

The bill substantially amends section 856.015, Florida Statutes.

II. Present Situation:

Section 856.015, F.S., provides that it is a second degree misdemeanor for any person having control of any residence to allow an open house party to take place at the residence if that person knows that an alcoholic beverage or drug is being possessed or consumed by a minor and fails to take reasonable steps to prevent such possession or consumption. A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.¹

Section 856.015(1), F.S., defines the following terms:

- “Open house party” means a social gathering at a residence;
- “Control” means the authority or ability to regulate, direct, or dominate;
- “Residence” means a home, apartment, condominium or other dwelling unit;
- “Minor” means a person not legally permitted by reason of age to possess alcoholic beverages; and
- “Person” means anyone 18 years of age or older.

In Florida, it is unlawful for any person younger than 21 years to possess alcoholic beverages.² As a result, the second degree misdemeanor penalty applies to persons 18 years of age or older who hold an open house party for minors under the age of 21 years.³ The statute exempts the use of alcoholic beverages at legally protected religious observances or activities under s. 856.015(3), F.S.

The open house party prohibition in s. 856.015, F.S., requires that the person in control of the residence have actual knowledge of the possession by the underage person. It is not sufficient proof that the person should have known that minors at the residence consumed or were in possession of drugs or alcohol.

The provision also requires the person in control of the residence to take reasonable steps to prevent possession or consumption of drugs or alcohol by minors. This condition has been interpreted to require the person in control to take reasonable steps to prevent the *continued* possession of the alcohol beverage or drug by the underage person *after attaining actual knowledge* of the illegal possession.⁴

¹ See ss. 775.082(4)(b) and 775.083(1)(e), F.S.

² Section 562.111, F.S.

³ See s. 856.015(4), F.S.

⁴ See *State v. Manfredonia*, 649 So.2d 1388 (Fla. 1995). 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.

III. Effect of Proposed Changes:

The bill amends subsection (4) of s. 856.015, F.S., to provide that individuals who violate, for a second or subsequent time, the prohibition against knowingly hosting an open house party where drugs or alcohol are possessed or consumed by minors without taking reasonable steps to prevent such possession or consumption would commit a first-degree misdemeanor. A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.⁵

The bill creates subsection (5), of s. 856.015, F.S., to provide that individuals who knowingly violate the open house party prohibition in s. 856.015(2), F.S., face a first-degree misdemeanor penalty if the violation results in serious bodily injury or death of a minor.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There could be an indeterminate fiscal impact upon jails as a result of the increased misdemeanor penalties.

VI. Technical Deficiencies:

None.

⁵ See ss. 775.082(4)(a) and 775.083(1)(d), F.S.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 7, 2010:

Specifies that the serious injury or death must be of a minor for the enhanced penalty to apply.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
