

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill creates new criminal offenses.

Promote personal responsibility -- This bill deters wrongful conduct by creating new criminal offenses for such conduct.

B. EFFECT OF PROPOSED CHANGES:

Current Law

Hazing is the subjection of another to extreme physical or mental harassment, usually associated with initiation into a social organization. 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 act.

Hazing Incidents in Florida

In 2003, the University of Central Florida suspended the Sigma Alpha Epsilon fraternity for one year over a suspected hazing incident that involved a head-on collision of two trucks on a campus road. Some of the truck passengers were bound at the wrists with duct tape. Several of the students were hurt, and alcohol may have been involved.¹

In 2004, the Florida Agricultural and Mechanical University settled a civil suit regarding a 1998 incident where a member of the Marching 100 band was paddled 300 times. The student required hospitalization, and is permanently injured.²

In 2001, University of Miami student Chad Meredith 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 tried to swim across Lake Osceola near campus. Meredith had a blood alcohol level of 0.13. He 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 found otherwise, and awarded the deceased student's family a \$12.6 million verdict in a negligence suit based on hazing.

Effect of Bill

This bill creates the "Chad Meredith Act."

This bill amends the statutory 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. The bill also eliminates "forced calisthenics" from the definition of the term "hazing" to allow for ROTC and athletic training.

This bill creates new criminal offenses specific to hazing at the high school or college level. This bill provides that it is a first degree misdemeanor to commit an act of hazing that creates a substantial risk of physical injury or death. The offense level increases to a third degree felony if the act of hazing actually results in serious bodily injury or death. A sentencing court may order the defendant to complete a 4-hour hazing education course and may also impose a condition of drug or alcohol probation. These new criminal offenses may not be construed to preclude prosecution for a more general offense resulting from the same criminal transaction or episode.⁴

This bill provides that certain general defenses to a criminal action are not applicable to the crime of hazing. Notably, consent of the victim is not a defense to hazing. Also, whether or not the hazing was sanctioned or approved as an official organizational event is not a defense, nor is it a defense that the act 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 Where an act of hazing results in the death of a person, and manslaughter could be charged under current law, it is possible that this bill, without this qualifier, could have the effect of reducing the potential criminal penalty from a second degree felony to a third degree felony. Manslaughter, a second degree felony, is "[t]he killing of a human being by the act, procurement, or culpable negligence of another without lawful justification . . ." It could be argued that a "hazing" death resulting from culpable negligence would have to be prosecuted as a hazing death under the newly created offense, rather than under the manslaughter law. Where a criminal law proscribes specific conduct, the state cannot prosecute the offender for a more broadly defined offense that has a greater penalty. For instance, the courts dismissed felony charges of official misconduct and grand theft filed against a public official who submitted numerous fraudulent claims for travel reimbursement because there is a misdemeanor offense for fraudulent travel claims. *State v. Maloy*, 523 So.2d 815 (Fla. 1st DCA, 2002).

This bill specifies that it does not create a new civil cause of action.

C. SECTION DIRECTORY:

Section 1 names the act for Chad Meredith.

Section 2 creates an unnumbered section of law creating criminal offenses for hazing at the high school level.

Section 3 amends s. 1006.63, F.S., changing the definition of hazing and creating criminal offenses for hazing at the college level.

Section 4 amends s. 1001.64, F.S, to correct a cross-reference.

Section 5 creates an unnumbered section of law specifying that this act does not create any new civil cause of action.

Section 6 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On February 22, 2005 the Criminal Justice Estimating Conference determined that this bill would have an insignificant 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

The bill provides that hazing does not include any activity or conduct which furthers a legal and legitimate objective. This clause gives rise to two constitutional concerns:

The principles of due process require that the state prove every element of a criminal offense beyond a reasonable doubt. Here, the state must prove the negative, that there was no legal or legitimate objective served by the alleged hazing activity. This constitutional principle would not result in a finding that this law is unconstitutional, but it may make a conviction difficult to obtain.

A criminal law must proscribe criminal conduct in a manner that can be understood and appreciated by the persons whose conduct is affected by the law. A criminal law that violates this is said to be "void for vagueness." In challenging a statute as vague, a defendant must establish that the statute "is so vague and lacking in ascertainable standards of guilt that, as applied, it failed to give 'a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.'" *Palmer v. City of Euclid*, 402 U.S. 544 (1971) (internal citations omitted). There may be fact situations where reasonable persons could disagree about whether a particular activity served a legitimate purpose; and in such cases, a court may find the law vague, and thus unenforceable.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 9, 2005, the Criminal Justice Committee adopted one amendment to the bill. The amendment provides that the newly created offenses are not to be construed to preclude prosecution for a more general offense. See footnote 4 herein. The bill was then reported favorably with a committee substitute.