

**STORAGE NAME:** h3039a.grr  
**DATE:** February 4, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL RULES AND REGULATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3039  
**RELATING TO:** Husband and Wife  
**SPONSOR(S):** Representative Fasano  
**COMPANION BILL(S):**

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

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

Currently, persons convicted of a capital felony and for whom a death sentence has been imposed with respect to such capital felony in the State of Florida may marry provided certain Department of Corrections procedural and security requirements are met.

HB 3039 would create s. 741.2105, F.S. It would prohibit those persons convicted of a capital felony and for whom a death sentence has been imposed with respect to such capital felony from marrying another person.

A county court judge may, at that judge's discretion, issue a marriage license to a couple where one of the marrying parties is a convicted capital felon for whom a death sentence has been imposed.

This bill becomes effective upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Supreme Court has held marriage to be a fundamental right. See *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L.Ed.2d 1010 (1967) and *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978). States may impose reasonable regulations on marrying parties "that do not significantly interfere with decisions to enter into the marital relationship." *Zablocki* at 434 U.S. 186.

Where states have sought to regulate the right of inmates to marry or the rights of non-inmates to marry inmates, the Court has held that such regulation can only be allowed where the restriction can be reasonably related to legitimate penological objectives. *Turner v. Safley*, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). In that case, inmates challenged, among other things, Missouri inmate regulations that prohibited marriages by women inmates unless approved by the prison superintendent for a compelling reason. *Id.* at 96. Missouri officials defending the regulations cited security and rehabilitative concerns. First, the regulations prevented the development of certain relationships that could lead to violence within the prison system. *Id.* at 97. Second, prison officials were concerned that some of these marriages were the result of over dependence on or abuse by male figures and that these relationships were connected to the crimes the women inmates committed. *Id.* The Court concluded that the Missouri prison officials' concerns did not warrant the exaggerated regulatory responses. *Id.* at 97-98. Though the Court could foresee legitimate security concerns that could "require placing reasonable restrictions upon an inmate's right to marry, and may justify requiring approval of the superintendent," it held that absent a reasonable relation to penological interests, such regulations could not be permitted and the regulations were unconstitutional. *Id.* at 98.

Prior to 1982, the rules of the Florida Department of Corrections prohibited marriage of inmates to non-inmates during the period of incarceration. Rule 33-3.13, F.A.C., prohibited marriage by inmates who were under a sentence of death, under a sentence of life imprisonment with a minimum mandatory time of service of twenty-five years before becoming eligible for parole, or marriage of inmates to prisoners as defined in s. 944.02(5), F.S. (defining prisoner a person incarcerated as a result of arrest or conviction and in the custody of a local or state law enforcement officer). *Dept. of Corrections v. Roseman*, 390 So.2d 394, 395 (1st DCA 1980). Inmates were permitted to marry to legitimize an expected or existing child, or when the inmate's release date could be definitely determined to be within one year and the inmate was participating in a community release and furlough program. *Id.* In that case, the court sustained a DOAH administrative law judge finding that 33-3.13 F.A.C. (now 33-3.013 F.A.C.) had "a rational basis in service of a legitimate state interest and that it [was] constitutionally valid." *Id.*

In *Holden v. Department of Corrections*, the First District Court of Appeals held that s. 944.292, F.S., the statute under which rule 33-3.013 F.A.C., is adopted, did not automatically suspend an inmates right to marry. *Holden v. Department of Corrections*, 400 So.2d 142 (1st DCA 1981). In that case, a non-inmate challenged the Department's final order denying she and an inmate the opportunity to marry. *Id.* at 143. The court noted that it had previously held (*Dept. of Corrections v. Roseman, supra*) that "inmates ha[d] no fundamental right to marry and the non-inmates ha[d] no fundamental right to

marry inmates while they are yet in prison. *Id.* The court also noted that in *Roseman*, it upheld the rule in question as constitutionally valid. *Id.* However, in *Holden*, the court held that the underlying statute, s. 944.292, F.S. did not allow for the automatic suspension of the right to marry. *Id.* at 143. “[S]ince s. 944.292 expressly limits the mechanism for restoration of civil rights automatically suspended by its operation to that provided in Article IV, Section 8, of the Florida Constitution and the Department of Corrections has authority to regulate inmate marriages, it naturally flows that the right to marry cannot be considered automatically suspended under the Statute.” *Id.* The court did sustain the Department’s decision to deny the marriage request because there was competent, substantial evidence upon which the Department based its findings of fact. *Id.* at 143-44.

In response to the *Holden* case, the Department amended the rule to permit inmate marriages provided certain procedural and security requirements were met. See Rule 33-3.013, F.A.C. (1997).

**B. EFFECT OF PROPOSED CHANGES:**

HB 3039 creates s. 741.2105, F.S. The bill prohibits those persons convicted of a capital felony and for whom a death sentence has been imposed with respect to such capital felony from marrying another person.

A county court judge may, at that judge’s discretion, issue a marriage license to a couple where one of the marrying parties is a convicted capital felon for whom a death sentence has been imposed.

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**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The county court is authorized to grant an exception to the prohibition through the issuance of a marriage license to a marrying couple of which one party is a convicted capital felon for whom a death sentence has been imposed.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill prohibits marriage where one of the marrying parties is convicted of a capital felony and is under a death sentence for the same.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates section 741.2105, F.S.

E. SECTION-BY-SECTION RESEARCH:

See II.B., Effect of Proposed Changes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenue 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:**

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

**VII. SIGNATURES:**

**COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:**

Prepared by:

Legislative Research Director:

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David M. Greenbaum

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