293 (1997).